



Compendium of International Standards for Elections

FOURTH EDITION



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INTRODUCTION

Elections provide examples of human rights in practice. Achieving a genuine, democratic electoral process is part of establishing a system of government that can ensure respect for human rights, the rule of law and the development of democratic institutions.

The European Union has a long tradition of supporting human rights, democracy and the rule of law throughout the world, and these principles are enshrined in the basic EU treaties as fundamental values. In this context, election observation constitutes an important EU foreign policy and external assistance instrument.

This Compendium provides an overview of international standards for elections, the key relevant texts, a matrix of the commitments of individual states, information on standards by area of assessment and a list of useful references for further information. This fourth edition also includes an explanation of human rights protection systems and election-related jurisprudence. It is complemented by an online database of international election-related case-law, available at www.eods.eu.

The Compendium is primarily designed for people working on EU election observation missions (EU EOMs), but may also be useful to interested stakeholders and analysts, including parliamentarians and lawmakers, election administrators, other international observer groups, citizen observers,

candidates and parties, implementers of technical assistance and other interested stakeholders. International standards provide those interested in an election with a tool for assessing the process according to agreed criteria for genuine elections.

It is the EU's expectation that EU EOMs will make regular use of this tool to assess the conduct of elections in line with international standards and ensure coherence among EU EOMs.



INTERNATIONAL HUMAN RIGHTS NORMS AND THE RIGHT TO PARTICIPATION THROUGH ELECTIONS

1.1 International Standards

The term ‘international standards’ used throughout this Compendium refers to the principles defined in international instruments, including political declarations, and to the clarification and interpretation that has developed within the framework of human rights bodies and courts to specify the scope of application and content of these principles.

International human rights treaties and other instruments define minimum standards as obligations that can be fulfilled by different means which are largely left to the discretion of States. That said, during the last 25 years, international human rights law has evolved considerably over the question of the best way to achieve the goal of democratic elections, and a set of criteria for democratic elections has gradually emerged based on international law, and the practice of States and inter-governmental organisations. These developments aim to clarify the principles in ways that take account of concrete situations.

In that sense, the term ‘international standards’ also includes comments and clarifications provided by human rights monitoring bodies and regional courts. The authority of their interpretation of treaty provisions is such that it is to be considered an integral part of international standards.

1.2 Typology of International Instruments

This Compendium contains a series of documents which have been adopted at international/universal level or at regional level. The normative strength and the nature of the various standards vary from that of obligations to political commitments.

Universal instruments have been developed and adopted within the United Nations (UN), usually as a result of negotiation and diplomatic exchanges. Since almost all States are represented in the UN, instruments and texts adopted tend to have a large degree of support at universal level.

Regional instruments have been compiled and adopted within regional organisations, such as the African Union, the Organization of American States, the Council of Europe or the Commonwealth of Independent States.

1.2.1 Treaty Standards

Treaty standards are standards contained in a treaty. A treaty can be concluded at both international and regional level, and is binding under international law for those States expressing their consent to be bound by the treaty. Article 2 of the Vienna Convention on the Law of Treaties defines a treaty as ‘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’. States cannot, by acts or omissions, derogate from the treaty standards, unless this is expressly provided for in the treaty, or the State has made a specific reservation to that effect. Treaties are denominated in a variety of ways, e.g. as treaties, agreements, conventions, charters, or protocols.

Signature, ratification, and accession: The consent of a State to be bound by a treaty is usually expressed by signature followed by ratification of the instrument. When a State has only signed the treaty, or pending the treaty’s entry into force, the State is obliged to refrain from acts that would defeat the object and purpose of a treaty. Alternatively, States that did not sign the treaty while it was open for signature can still become a party of the treaty by ‘acceding’ to it. Accession and ratification have the same legal effect. Some countries also use the terms ‘acceptance’ or ‘approval’ to express their consent to be bound. When in doubt whether a State has ratified, acceded or approved a treaty, practitioners should refer to that State as being ‘a State party to’ the treaty. The information about ratification and signature status contained in the Compendium has been updated from the United Nations Treaty Series database and from the websites of the respective international organisations in early 2016.

Interpretation and enforcement at regional level: human rights protection systems have emerged in the Americas, in Europe and in Africa, with regional human rights courts and commissions providing forms of redress in cases of alleged violations of the relevant human rights treaty. State parties to a human rights treaty decide whether they accept the competence of these courts and commissions to consider individual cases.

Treaty Monitoring Bodies: Within the UN system, each human rights treaty has its own ‘treaty monitoring body’, in charge of following the adherence of States parties to their human rights obligations. Treaty monitoring bodies are not courts. They generally have less investigative powers, and their observations and recommendations are not legally binding, even though they have a strong moral strength.

General comments (or recommendations) are issued by treaty monitoring bodies in order to provide their interpretation of specific provisions of the relevant treaty. This also serves to make the experience of the monitoring body available for the benefit of all States Parties, and to promote the further implementation of the treaty and facilitate the compilation of State reports. General comments referred to in this Compendium are, for example, General Comment 25 on The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Article 25) (1996) adopted by the Human Rights Committee and General Recommendation 23 on Political and Public Life (1997) adopted by the Committee on the Elimination of All Forms of Discrimination Against Women.

Concluding Observations and Views: In addition to general comments or recommendations, the treaty bodies issue ‘concluding observations’ after dealing with the periodic reports from the States parties. They may also issue decisions/opinions/communications in individual cases submitted to the treaty bodies, provided that the treaty contains such a mechanism and the State in question has accepted the competence of the treaty body to examine individual cases. The documentation concerning concluding opinions and individual decisions can be accessed through the websites of the different treaty bodies.

1.2.2 Non-treaty Standards

Non-treaty standards are sometimes called ‘soft law’ instruments. This is a body of resolutions of inter-governmental organisations containing declarations, commitments, joint statements, or declarations of policy or intentions. The main factor distinguishing non-treaty standards from treaty obligations

1 is the intention of the drafters, i.e. whether they intended for the document to be legally binding or not. Non-treaty standards are usually adopted by the highest decision-making bodies of international organisations concerning issues that reflect new concerns or developments on which the political will to conclude a legally binding treaty is insufficient, or the matter is of such a nature that the adoption of non-treaty standards is better suited for the intended purpose. Non-treaty standards can, however, be used as interpretative tools in establishing the contents of a particular treaty standard, and they can be considered to be indicative of emerging trends in international law. In that respect, they contribute to the formation of customary international law, especially if adopted by consensus or by a majority vote.

Declarations and resolutions (except for Security Council resolutions, which are legally binding) adopted under the auspices of the United Nations are typical examples of non-treaty standards. This includes the Universal Declaration of Human Rights (1948), the provisions of which constitute a strong moral commitment to the protection of the human rights contained in the Declaration. Other examples of non-treaty standards referred to in this Compendium are the General Assembly Resolution A/RES/46/137 (1991) on Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections, the Inter-American Democratic Charter (2001) and the OAU/AU Declaration on the Principles Governing Democratic Elections (AHG/Dec.1 (XXXVIII)) (2002). In the case of the OAU/AU Declaration, however, its normative status has been elevated by reference to it in the 2007 African Charter on Democracy, Elections and Governance.

Political commitments may contain standards, but can be considered as part of a political dialogue between the States concerned, the intention of which is not to make the standards binding at the level of international law. Political commitments are pledges that governments make to each other to comply with certain standards of conduct, but without the threat of formal sanctions normally attached to the violation of treaty standards. Examples of political commitments contained in the guide are the OSCE Copenhagen Document (1990) and the OSCE Istanbul Summit Declaration (1999).

1.2.3 Other documents and initiatives

When assessing an electoral process, EU observers may rely on other sources than ‘international standards’ in the narrow sense. Reference can be made, for instance, to ‘good practice’, meaning State practices that help illustrate how countries can fulfil their obligations while accommodating their specific needs. These documents do not create norms, but provide indications on how

to fulfil the norms; they provide examples of practices that can help States implement their obligations. Broadly used references of good practice are for example the Venice Commission’s ‘Code of Good Practice in Electoral Matters’ (2002)¹ or ‘Principles for Election Management, Monitoring, and Observation in the SADC Region’ (PEMMO).²

EU observers must use these sources with caution. They may benefit from a broad consensus within the election expert community, but may not be universally accepted. Texts and documents promoting assessment criteria that go beyond what can be inferred from legally binding or politically-binding instruments may be useful as guidance, but they should not be referred to as binding norms.

1.3 The Emergence of a Global Norm of Participation

Before World War II, no comprehensive set of human rights was recognised at the international level. Rules concerning political participation were confined to the sphere of national legislation and were in many cases provided for in a general manner in national constitutions.

Following World War II, the conviction began to take hold that such rights should be granted in a binding form at the international, rather than national, level. The Charter of the United Nations (UN) adopted in 1945 mentions the concept of ‘human rights’ in its preamble and in a number of other provisions, including Article 1, which sets forth the purposes of the United Nations. However, the meaning of these ‘human rights’, their substantive content, is not spelled out in the Charter.

The UN then assigned a committee with the task of formulating a set of human rights for later adoption in a Bill of Human Rights. This work led to the adoption of the Universal Declaration of Human Rights (hereafter, the Universal Declaration) by the United Nations General Assembly (UNGA) in December 1948, an adoption that took place just before the onset of the Cold War. It is important to remember that formally speaking the Universal Declaration is not a treaty but a non-binding UNGA resolution. However, it contains at least a number of norms which have the status of customary international law, although this does not yet appear to be the case concerning Article 21 on participation and elections. In addition, the Universal Declaration has been regarded as:

1 European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters*, CDL-AD (2002)23.

2 *Principles for Election Management, Monitoring, and Observation in the SADC Region*, EISA, Johannesburg, 2003

1 *'an authoritative interpretation of the term 'human rights' in the UN Charter, and thus can be considered indirectly constituting international treaty law. All human rights activities and mechanisms of the Human Rights Commission and other bodies of the United Nations, which are directly based on the Charter, refer to the Universal Declaration as universally recognised standards accepted by all States'.³*

The adoption of the Universal Declaration marked the beginning of the development of participation as a human right. Participation – directly or through freely chosen representatives – is the norm to which a number of other substantive human rights are connected. In the Universal Declaration, the right to participation is included in Article 21.

Article 21 of the Universal Declaration of Human Rights (UDHR) (1948)

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. 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.

While the article does not make any distinction between individuals on the basis of, for instance, citizenship, the norm obviously presumes an organic link of some sort to a particular country, either on the basis of residence or citizenship.

The article is mainly concerned with the level of central government, rather than regional or local government. The exact body in which everyone is entitled to participate is not specified; it could be the parliament or even the executive in those cases where the executive is elected. However, it is clear that the judiciary is outside the scope of at least paragraphs 1 and 3 of Article 21, because of the reference to government.

Participation in the government of a country should, according to Article 21, be either direct or through freely chosen representatives. It is easy to make a *prima facie* conclusion that such participation is determined either through a referendum or an election.

³ Manfred Nowak, *Introduction to the International Human Rights Regime*, MNP, Leiden, 2003, p.76

In Article 21(3), it is said that the will of the people shall be the basis of the authority of government. Hence the exercise of public power is to be legitimised by the people. The minimum level of participation in government is defined after the semi-colon, where an explanation is given of how the will of the people shall be expressed, with reference to a series of **election elements**. These election elements provide the operational dimension of the right to participation, and they are the key references for assessing elections.

The first requirement of Article 21(3) is that elections must indeed be held; otherwise the government does not ground its authority in the will of the people. The other elements are periodic elections, genuine elections, universal suffrage, equal suffrage, and secrecy of the vote.

The element of **periodic elections** implies that a country's legislation should prescribe a certain period after which elections must take place. The purpose of this is to ensure that the authority of government continues to be based on the will of the people. Nothing is said about the length of the period, although it should not be unduly long. This element also contains the implicit need for a responsive election administration or other such structure to ensure the timely conduct of elections.

The element of **genuine elections** may be understood at two levels. In the broader sense, the adjective genuine can be seen to bring in the adjacent political freedoms and rights, such as the freedom of expression, assembly, association, and movement. In the narrower sense, the element of genuine election refers to voters having a real choice between distinct political options and contestants.

Universal suffrage defines the electorate. This element concerns who, among the 'everyone', should have the right to participate in elections, with a premise that it should be defined as inclusively as possible. It is understood on the basis of Article 21 paragraph 1 that a relationship of some sort between the individual and the country in question can be required.

The reference to **equal suffrage** is related to equality among the electorate in the actual voting. This translates into the maxim 'one person, one vote'. That is to say, voters should have an equal number of votes at their disposal when carrying out the act of voting. Also, each vote should count more or less the same, with implications for the delineation of electoral district boundaries. Gerrymandering, the opportune changing of electoral boundaries in bad faith, is inadmissible under the principle of equal suffrage.

The element of a **secret vote** is quite clear and is an essential condition for the vote to be free. It holds that the voter should cast his or her vote in secret.

1

No one else should be able to see how the voter votes, guaranteeing that the person is actually in a position to vote according to his or her own conviction, free from influence and coercion from anyone else during the act of voting. The secrecy of the vote should also imply that it is impossible to attribute a vote, marked in the secrecy of the polling booth, to any particular voter. Rather, the ballot paper, when marked and dropped into the ballot box, must be completely anonymous in relation to the voter who marked it. There may be special procedures for persons unable to mark the ballot paper themselves, such as illiterate or physically impaired voters. As far as possible, the secrecy of the vote should be respected for these persons as well.

1.4 The Right to Participate in Public Affairs in the ICCPR

The plan to create a global Bill of Human Rights was completed in 1966 with the adoption of the two UN Covenants, the **International Covenant on Civil and Political Rights (ICCPR)** and the International Covenant on Economic, Social and Cultural Rights. In relation to the Charter of the United Nations and the Universal Declaration of Human Rights, the two UN Covenants implement the Universal Declaration by creating a binding set of human rights norms at the level of international law. The ICCPR also creates its own treaty monitoring body to monitor the adherence of States parties to the Covenant: the UN Human Rights Committee.

Article 25 ICCPR

Article 25 of the ICCPR contains a set of rules about elections.

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) (1966)

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.

Article 25 is about **participation**; it does not mention the word democracy. In fact, it deserves to be repeated that very few binding human rights documents do so, and when they do, it is mainly in their preamble. However, Article 25 does introduce a number of human rights aspects into the electoral process, and identifies elections as a central component of participation while defining a number of election-related elements as a minimum level of participation.

Article 25 refers to ‘every citizen’. This is clearly a specification and delimitation of the contents of Article 21 in the Universal Declaration, where the terms ‘everyone’ and ‘government of his country’ are used. Now the situation is clear concerning the exercise of the sovereign law-making powers: the States may limit the rights guaranteed in Article 25 of the ICCPR to that group of persons the State itself has recognised as being its citizens.

Article 25 refers to the right and the **opportunity** to take part. This too differs from Article 21 in the Universal Declaration. This reference is there to make clear to the States that the right to participate should not only be guaranteed as *de jure*, but also *de facto*. Thus, the State is required to take positive measures to give effect to the right to participation. Such positive measures may include, for example, the effective registration of voters that is as inclusive as possible, the provision of accessible and inclusive candidate registration procedures, and the convenient locating of polling stations.

The distinctions referred to in Article 2 of the ICCPR include discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. These grounds of distinction are examples through which prohibited discrimination can be identified. The reference to Article 2 brings the principle of non-discrimination into the ambit of Article 25 of the ICCPR, but it should be noted that such a dimension is included already in the very first word of Article 25: ‘every’.

As concerns the notion of **unreasonable restrictions** referred to in the *chapeau*, nothing specific is mentioned. This means that the content of such restrictions is a matter of interpretation. The body created to oversee the implementation of the ICCPR, the UN Human Rights Committee, determines what is to be understood by ‘unreasonable restrictions’, especially in the views it expresses in ‘concluding observations’ relating to specific countries and on individual cases (see 1.11 Human Rights Protection Systems, below).

In comparison with Article 21 of the UDHR, the institutional scope of Article 25 is broader. Whereas Article 21 is primarily focused on the government of a country, Article 25 of the ICCPR refers to the conduct of public affairs.

1 Institutionally speaking, participation should thus not only take place in relation to the national government, but also in relation to other levels and forms of administration, such as regional and local government levels.

In its **General Comment 25**, the UN Human Rights Committee has held that direct participation in the conduct of public affairs implies that a person may take part, for instance, as a voter in elections, as a voter in referenda, as a participant in local decision-making assemblies, as a member of legislative bodies, as a person holding executive office or as a member of a body established to represent citizens in consultation with government.⁴

The way in which the representatives shall be chosen so that there is a free expression of the will of the people is established in paragraph (b) of Article 25. This paragraph can be understood as an operationalisation of paragraph (a) as concerns direct voter participation in elections and as concerns the reference to freely chosen representatives. This operationalisation actually defines what the ICCPR understands by the term ‘elections’. According to the article, there shall be the right and the opportunity *‘[t]o 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.’* This provision contains at least two distinct matters: firstly, the necessary elements for elections, and secondly, the idea of an electoral cycle or a time-span during which the various elements for elections shall be implemented.

It is also important to mention what Article 25(b) does *not* contain. Firstly, it does not contain a definition of democracy, although it seems to have a preference for a representative system of government. Direct popular decision-making through a referendum is, however, not excluded. In fact, the election norms are also relevant for assessing referendum procedures, because at least some of the election elements are also applicable to referenda. Secondly, the provision does not prescribe any particular electoral system.

Election Elements as defined in Article of ICCPR

Regarding the elements of an election, it is possible to identify a number of distinct features, namely: the right to vote and the right to stand as a candidate, genuine as well as periodic elections, universal as well as equal suffrage, the secrecy of the ballot and the free expression of the will of the electors. In comparison with Article 21 of the Universal Declaration, the right to stand as a candidate is a new and very important dimension, no longer only implied but made explicit.

⁴ Human Rights Committee, General Comment 25, paragraph 6

As concerns the electoral cycle, it is possible to argue on the basis of paragraph (a) of Article 25 that the right to participation in the conduct of public affairs is a continuous right.

The attribution of a **continuous** character to the right to participate through elections strongly underlines the fact that elections and participation are not limited to the simple act of voting on election day. Rather, the continuous character of the right to participate implies that elections are a process of a cyclical nature: when one election has been completed and those elected have assumed their seats, the process starts again.

The continuous character of the right to participate beyond the immediate act of voting also has wider implications. It requires that a number of other human rights closely linked to the right to participation be taken into account. The adjacent political rights of freedom of association, freedom of assembly and freedom of speech are brought into the election context in a more substantive way through understanding elections as a cycle, and the requirement for genuine elections in Article 25.⁵

The Human Rights Committee has underlined the relationship between Article 25 and Article 19 of ICCPR on freedom of expression in the following way: *‘The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential’*.⁶ The Human Rights Committee underlines the promotion and the protection of the freedom of expression in the context of Article 25, developing a doctrine that allows, *inter alia*, that 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.

Through the term ‘every citizen’, the element of **universal suffrage** emphasises inclusiveness as well as non-discrimination within the group of persons to whom the right to vote is granted. As a practical matter, universal suffrage boils down to the composition of voter lists before the elections. The visible outcome of this election element is the specific list of voters managed by the election administrators on election day in the polling station.⁷

⁵ See relevant jurisprudence in Section 1.12.

⁶ General Comment No. 34 concerning Article 19 on freedoms of opinion and expression. Human Rights Committee, 102nd session, 11-29 July 2011 (CCPR/C/GC/34), p. 5. See also Rafael Rodríguez Castañeda v. Mexico (Comm. No. 2202/2012, CCPR/C/108/D/2202/2012), in which the Human Rights Committee considered the case on the basis of the access to information implied by article 19, para. 2, of the ICCPR and did not find a violation when access to ballot papers was denied by their destruction after elections, because the intention was to guarantee the integrity of the electoral process in a democratic society: ‘This measure was a proportionate restriction by the State party necessary for the protection of public order in accordance with the law and to give effect to electors’ rights, as set forth in article 25 of the Covenant.’

⁷ See relevant jurisprudence in Section 1.12.

1 There is a reference in Article 25(b) to **the right to be elected**. In comparison with Article 21 of the Universal Declaration, the provision is a novelty. It does not imply that citizens have a subjective right to become members of any elected body, but rather that all citizens qualifying under the provisions of the law should not only have the right, but also the opportunity, to stand as a candidate.

The right to stand for election also includes recognition of the right to stand as an independent candidate. In fact, according to the interpretation of the Human Rights Committee in paragraph 15 of General Comment 25, the ‘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’. Combined with the principle that candidates cannot be required to be members of parties in the first place, nor of specific parties (such as the one ruling party, as was ruled in the case of *Peter Chiiko Bwalya v. Zambia*), or to hold some defined political opinion, the scene is opened up for a competitive election.⁸

As a practical matter, the element of standing for election implies that the national law should contain sufficient provisions concerning registration of parties and candidates so as to give all political opinions and groupings equal opportunity – without any of the distinctions mentioned in Article 2 of the ICCPR and without unreasonable restrictions – to officially become participants in the electoral process leading up to an election. Registration procedures should not be so difficult as to inhibit candidacy (e.g., an extremely high number of signatures required for candidacy, or an excessive deposit required from a party before a list of candidates is accepted for elections, or, as in the case of *Lukyanchik v. Belarus*,⁹ invalidating an initiative to nominate a candidate for presidential elections because two out of the original 64 supporters of the initiative allegedly had not given their consent, while the requirement established by law was ten supporters). During this stage of the electoral cycle, which is crucial for the outcome of the elections, the free expression of the electors’ will should not be unduly restricted, but rather promoted.

The element of the right to be elected could also be developed beyond ordinary concerns related to the nomination of candidates, so as to target a number of special groups such as women and minorities that may be at a disadvantage in the exercise of their rights in general, and their political rights in particular. Such targeting of special groups must not be arbitrary,

⁸ See relevant jurisprudence in Section 1.12.

⁹ *Lukyanchik v. Belarus*, CCPR/C/97/D/1392/2005, 3 December 2009

but must be based on objective and reasonable criteria. This was not the case in *Devianand Narrain et al. v. Mauritius*,¹⁰ where information of ethnic background from a more than 30 years old classification of the population into four different communities was used as a compulsory criterion for potential candidates who, as a consequence, were unable to make a self-declaration on their proper community category and thus were effectively barred from standing for general election.

However, certain categories of persons may, under certain conditions, be excluded from the right to stand for elections. In the case of *Joszef Debreczeny v. the Netherlands*,¹¹ it was alleged that the refusal to accept the credentials of an elected person for a seat of a local council, because the person was a police sergeant in the national police force, would be a violation of Article 25 of the ICCPR. The Human Rights Committee noted 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 interests, the Committee considers that the said restrictions are reasonable and compatible with the purpose of the law.’

Voting in elections on the basis of the right to vote is normally quite uncontroversial once a voter is registered on the voter list. It includes the right of access to the polling station as well as the right to receive ballot materials, to mark the ballot paper in a polling booth, and to deposit the ballot paper in the ballot box. The right to vote can also be said to include a right to have one’s vote counted. The development of electronic methods of voting may affect the procedure of balloting, and may raise concerns from the point of view of at least two other election elements, namely the secrecy and the equality of the vote.¹²

The element of equal suffrage deals with the principle of ‘one person, one vote’ and its adjacent dimension that each vote should carry more or less the same weight. This has implications for the delineation of electoral district boundaries, for example. However, if justifiable reasons exist, it should not be impossible to undertake positive measures under the election law in order to promote the political participation of disadvantaged groups.¹³

10 *Devianand Narrain et al. v. Mauritius*, Com. No. 1744/2007, U.N. Doc. CCPR/C/105/D/1744/2007 (2013)

11 *Debreczeny v. The Netherlands*, Com. No. 500/1992, U.N. Doc. CCPR/C/53/D/500/1992 (1995)

12 See relevant jurisprudence in Section 1.12.

13 See relevant jurisprudence in Section 1.12.

1 The element of secrecy aims at ensuring for the voter an environment in which s/he can make her or his own choice, without undue influence or intimidation from any other person, and without fear that her or his choice would become known after the vote has been cast.¹⁴

The final election element in Article 25(b) of the ICCPR, the free expression of the will of the electors, is of a summary nature. Through the expression ‘guaranteeing’, it emphasises the importance of fulfilment of the other election elements. The free expression of the will of the voters is hence the aim of Article 25 of the ICCPR.

There are complicating factors here as well. For instance, political parties and candidates cannot, in most societies, carry out a significant election campaign without sufficient funds at their disposal. While such funds are needed, and the legality of donations to such ends cannot be questioned, campaign financing may come with strings that attach the party or the candidate to the donor. To prevent legitimate campaign funding from transgressing the line and becoming a non-legitimate method of influence, some regulatory measures are needed. This has been identified as an area of possible legislative action by the Human Rights Committee in paragraph 19 of General Comment 25:

‘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.’

In respect to illegal donations, action has been taken by different international organisations through the adoption of conventions for the fight against corruption, such as the United Nations (2003), the Organization of American States (1996), the African Union (2003), the Council of Europe (1999), the European Union (1997) and the Organization of Economic Co-operation and Development (1997). In most cases, these anti-corruption conventions include rules concerning elected public officials and civil servants that may also become relevant in the context of elections. Such anti-corruption rules may protect, in particular, two election elements, namely equal suffrage and the free expression of the will of the voters, at the same time as they set requirements that promote the transparency and integrity of election management.

The issue of the free expression of the will of the electors is, of course, not closed once internal safeguards are in place. It must also be possible to bring

¹⁴ See relevant jurisprudence in Section 1.12.

election issues for external review as regards their legality. For this reason, complaints mechanisms must be in place. Voters, as well as parties and candidates, should be given the opportunity to claim their rights before the judiciary and raise claims about the conduct of the elections, from voter registration to the allocation of mandates. For instance, under Article 2(3) of the ICCPR, each State party undertakes to ensure that any person, whose rights or freedoms recognised in the ICCPR are violated, has an **effective remedy**. The remedy should preferably be judicial. According to the Human Rights Committee, *‘[t]here 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’*.¹⁵ The ultimate sanction should be the disqualification of the elections, with the practical outcome of new elections, either in the entire country or in the constituency that has been affected by misconduct, although the sanction should always be proportional to the breach of law.¹⁶

As this review of the contents of Article 25 of the ICCPR shows, the right to participation is particularly well-specified in the area of the electoral process, within which a number of well-established rules exist. A summary of what elections should look like under Article 25 of the ICCPR is contained in General Comment 25 of the Human Rights Committee:

‘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.’

1.5 Universality and Inclusiveness

The right to participate in public affairs is further protected in a number of other more specific universal human rights instruments, such as the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the 1979 Convention on the Elimination of All Forms of

¹⁵ General Comment 25, para. 20

¹⁶ See relevant jurisprudence in Section 1.12.

1 Discrimination against Women (CEDAW), as well as in the 2006 Convention on the Rights of Persons with Disabilities (CRPD). These conventions aim to ensure that all the rights set forth in ICCPR can effectively be exercised by vulnerable groups in society.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹⁷

Article 5, Convention on the Elimination of All Forms of Racial Discrimination (1965)

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; [...]

In Article 5 of the ICERD, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee to everyone, without distinction, the enjoyment of political rights, in particular the right to participate in elections through voting and through the opportunity to stand for election on the basis of universal and equal suffrage. Eligibility on equal terms is hence explicitly at the core of Article 5(c) of the ICERD. The ICERD emphasises non-discrimination, but it also contains an element of positive measures when establishing a guarantee of the right to participation for everyone without distinction as to race, colour, or national or ethnic origin. In this respect the ICERD is of relevance for minorities of all kinds.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁸

Women are clearly included among the persons who, on the basis of the Universal Declaration and the ICCPR, shall have the right to participate in

¹⁷ The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted and opened for signature on 21 December 1965 and entered into force on 4 January 1969. As of February 2016, it had 88 signatories and 177 parties.

¹⁸ The Convention on the Elimination of All Forms of Discrimination against Women was adopted in December 1979, opened for signature on 1st March 1980 and entered into force on 3rd September 1981. As of February 2016, it had 99 signatories and 189 parties.

government or public affairs respectively. However, in most countries, the position of women in governmental structures does not reflect their share of the population, and therefore, the CEDAW has the important function of ensuring the States take measures to bridge existing gaps regarding women's role in public life.

In contrast with the 1952 Convention on the Political Rights of Women, which focused on achieving *de jure* equal rights to vote and to stand for women, CEDAW brings about the notion that in order to address existing entrenched inequalities and discrimination, temporary special measures may be necessary, with the aim to achieve *de facto* equality between men and women.

Convention on the Elimination of All Forms of Discrimination against Women

Article 4

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.

Article 7(a) of CEDAW promotes inclusiveness for women by prescribing eligibility for election to all publicly elected bodies in a manner relevant for the right to stand for candidacy. It also extends inclusiveness in paragraphs (b) and (c) to the practical functioning in elective office and to participation in non-governmental organisations and associations concerned with the public and political life of the country.¹⁹

¹⁹ See also General Recommendation No. 23 of the UN Committee on the Elimination of Discrimination against Women (16th session, 1997) on Article 7 (political and public life).

1 Convention on the Elimination of All Forms of Discrimination against Women

Article 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 and ICERD – together with the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in which the right of effective participation of minorities is mentioned – point out that there are certain disadvantaged groups in society which may need special attention in terms of participation. It is of little help that these groups have an equal right to vote if no one from these groups is included among nominated candidates. Therefore, it may be possible to promote the participation of these groups already at the nominations stage, for instance, by informing them of the necessity to avail themselves of the legal mechanisms to nominate candidates.

This perspective is further support in Article 5 of ICERD, with reference to the groups mentioned in the document. The ICERD provision refers to immediate accessibility through participation and the right to take part in government as well as in the conduct of public affairs at any level, and to the right to have equal access to public service. The language found in Article 5 joins the focus of Article 21 of the Universal Declaration and Article 25 of the ICCPR. Measures to promote accessibility are also recommended, for instance in the UN Declaration on Minorities,²⁰ where Article 2 tries to enhance the effective participation of minorities.²¹

Against this background, it is interesting to note what the European Court of Human Rights has said about pluralism, tolerance and broadmindedness as hallmarks of a so-called democratic society: *Although individual interests must on occasion be subordinated to those of a group, democracy does not sim-*

²⁰ UN General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities A/RES/47/135, 92nd plenary meeting, 18 December 1992

²¹ For case-law relevant for minorities stemming from different treaty bodies, see, *inter alia*, *Marie-Hélène Gillot et al. v. France* (Comm. 932/2000, U.N. Doc. CCPR/C/75/D/932/2000), *Devianand Narrain et al. v. Mauritius* (Comm. 1744/2007, U.N. Doc. CCPR/C/105/D/1744/2007), *Yatama v. Nicaragua* (Inter-Am. CtHR, Jdg. of 23 June 2005, Series C No. 127), *Gorzelik and others v. Poland* (ECtHR, Jdg. of 17 Feb. 2004), *Grosaru v. Romania* (ECtHR, Jdg. of 2 March 2010), *Py v. France* (ECtHR, Jdg. of 11 Jan. 2005), *Sejdic and Finci v. Bosnia and Herzegovina* (ECtHR, Jdg. of 22 Dec. 2009), and *Zornic v. Bosnia and Herzegovina* (ECtHR, Jdg. of 15 July 2014).

ply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.²²

Convention on the Rights of Persons with Disabilities (CRPD)²³

A more recent addition to the norms concerning special groups is the Convention on the Rights of Persons with Disabilities which contains in Article 29 strong language on participation of persons with disabilities in political and public life. While the provision creates positive obligations on the part of the State to take into account disabled voters, it simultaneously benefits every other voter in many ways.

Article 29, UN Convention on the Rights of Persons with Disabilities (2006)

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 to:

- a) 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;
 - 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;
- b) 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; [...]

22 See *Young, James and Webster* (ECtHR, Jdg. of 13 Aug. 1981, Series A, Vol. 44). However, the case arose in a trade union context.

23 The Convention on the Rights of Persons with Disabilities was adopted on 13 December 2006 and entered into force on 3 May 2008. As of February 2016, it had 160 signatories and 162 parties

1 CRPD is a far-reaching document whose entering into force in 2008 marked a paradigm shift in the way disability is considered in international law. No longer is the focus on a person's impairment *per se*, but rather on the obligation of societies to be inclusive and accommodate individual differences. In the electoral context, this means authorities have the responsibility to proactively remove obstacles and facilitate participation, throughout the entire election process.

CRPD guarantees full participation in public life, including the right to vote and be elected for persons with disabilities, and does not refer to any possible reasonable restriction to these rights. Until recently, mental incapacity was generally regarded as possible legitimate grounds for limiting suffrage rights, provided that restrictions were based on an individual court decision. This matter is in rapid evolution, as new jurisprudence is being developed by international human rights bodies as regards conditions for the right to vote of persons with mental disabilities.²⁴

1.6 Developments in Europe

Convention for the Protection of Human Rights and Fundamental Freedoms - ECHR

Post-1948, the plan to quickly adopt at the global level a complete Bill of Human Rights of a binding nature proved to be a difficult matter, mainly because of the Cold War and the differences of position between the West and the East concerning the contents of human rights and the meaning of democracy. Instead, steps were taken at regional level, particularly in Europe, where the Council of Europe and its Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) were created in 1949 and 1950, respectively.

The ECHR did not contain any mention of participation as such, although its articles made provisions concerning the adjacent political rights, that is, everyone's freedom of expression, of association and of assembly. A protocol to the Convention was opened for ratification in 1952, which provided rights upon which the States had not agreed in time for their inclusion in the Convention, including a 'right to free elections'.

²⁴ See the case of *Zsolt Bujdosó and five others v. Hungary* (Committee on the Rights of Persons with Disabilities, Comm. No. 4/2011(2013) in which a violation of the CRPD was found. See also *Purohit and Moore v. the Gambia* (Afr. Comm., Comm. No. 241/01(2003)) and *Alajos Kiss v. Hungary* (ECtHR, Jdg. of 20 May 2010). See also UN Human Rights Committee, *Concluding Observations on Belize*, 2013.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952)

Article 3 – Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions, which will ensure the free expression of the opinion of the people in the choice of the legislature.

Interestingly, rather than providing citizens with a right to vote in elections, Article 3 of the First Protocol to the ECHR merely places an obligation on the States to organise elections. The wording of Article 3 does not indicate any individual right to participation in elections, and it was originally considered that Article 3 did not create subjective rights.

Nevertheless, the European Court of Human Rights (ECtHR) eventually pronounced itself on the matter and interpreted the article as creating an individual right, on the basis of which an individual under the jurisdiction of one of the State Parties can file individual complaints against that State. This interpretation of the ECtHR was given through the leading case of *Mathieu-Mohin and Clerfayt v. Belgium* (1987).²⁵ The ‘people’ referred to in the article is to be understood as the citizens of the State, in the form of the electorate, consisting of individuals who are the beneficiaries of the provision.

Since the end of the Cold War, there has been a proliferation of case law resulting from Article 3. According to Article 3 in the First Protocol, elections shall be held at reasonable intervals. This qualification is somewhat more specific than the principle of periodic elections in Article 21 of UDHR and Article 25 of the ICCPR. In addition to the requirement of *fixed* intervals in national legislation, Article 3 asks the State to establish a *reasonable* interval for the elections. This requirement certainly excludes the possibility of fixing very long intervals – such as a generation or 10 years – while indicating that a normal length of parliamentary period should be identified. In the Member States of the Council of Europe, that period is between 3 and 6 years. It is not quite clear on the basis of the wording of Article 3 what the ‘conditions which will ensure the free expression of the opinion of the people’ are, but generally speaking the idea is to facilitate an atmosphere during the election times which is free from intimidation or coercion and other measures that could thwart the free expression of the opinion of the people in the choice of the legislature.

²⁵ *Mathieu-Mohin and Clerfayt v. Belgium* (ECtHR, Jdg. of 2 March 1987, Series A, vol. 113)

The evolution of the case-law contains milestones such as *Hirst v. UK*, *Frodl v. Austria*, *Scoppola v. Italy* and *Anchugov and Gladkov v. Russia* on the right to vote of prison inmates, *Labita v. Italy* on the use of special measures to combat infiltration of organised crime in politics as grounds for restricting the right to vote, *Zdanoka v. Latvia* on ineligibility of a candidate running for a party that had been declared unconstitutional for activities after the re-gained independence of Latvia, *Tanase v. Moldova* on prevention of elected MPs with multiple nationalities from taking seats in Parliament and *Sitaropoulos and Giakoumopoulos v. Greece* on the inability of the State to implement the right to out-of-country voting, just to mention a few (see section 1.12 Election-related Jurisprudence, below).

The Organisation for Security and Cooperation in Europe

The freedom of political choice, familiar to us from the Universal Declaration and the ICCPR, is also reflected in the OSCE commitments adopted in the **Copenhagen Document**, which was adopted following the Cold War. Paragraph 3 declares that the participating States recognise the importance of pluralism with regard to political organisations. The Copenhagen Document maintains that *‘the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of authority and legitimacy of all government’*. It is emphasised that *‘citizens should be able to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes’*.

The OSCE Copenhagen Document (1991)

- (7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will
 - (7.1) hold free elections at reasonable intervals, as established by law;
 - (7.2) permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
 - (7.3) guarantee universal and equal suffrage to adult citizens;
 - (7.4) ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
 - (7.5) respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

- (7.6) respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;
- (7.7) ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;
- (7.8) provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;
- (7.9) ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

Paragraphs 7.1 and 7.2 of the Copenhagen Document make the same point at the level of political competition. Paragraph 7.2 stipulates that the participating States will ‘permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote’. This is sustained in Paragraph 7.6, which emphasises the necessity of legal guarantees to enable political parties and organisations to compete with each other on a basis of equal treatment before the law and the authorities. Competition between political contestants will be the basis for the expression of the electors’ free will.

The Copenhagen Document, and the work of the OSCE more broadly, has been important to the development of electoral rules in Europe. The OSCE has played an important role in the development of election observation, through the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR), which is mandated to observe participating States’ compliance with the election-related commitments contained in the Copenhagen Document.

In addition, the OSCE has been active in the area of minority protection, another field touched upon in the Copenhagen Document. Finally binding norms emphasising the effective participation of minorities were issued by the Council of Europe in the 1995 Framework Convention for the Protection of National Minorities.

The CIS

Also in 1995, another system of conventions was grounded by the Commonwealth of Independent States (CIS), originally founded in 1991, through which election-related norms were extended also to Central Asia. The CIS Convention on Human Rights and Fundamental Freedoms contains in Article 29 language similar to Article 25 of the ICCPR, but with the difference that participation through elections is guaranteed in accordance with national legislation. The problematic return of the right from the level of international human rights law to the level of national law may to some extent be mitigated by the 2002 Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the CIS. The Convention spells out its own definitions of various election elements, including funding issues, the involvement of the State in informational support and campaigning, the status and powers of both domestic and international observers, complaints procedures and measures that are not to be considered discriminatory (for instance, positive measures concerning minorities).

1.7 Participation in the Americas

In its Preamble, the Charter of the Organization of American States (OAS) (1948) makes an important statement concerning national decision-making by concluding that representative democracy is an indispensable condition for the stability, peace and development of the region. In Article 2(b) of the OAS Charter, the promotion and consolidation of representative democracy is identified as an essential purpose of the OAS. It is therefore not surprising that the American Convention on Human Rights of 1969 in its Article 23 very much repeats the language of Article 25 of ICCPR, including the reference to ‘opportunity’. According to the case of *Castañeda Gutman v. Mexico*, the term ‘opportunity’:

*‘implies the obligation to guarantee with positive measures that every person who is formally the titleholder of political rights has the real opportunity to exercise them. As the Court has previously indicated, it is essential that the State create optimum conditions and mechanisms to ensure that political rights can be exercised effectively, respecting the principle of equality and non-discrimination’.*²⁶

²⁶ Case of *Castañeda Gutman v. Mexico*, Inter-Am. Ct of HR, 6 August 2008, para.145. For other references to “opportunity”, see *Yatama v. Nicaragua* (Inter-Am. CtHR, Jdg. of 23 June 2005) and *López Mendoza v. Venezuela* (Inter-Am.CtHR, Jdg. of 1 Sep. 2011).

Article 23. American Convention on Human Rights (1969)**Right to Participate in Government**

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

According to Article 3 of the Charter of the OAS, the essential elements of representative democracy include, *inter alia*, ‘respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government’.

Elections are here embedded in a broader context of constitutional features. This is sustained by a provision on the right to vote and to participate in government in Article XX of the American Declaration of the Rights and Duties of Man (1948) and by the Inter-American Democratic Charter (2001).

Unlike Article 25 of ICCPR, Article 23 of the American Convention on Human Rights contains its own limitation clause. On the basis of this clause, the States Parties can, in national law, regulate the exercise of the rights and opportunities to participate in government on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings. Of these, at least language and education can be considered at odds with Article 25 of the ICCPR, which in its *chapeau* makes a reference to the principle of non-discrimination and to the prohibition of unreasonable restrictions. The language criterion could perhaps also be problematic in relation to Article 27 of the ICCPR and the recognition granted to linguistic minorities. If a State is party to the American

1 Convention and the ICCPR at the same time, and chooses to use national legislation to create a legal limitation on the right of participation on grounds of language or education, it might be possible to argue that the national law is not in harmony with Article 25 of the ICCPR.

1.8 Participation in Africa

On the African continent, the African Charter on Human and Peoples' Rights was concluded in 1981. In Article 13 of this Charter, there is a participation clause that opens up in a manner similar to Article 25 of the ICCPR and Article 21 of the Universal Declaration. However, Article 13 of the African Charter lacks an operationalisation of participation in the field of elections.

ARTICLE 13, African Charter on Human and Peoples' Rights (1981)

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of the country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

On the basis of Article 13, it is clear that citizens have the right to take part in government. It is also possible to maintain, on the basis of the provision about participation in the government of one's country, that the article is mainly targeted towards the national level, leaving regional and local levels aside. Participation should be free, and representatives should be freely chosen. However, Article 13(1) of the African Charter makes the implementation of the right to participation almost entirely dependent on national law.

The African Charter says nothing concrete about how participation should take place. More importantly, the principles governing elections are not explicitly prescribed, although Article 13(1) mentions that participation can be direct or through freely chosen representatives. The latter part – the freely chosen representatives – seems to presuppose elections, but neither elections nor election elements are prescribed.

Nonetheless, the practice of the African Commission and of the newly established African Court on Human and Peoples' Rights indicates that at least the most extreme forms of exclusion of the people from national decision-mak-

ing, such as a military overthrow of civilian government, are not acceptable under Article 13(1) of the African Charter. Such a point is made in relation to election observation in the case of the *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria* by the African Commission on Human and Peoples' Rights, for example, where the African Commission on Human and Peoples' Rights held that Nigeria had violated, *inter alia*, Article 13 of the African Charter.²⁷

The commencement of the functioning of the African Court on Human and Peoples' Rights has created a new forum for trying cases on the basis of individual applications, and in one of the very first cases resolved after a material examination, *Reverend Christopher Mtikila and others v. Tanzania*,²⁸ the African Court found that 'any law that requires the citizen to be part of a political party before she can become a presidential candidate is an unnecessary fetter that denies to the citizen the right of direct participation, and amounts to violation' of Article 13(1) of the African Charter. In addition, such a requirement in national law of compulsory membership in a party is contrary to the freedom of association guaranteed in Article 10 of the African Charter.

The OAU/AU Declaration of July 2002 is more explicit with regard to the rights and obligations relating to elections, and is also useful for consideration of the commitment to democratic elections in the African context.

27 Afr.Comm. HR, Comm. No. 102/93 (1998), paras. 47-48. Reports from election observation missions are from time to time used as evidence and even as supporting arguments in human rights cases. See, e.g., *Viktor Korneenko v. Belarus* (Comm. No. 1553/2007, CCPR/C/95/D/1553/2007(2009)), *Georgian Labour Party v. Georgia* (ECtHR, Jdg. of 8 July 2008), paras. 49-53, 85-87, 98, 109, *Krasnov and Skuratov v. Russia* (ECtHR, Jdg. of 19 July 2007), para. 36, *Petkov and others v. Bulgaria* (ECtHR, Jdg. of 11 June 2009), para. 53, *Sejdic and Finci v. Bosnia and Herzegovina* (ECtHR, Jdg. of 22 Dec. 2009), para. 24, *Muradova v. Azerbaijan* (ECtHR, Jdg. of 2 Apr. 2009), para. 72, *Namat Aliyeva v. Azerbaijan* (ECtHR, Jdg. of 8 Apr. 2010), paras. 10, 12-18, 55, 78, 84, *Kerimova v. Azerbaijan* (ECtHR, Jdg. of 30 Sep. 2010), para. 30, *Communist Party of Russia and Others v. Russia* (ECtHR, Jdg. of 19 June 2012), para. 20, *Mammadov v. Azerbaijan* (No. 2) (ECtHR, Jdg. of 10 Jan. 2012), para. 28, *Hajili v. Azerbaijan* (ECtHR, Jdg. of 10 Jan. 2012), para. 21, and *Karimov v. Azerbaijan* (ECtHR, Jdg. of 25 Sept. 2014), para. 23.

28 African Court on HPR, Jdg. of 14 June 2013 (joined cases), paras. 109, 114.

The OAU/AU Declaration on the Principles Governing Democratic Elections in Africa (2002)

Adopted at the 38th Ordinary Session of the Organization of African Unity,

8 July 2002, Durban, South Africa

IV. ELECTIONS: RIGHTS AND OBLIGATIONS

1. Every citizen shall have the right to participate freely in the government of his or her country, either directly or through freely elected representatives in accordance with the provisions of the law.
2. Every citizen has the right to fully participate in the electoral processes of the country, including the right to vote or be voted for, according to the laws of the country and as guaranteed by the Constitution, without any kind of discrimination.
3. Every citizen shall have the right to free association and assembly in accordance with the law.
4. Every citizen shall have the freedom to establish or to be a member of a political party or organization in accordance with the law.
5. Individuals or political parties shall have the right to freedom of movement, to campaign and to express political opinions with full access to the media and information within the limits of the laws of the land.
6. Individual or political parties shall have the right to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.
7. Candidates or political parties shall have the right to be represented at polling and counting stations by duly designated agents or representatives.
8. No individual or political party shall engage in any act that may lead to violence or deprive others of their constitutional rights and freedoms. Hence all stakeholders should refrain from, among others, using abusive language and/or incitement to hate or defamatory allegations and provocative language. These acts should be sanctioned by designated electoral authorities.
9. All stakeholders in electoral contests shall publicly renounce the practice of granting favours, to the voting public for the purpose of influencing the outcome of elections.
10. In covering the electoral process, the media should maintain impartiality and refrain from broadcasting and publishing abusive language, incitement to hate, and other forms of provocative language that may lead to violence.
11. Every candidate and political party shall respect the impartiality of the public media by undertaking to refrain from any act which might constrain or limit

their electoral adversaries from using the facilities and resources of the public media to air their campaign messages.

12. Every individual and political party participating in elections shall recognize the authority of the Electoral Commission or any statutory body empowered to oversee the electoral process and accordingly render full cooperation to such a Commission/Body in order to facilitate their duties.
13. Every citizen and political party shall accept the results of elections proclaimed to have been free and fair by the competent national bodies as provided for in the Constitution and the electoral laws and accordingly respect the final decision of the competent Electoral Authorities or, challenge the result appropriately according to the law.

The African Charter on Democracy, Elections and Governance (2007-2012), which entered into force in 2012, is an important addition to the regional regulation of elections, specifying in its Article 17 the contents of democratic elections and reinforcing the normative nature of the above Declaration by re-affirming the commitment of the State Parties to holding regular, transparent, free and fair elections in accordance with the Declaration.

Article 17 African Charter on Democracy, Elections and Governance (2007-2012)

State Parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa.

To this end, State Parties shall:

1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
2. Establish and strengthen national mechanisms that redress election-related disputes in a timely manner.
3. Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.
4. Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels

1.9 Participation in Asia

In Asia, there are no comprehensive human rights conventions at regional level and consequently no specific regionally expressed right to participation with rules on elections. In case of elections organised in Asia, Article 25 of ICCPR is applicable if a State is a party to it. If this is not the case, an argument to the same effect in the electoral area could be developed on the basis of Article 21 of the Universal Declaration. It should also be observed that the OSCE commitments and the CIS conventions with provisions in the area of elections extend themselves to the Central Asian space of the former Soviet Union.

However, there is a sub-regional human rights declaration, namely the ASEAN Human Rights Declaration of 2012 adopted by the ten members of the Association of the Southeast Asian Nations (ASEAN). The declaration is not legally binding and is not explicitly connected to the mandate of the ASEAN Human Rights Commission. In its Article 25, the ASEAN Declaration contains a provision on the right to participation and on the right to vote.

Article 25 of the ASEAN Human Rights Declaration (2012)

- (1) Every person who is a citizen of his or her country has the right to participate in the government of his or her country, either directly or through democratically elected representatives, in accordance with national law.
- (2) Every citizen has the right to vote in periodic and genuine elections, which should be held by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law.

In addition to not being legally binding, the two paragraphs of the Article make the right to participation and the right to vote dependent on provisions in national law. The Declaration has been criticised for being incomplete and for provisions such as the following: *'the realization of human rights must be considered in the regional and national context'* (Article 7), which seem to apply cultural relativism to human rights.

1.10 Participation in the Arab World

The Arab Charter on Human Rights was concluded within the framework of the League of Arab States (LAS) and entered into force in 2008. The Arab Charter replaced a corresponding document from 1994, which did not receive sufficient support by the Member States. The Arab Charter contains in Article 24 a relatively broad provision concerning participation, which guarantees every citizen a number of specific rights.

Article 24 of the Arab Charter on Human Rights

Every citizen has the right:

1. To freely pursue a political activity.
2. To take part in the conduct of public affairs, directly or through freely chosen representatives.
3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will.
4. To the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity.
5. To freely form and join associations with others.
6. To freedom of association and peaceful assembly.
7. No restrictions may be placed on the exercise of these rights 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 health or morals or the protection of the rights and freedoms of others.

The right to freely pursue a political activity is supplemented by the right to freely form and join associations with others and by the right to freedom of association and of peaceful assembly, all of which are important rights, for instance, for the functioning of political parties. In addition, every citizen is guaranteed the right to take part in the conduct of public affairs, directly or through freely chosen representatives and, specifically, the right to stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will.

The provision in the Arab Charter seems to be modelled, to a great extent, against the background of Article 25 of ICCPR, although the election elements of Article 25 are not explicitly replicated. This impression is strengthened by the additional right to the opportunity to gain access, on an equal footing with others, to public office in accordance with the principle of equal opportunity. However, Article 24 of the Arab Charter contains a limitation clause similar to those found in the ECHR according to which no restrictions may be placed on the exercise of these rights 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 health or morals or the protection of the rights and freedoms of others. There is no mechanism for considering individual cases.

1 There are two organisations with an inter-regional reach amongst two different groups of countries, namely the Commonwealth and the Francophonie. The former is an organisation for countries with historical and cultural links with Britain, while the latter is an organisation for countries with historical and cultural links with France. Both organisations have adopted declarations in which the participating countries affirm their commitment to holding elections and to electoral norms.

1.11 Human Rights protection systems

1.11.1 Universal level

Within the UN system, one generally distinguishes ‘Charter-based’ bodies, which legal basis is in the 1945 UN Charter, from ‘treaty-based bodies’, which creation is foreseen by a specific human rights treaty.

Charter-based mechanisms:

Under Article 68 of the UN Charter, the UN Economic and Social Council (ECOSOC) is to ‘*set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions*’.

In 1946 the **UN Commission on Human Rights** was created and its first task was to set standards: first the Universal Declaration, and subsequently the legally-binding ICCPR and the International Covenant on Economic, Social and Cultural Rights.

In the mid-70s, the Commission on Human Rights became more active in investigating and reporting on human rights violations and since 1979, special procedures have been put in place with a thematic or country-specific focus. As of late 2015, there were 41 thematic and 14 country-specific **special procedures**.²⁹ For each of these areas, special rapporteurs are assigned with a mandate to report to the Human Rights Council.

Of particular interest for electoral matters are the reports of the country-specific mandates, as well as the reports of several thematic mandates, most notably of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

²⁹ See: www.ohchr.org

In 2006 a UNGA resolution turned the Commission into the **UN Human Rights Council** and created the process of the **Universal Periodic Review (UPR)**, through which all States declare the steps they are taking to foster human rights in their country.³⁰ The UPR is essentially a peer review process in which States review each other's practice.

In 2007 the Human Rights Council created a new complaint procedure to examine cases submitted by individuals, groups or NGOs alleging human rights violations. The procedure is confidential.

Treaty-based Bodies

Each of the nine universal human rights treaties establishes its own 'treaty monitoring body', whose task it is to monitor States' implementation of their human rights commitments specific to that treaty. These are the Committee on Civil and Political Rights (the UN Human Rights Committee, also abbreviated CCPR), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD Committee), the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the Committee against Torture (CAT), the Committee on the Rights of the Child (CRC), the Committee on Migrant Workers (CMW), the Committee on the Rights of Persons with Disabilities (CRPD Committee), and the Committee on Enforced Disappearances (CED).³¹

Treaty bodies consist of independent human rights experts serving in their own capacity, and operate with the support of the Office of the High Commissioner for Human Rights (OHCHR).

Their tasks involve reviewing States parties' periodic reports, report and provide recommendations, and provide authoritative interpretation of the provisions of the relevant treaty. Treaty bodies may also, under certain conditions, consider individual cases.³²

Finally, several human rights treaties foresee the possibility for inter-state complaints, complaints by a State party alleging violation of a treaty obligation by another State party. This procedure has never been used.

30 See, UNGA Resolution 60/251, *Human Rights Council*, A/RES/60/251

31 In addition, the Optional Protocol of the Convention against Torture (2002) has established a Subcommittee on Prevention of Torture (SPT).

32 As of writing, this was not the case for CMW, for which the individual complaint mechanism had not entered into force.

1

The UN Human Rights Committee

In the case of the ICCPR, the UN Human Rights Committee monitors compliance by State parties through several mechanisms:

- Under Article 40 of ICCPR, State parties are to submit **Periodic Reports** on their compliance with ICCPR to the Human Rights Committee, who can engage in a dialogue with each country over specific matters. At its conclusion, the Committee prepares **Concluding Observations** highlighting issues of concern and recommendations for remedial actions.
- The Committee has also competence to transmit ‘such **general comments** as it may consider appropriate to the State parties’ (Article 40 para.4), and has used this procedure to clarify the scope and meaning of ICCPR provisions. Of particular significance for elections are General Comment 25 on the right to participate in public affairs and the right to vote (1996), and General Comment 34 on Freedom of Opinion and Expression (2011).
- States Parties can decide to recognise the competence of the Human Rights Committee to receive **communications from individuals** alleging a violation of their rights. As of January 2016, 115 States have done so by becoming party to the first Optional Protocol to the ICCPR. If the case meets the criteria for admissibility spelled out in Article 3 and 5 of the Optional Protocol, the Human Rights Committee adopts ‘Views’ on the substance of the case, in which it may find a violation of the Covenant. Views, comments and observations of the UN Human Rights Committee have a strong moral authority but are not legally binding.

1.11.2 Regional level – The European Human Rights Protection System

The European human rights protection system emerged within the Council of Europe (CoE), founded in 1949. According to its statute (Treaty of London - May 1949), membership is open to ‘any European State’ (Article 4, CoE Statute) which accepts ‘*the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I*’ (Article 3, CoE Statute). As of early 2016, it had 47 member states, representing around 820 million citizens.

From the early days, the Council of Europe has been at the forefront of standards setting in human rights, and has elaborated a rich corpus of conventions, recommendations, guidelines and declarations in the field of human rights covering areas that include personal data protection, electronic voting, polit-

ical and campaign finance, human rights of older people, Internet freedoms and corporate responsibility in the field of human rights, among others.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (usually called European Convention on Human Rights - ECHR) was the first treaty to establish a supranational organ, **the European Court of Human Rights (ECtHR)**, to ensure that the States Parties fulfil their obligations.³³ The Committee of Ministers ensures continuous supervision of the execution of judgments. Until a reshaping of the system in 1998, there was a European Commission of Human Rights to which individuals had to apply. The Commission would forward only those cases deemed sufficiently grounded to the Court. In the new system, the Commission does not exist and individuals can directly apply to the Court.

Several rights are not covered by the Convention but by the First Protocol to the European Convention, signed in 1952, specifically the right to property, the right to education and the right to free elections. According to the Preamble to the Convention, fundamental human rights and freedoms are best maintained by 'an effective political democracy'. Article 3 of the First Protocol (P1-3) is hence of crucial importance in the Convention system.

The other substantive clauses in the Convention system use the words 'Everyone has the right' or 'No one shall', while Article 3 of the 1st Protocol (P1-3) uses the phrase 'The High Contracting Parties undertake'; consequently, for many years the position of the Court was that P1-3 did create an obligation for State Parties to hold free elections, but did not create substantive rights for individuals. The Court then moved to the concept of subjective rights of participation - the 'right to vote' and the 'right to stand for election to the legislature'.³⁴

For a complaint to be admissible, the plaintiff must qualify as a victim. There is no '*actio popularis*' (action in the name of a collective interest) in the ECHR system. Applicants have to be personally affected by the measure they challenge.

There are implied limitations to these rights, and States have a wide margin of appreciation to establish the conditions in which they are exercised. The Court has clarified the conditions under which these limitations are acceptable in a number of judgements since the case of *Mathieu-Mohin and Clerfayt*:

³³ Decisions and judgements of the ECtHR are available at: <http://hudoc.echr.coe.int>

³⁴ The leading case on this matter is *Mathieu-Mohin and Clerfayt v. Belgium*, Application no. 9267/81, 1987.

1 Case of *Mathieu-Mohin and Clerfayt v. Belgium*, 1987

52. The rights in question are not absolute. Since Article 3 (P1-3) recognises them without setting them forth in express terms, let alone defining them, there is room for implied limitations [...]. In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3 (P1-3) [...]. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 (P1) have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate [...]. In particular, such conditions must not thwart the free expression of the opinion of the people in the choice of the legislature.

Since the *Mathieu-Mohin* case, the ECtHR has developed a substantive corpus of principles in its case law related to Article P1-3. For example:

- No democracy without pluralism: *Gorzelik and Others v. Poland* (2004)
- Voting rights of non-residents: *Sitaropoulos and Giakoumopoulos v. Greece* (2012)
- Rights of convicted persons: *Hirst v. the U.K* (2005), *Frodl v. Austria* (2010), *Scoppola v. Italy* (2012)
- Voting rights of persons placed under guardianship: *Alajos Kiss v. Hungary* (2010)
- Restrictions on ground of national origin: *Aziz v. Cyprus* (2004)
- Disenfranchisement of voters for belonging to organised crime: *Labita v. Italy* (2000)
- Disqualification as a candidate for lack of proficiency in the national language: *Podkolzina V. Latvia* (2002)
- Criteria of eligibility of candidates on account of their political affiliation or other status: *Ždanoka, v. Latvia* (2006); *Seyidzade v. Azerbaijan* (2009)
- Right to take office: *Paschalidis, Koutmeridis and Zaharadis v. Greece* (2008)
- Exclusion of bi-nationals (from being elected): *Tanase v. Moldova* (2010)
- Excessive deposit requirement for candidate registration: *Sukhovetsky v. Ukraine* (2006)

- Registration denied on ground of allegations of collaboration with secret services: *Petkov and Others v. Bulgaria* (2009)
- Compositions of electoral commissions: *The Georgian Labour Party v. Georgia* (2008)
- Electoral thresholds: *Yumak and Sadak v. Turkey* (2008)
- Interrelation between free elections and freedom of expression: *Bowman v. the United Kingdom* (1998)
- Link between media coverage and the results of the elections: *Partija Jaunie Demokrāti and Partija Mūsu Zeme v. Latvia* (2007)
- Media coverage of an electoral campaign: *Communist Party of Russia and Others v. Russia* (2012)
- Obligation for public broadcasting system to provide a pluralistic service: *Manole and Others v. Romania* (2009)
- Routine reporting on the activities of State officials: *Saliyev v. Russia* (2010)
- Effective examination of individual complaints and appeals in matters concerning electoral rights: *Namat Aliyev v. Azerbaijan* (2010)

1.11.3 Regional Systems: Africa

The African human rights protection system developed within the Organisation of African Unity (1963) then African Union (2001). The African Union has 54 Member States: All African States, including South Sudan (2011). Morocco left the Union in 1984, after the admission of Western Sahara.

The OAU Charter (1963) was adopted in the post-colonial context and put a strong emphasis on sovereignty and non-interference, as demonstrated in Article II and III below. The OAU Charter makes no mention of human rights, and there was no human rights instrument before 1981.

The OAU Charter (1963)

Article I

The Organization shall have the following purposes:

(...) (d) To defend their sovereignty, their territorial integrity and independence;

Article III

The Member States, in pursuit of the purposes stated in Article II solemnly affirm and declare their adherence to the following principles:

- The sovereign equality of all Member States.
- Non-interference in the internal affairs of States.
- Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.

In 1981, the African Charter on Human and Peoples' Rights was adopted; it entered into force in 1986. It lists rights and also duties. The provision dealing with political participation is Article 13, quoted above.

The African Charter also creates the African Commission on Human and Peoples' Rights (1987, Banjul), with three main roles:

- Promoting human rights (in particular with special rapporteurs, thematic working groups, resolutions);
- Providing the authoritative interpretation of the charter;
- Protecting human rights through fact-finding missions, reporting from State parties, and consideration of communications from individuals and NGOs.

The competence of the Commission to examine communications does not require explicit State acceptance. Communications can be filed by direct victims, but also by any individual or organisation. In practice, most communications have been authored by NGOs (for example Interights).

The creation of the African Union (AU) has given a new impetus to the protection of human rights in Africa, as demonstrated in the Constitutive Act of the African Union (2000, 2001) by the inclusion of a reference to human rights in the objectives of the Union (Article 3) and a less absolute formulation of the principle on non-interference, which allows interference by the Union (Article 4).

During the same period, the AU adopted the Protocol to the African Charter on the Establishment of an African Court of Human and Peoples' Rights (1998, 2004). As of February 2016, the protocol has 27 States parties.³⁵ The Court sits in Arusha (Tanzania) and has been operational since 2006.

The Court has competence for delivering advisory opinions to any Member State, and may receive complaints through several channels:

- By direct access / individual communications - only if the responding state has accepted the competence of the Court to receive direct petitions from individuals or NGOs;
- from the African Commission on Human and Peoples' Rights;
- from the State party which had lodged a complaint to the commission; and
- from the responding State.

The enforcement of the Court's judgements is under the responsibility of the African Union Executive Council (foreign affairs ministers) who shall 'monitor the execution on behalf of the assembly' (Article 29).

In the case of *Tanganyika Law Society in June 2013*³⁶, the Court clarified that:

'the rights guaranteed under the Charter as stated in Article 13(1) are individual rights. They are not meant to be enjoyed only in association with some other individuals or group of individuals such as political parties' (paragraph 98); and that Article 27(2) of the Charter allows restrictions on the rights and freedoms of individuals only on the basis of the rights of others, collective security, morality and common interest.

Interestingly, in its reasoning, the Court mentions the United Nation's Human Rights Committee's position on the matter in General Comment No. 25 and cites jurisprudence from the Inter-American Court of Human Rights.

35 States parties to the protocol as of February 2016 include: Algeria, Burkina Faso, Burundi, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia and Uganda. Eight of them have accepted the competence of the Court to receive cases from individuals and NGOs (Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Rwanda, and Tanzania).

36 See: *Tanganyika Law Society et al. v. The United Republic of Tanzania*, 14 June 2013

1.11.4 Regional Systems: The Americas

Human rights protection in the Americas developed within the Organization of American States (OAS). It went through several phases of development, and operates through a dual system.

The OAS Charter (1948) makes reference to fundamental rights among the principles of the Organization (Article 3).

The Organization adopted in 1948 the American Declaration on the Rights and Duties of Man. It defines the content of the fundamental rights referred to in the OAS Charter, and is the first international human rights instrument, pre-dating the UDHR by several months.

The Declaration was originally not intended to be binding. It provides for a right to participation, and also for a duty to vote. Voting is mandatory in a number of States in the region, including Argentina, Brazil, Costa Rica, Ecuador, Peru, Uruguay, Bolivia, Honduras and Mexico.

The American Declaration on the Rights and Duties of Man (1948)

Article XX. Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

Article XXXII. It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

The **Inter-American Commission on Human Rights** was created in 1959, with the purpose to protect ‘those [human rights] set forth in the American Declaration...’ and the competence to issue recommendations to governments, make country reports and receive reports from States. The first report was on Cuba, and resulted in the exclusion of Cuba from the OAS in 1962. Originally, the Commission was not meant to consider individual cases, but received that competence in 1965.

In 1969, the system was reshaped with the adoption of the American Convention on Human Rights, which entered into force in July 1978. The Convention has been ratified by 25 of the 35 OAS member States.³⁷ The Convention has currently 23 State parties, since the withdrawal of Trinidad and Tobago in 1998 and of Venezuela in 2012.

³⁷ As of February 2016, the United States, Canada, Antigua and Barbuda, the Bahamas, Belize, Grenada, Guyana, St Kitts & Nevis, St Lucia and St Vincent & the Grenadines are not party to the Convention.

The Convention creates the **Inter-American Court of Human Rights** (1979, San José, Costa Rica). All parties to the Convention have accepted the jurisdiction of the Court except Dominica, Grenada, and Jamaica.

These successive phases of development have shaped a dual system:

- before the American Convention (1969), the Commission applied the **American Declaration** to all OAS Member States.
- Once a Member State becomes a party to the **American Convention**, it is the Convention, not the declaration that becomes the source of law; the Declaration remains the relevant instrument for the Member States that have not ratified the Convention.

The Inter-American Court of Human Rights has an advisory role and an adjudicatory role. It provides opinions on the interpretation of the Convention, and on compatibility of legislation at the request of states parties. The adjudicatory role operates as follows: the Court can consider cases submitted to it by a State party to the Convention or by the Inter-American Commission (if the defending state is a party to the Convention). Any person or group of persons, or NGO³⁸ may lodge petitions to the Commission containing denunciations or complaints of violation by a State party.

- If the petition is admissible, the Commission may seek a friendly settlement.
- If it fails, it can investigate whether the violation exists, and if that is the case, it draws up a report containing conclusions and recommendations sent to the State and the authors of the petition. This can lead to a friendly settlement.

For OAS member States that are not party to the ACHR (procedure based on the OAS Charter)

- If the friendly settlement fails, the procedure ends with the conclusions and decision of the Commission.
- The decision can be published, but is not legally binding. There is no enforcement mechanism.

For OAS Member State party to ACHR (procedure based on the 1969 Convention)

- If friendly settlement fails, and for States parties to the Convention who have accepted the contentious jurisdiction of the Court, the Commission can forward the case to the Court.

³⁸ This form of *Actio Popularis* does not exist in the ECtHR system.

- The Court can order compensatory payments to victims, and requests states to report back about implementation.

1.12 Election-related Jurisprudence

There are an ever-larger number of cases from the bodies supervising the application of the various human rights treaties that illustrate the interpretation of the various election elements. Indeed, over the last three decades, an important corpus of election-related jurisprudence has developed under the framework of regional human rights protection mechanisms and of UN treaty monitoring bodies. This jurisprudence has largely clarified the scope and the meaning of the norms provided in international instruments.

The list of cases below includes jurisprudence from both the UN Human Rights Committee as well as cases from the Inter-American Commission and Court on Human Rights, the African Court and the African Commission on Human and Peoples' Rights and the European human rights system,³⁹ and one case from the UN Committee on the Rights of Persons with Disabilities. It should also be noted that General Comment 25 of the UN Human Rights Committee says something about virtually every election element.

EODS has developed a searchable online database of international election-related case-law sorted by norms, country, year and court/arbitrator, available on its website (www.eods.eu).

Jurisprudence concerning the element of periodic elections:

For Europe, see the *Greek Case* (*Yearbook of the European Convention on Human Rights*, Vol. 12(1969)), dealing with the consequences of the military coup, and *Timke v. Germany* (Eur.Comm.HR, Deci. of 11 Sept. 1995, 82 D&R 158), in which a prolongation of the parliamentary term in a German *Land* from four to five years was not deemed to be a violation of the ECHR.

In *José Luis Mazón Costa v. Spain* (Comm. No. 1745, CCPR/C/92/D/1745/2007 of 23 April 2008), the UN Human Rights Committee, in the context of a constitutional monarchy with very limited royal powers, concludes that while art. 25(b) of the CCPR guarantees the right to vote and to be elected at periodic elections, it does not, in this case, grant a right to elect a head of State or to

³⁹ It should be noted that the cases resolved by the European Court of Human Rights do not have any binding effect outside the immediate European context, but they can be useful at least for giving direction for the argumentation and possibly also for interpretation in other human rights systems. In the same way, cases resolved by treaty bodies in the Inter-American human rights system formally only apply within that system, and those resolved by the treaty bodies of the African human rights system only in the African context.

be elected to such position. The African Commission had found a violation of article 13 of the African Charter of Human Rights and Peoples' Rights in a context where the king exercised all-encompassing powers. See the case of *Lawyers of Human Rights v. Swaziland* (Comm. No. 251/02(2005)).

The requirement of periodic elections also seems to imply that the State should have an election administration in place. While the organisation of the election administration is not determined in international law, the expectation is that the election administration is impartial. See, e.g., *Georgian Labour Party v. Georgia* (ECtHR, Judgment (hereinafter: Jdg.) of 8 July 2008), *Namat Aliyeva v. Azerbaijan* (ECtHR, Jdg. of 8 April 2010) *Kerimova v. Azerbaijan* (ECtHR, Jdg. of 30 Sept. 2010), *Mammadov v. Azerbaijan* (No. 2) (ECtHR, Jdg. of 10 Jan. 2012), *Hajili v. Azerbaijan* (ECtHR, Jdg. of 10 Jan. 2012), and *Karimov v. Azerbaijan* (ECtHR, Jdg. of 25 Sept. 2014).

Jurisprudence concerning the element of genuine elections:

Under **ICCPR**, see the case of *Kim Jong-Cheol v. the Republic of Korea* (Comm. 968/2001, U.N.Doc. CCPR/C/84/D/968/2001), which deals with the element of genuine elections from the perspective of the freedom of the press, and the case of *Viktor Korneenko v. Belarus* (Comm. No. 1553/2007, CCPR/C/95/D/1553/2007 of 24 Apr. 2009). See also the case of *Shchetko and Shchetko v. Belarus* (Comm No. 1009/2001, CCPR/C/87/D/1009/2001 of 8 August 2006) concerning the imposition of fines on the applicants solely for having distributed leaflets that contained a call for boycott of a general election. In the same vein, see also *Leonid Sudalenko v. Belarus* (Comm. 1750/2008, U.N. Doc. CCPR/C/100/D/1354/2005 (2010)).

For genuine elections under the **Inter-American Convention**, see *Manuel Cepeda Vargas v. Colombia* (Inter-Am. CtHR, Jdg. of 26 May 2010).

For genuine elections under the **African Charter** for Human Rights and Peoples' Rights, see *Lawyers of Human Rights v. Swaziland* (African Commission, Comm. No. 251/02(2005)) and *Reverend Christopher Mtikila and others v. Tanzania* (joined cases, African Court on HPR, Jdg. of 14 June 2013), which deals with the right to stand.

For genuine elections under the **ECHR**, see the *Greek Case* (Yearbook of the ECHR, Vol. 12(1969)), *Oberschlick v. Austria* (ECtHR A204 (1990)), *Lopes Gomes da Silva v. Portugal* (ECtHR, Jdg. of 28 Sept. 2000, Rep. of Judgments and Decisions 2000-X), *Bowman v. U.K.* (ECtHR, Jdg. of 19 Feb. 1998, Reports of Judgments and Decisions 1998-I), *Incal v. Turkey* (ECtHR, Jdg. of 9 June 1998, Reports of Judgments and Decisions 1998-IV), *Malisiewicz-Gasior v. Poland* (ECtHR, Jdg.

1 of 6 Apr. 2006), *TV Vest & Rogaland Pensjonistparti v. Norway* (ECtHR, Jdg. of 11 Dec. 2008), *Communist Party of Russia and Others v. Russia* (ECtHR, Jdg. of 19 June 2012) and *Oran v. Turkey* (ECtHR, Jdg. of 15 Apr. 2014) in the freedom of expression and media area, while cases such as *Socialist Party and others v. Turkey* (ECtHR, Jdg. of 25 May 1998, Reports of Judgments and Decisions 1998-III), *United Communist Party and others v. Turkey* (ECtHR, Jdg. of 30 Jan. 1998, Reports of Judgments and Decisions 1998-I), *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (ECtHR, Jdg. of 2 Oct. 2001, Reports of Judgments and Decisions 2001-IX), the *Welfare Party v. Turkey* (ECtHR, Jdg. of 13 Feb. 2003), *Gorzelik and others v. Poland* (ECtHR, Jdg. of 17 Feb. 2004), *Linkov v. the Czech Republic* (ECtHR, Jdg. of 7 Dec. 2006), *Kavakçı v. Turkey* (ECtHR, Jdg. of 5 Apr. 2007) *Silay v. Turkey* (ECtHR, Jdg. of 5 Apr. 2007) and *Ekoglasnost v. Bulgaria* (ECtHR, Jdg. of 6 Nov. 2011) illustrate the right to association and assembly. The case of *Rekvényi v. Hungary* (ECtHR, Jdg. of 20 May 1999) illustrates both the freedom of expression and the freedom of association area.

Jurisprudence concerning the element of Universal Suffrage:

Under the **ICCPR**, see *Fongum Gorji-Dinka v. Cameroon* (Comm. 1134/2002, U.N. Doc. CCPR/C/83/D/1134/2002) and *Marie-Hélène Gillot et al. v. France* (Comm. 932/2000, U.N. Doc. CCPR/C/75/D/932/2000), *M.S.B. Dissanayake v. Sri Lanka* (Comm. No. 1373/2005, U.N. Doc. CCPR/C/93/D/1373/2005(2008)) and *Denis Yevdokimov and Artiom Rezanov v. the Russian Federation* (Comm. 1410/2005, U.N. Doc. CCPR/C/101/D/1410/2005(2011)), in which a blanket deprivation of prisoners' right to vote without any arguments for the reasonableness of the prohibition was deemed a violation of article 25.

See also from the ambit of the **Inter-American Convention** on Human Rights the case of *Andres Aylwin Azocar et al. v. Chile* (Inter-Am. Comm.HR, Rep. No. 137/99 of 27 Dec. 1999) and *Statehood Solidarity Committee v. United States* (Inter-Am.Comm.HR, Rep. No. 98/03 of 29 Dec. 2003).

For universal suffrage under the **African Charter** on Human Rights and Peoples' Rights, see *Modise v. Botswana* (Comm. No. 97/93(2001)), *Legal Resources Foundation v. Zambia* (Comm. No. 211/98(2001)), *Purohit and Moore v. the Gambia* (Comm. No. 241/01(2003)) *Mouvement ivoirien des droits humains (MIDH) v. Côte d'Ivoire* (Comm. No. 246/02(2008)).

For universal suffrage under the **ECHR**, see *Polacco and Garofalo v. Italy* (ECommHR No. 23450/94, Dec. of 15 Sept. 1997, D&R 90-A), *Labita v. Italy* (Appl. No. 26772/95, ECtHR, Jdg. of 6 Apr. 2001), *Matthews v. the United Kingdom* (ECtHR, Jdg. of 18 Feb. 1999, Rep. of Judgments and Decisions

1999-I), *Vito Sante Santoro v. Italy* (ECtHR, Jdg. of 1 July 2004), *Aziz v. Cyprus* (ECtHR, Jdg. of 22 June 2004), *Py v. France* (ECtHR, Jdg. of 11 Jan. 2005), *Hirst v. the United Kingdom* (ECtHR, Jdg. of 6 Oct. 2005), *Albanese v. Italy*, (ECtHR, Jdg. of 23 March 2006), *Vitiello v. Italy* (ECtHR, Jdg. of 23 March 2006), *Campagnano v. Italy* (ECtHR, Jdg. of 23 March 2006), *Frodl v. Austria* (ECtHR, Jdg. of 8 Apr. 2010), *Alajos Kiss v. Hungary* (ECtHR, Jdg. of 20 May 2010), *Sitaropoulos and Others v. Greece* (ECtHR, Jdg. of 8 July 2010), *Greens and M.T. v. the United Kingdom* (ECtHR, Jdg. of 23 Nov. 2011), *Sitaropoulos and Giakoumopoulos* (ECtHR, Jdg. of 15 March 2012), *Scoppola v. Italy (No. 3)* (ECtHR, Jdg. of 22 May 2012), *Cucu v. Romania* (ECtHR, Jdg. of 13 Nov. 2012), *Shindler v. the United Kingdom* (ECtHR, Jdg. of 7 May 2013), *Anchugov and Gladkov v. Russia* (ECtHR, Jdg. of 4 July 2013), *Söyler v. Turkey* (ECtHR, Jdg. of 17 Sept. 2013), *Oran v. Turkey* (ECtHR, Jdg. of 15 Apr. 2014), *Firth and Others v. the UK* (ECtHR, Jdg. of 12 Aug. 2014), *Murat Vural v. Turkey* (ECtHR, Jdg. of 21 October 2014), and *McHugh and Others v. the United Kingdom* (ECtHR, Jdg. 10 Feb. 2015). Many of the cases resolved after *Hirst* in 2005 deal with prison inmates who lost their right to vote due to a blanket restriction.

For universal suffrage of persons with mental disabilities inside or outside of mental institutions, see the cases of *Purohit and Moore v. the Gambia* and *Alajos Kiss v. Hungary*, above, and the case of *Zsolt Bujdosó and five others v. Hungary* (Comm. on the Rights of Persons with Disabilities, Comm. No. 4/2011(2013)).

Jurisprudence concerning the element of the right to stand:

Under the **ICCPR**, see the cases of *Peter Chiiko Bwalya v. Zambia* (Comm. 314/1988, U.N. Doc. CCPR A/48/40(1993)), *Alba Pietrarroia v. Uruguay* (Comm. 44/1979, views adopted on 27 March 1981, and a number of other similar cases), *Jozsef Debreceny v. the Netherlands* (Comm. 500/1992, U.N. Doc. CCPR A/50/40(1995)), *Antonina Ignatane v. Latvia* (Comm. 884/1999, U.N. Doc. CCPR/C/72/D884/1999(2001)), *Fongum Gorji-Dinka v. Cameroon* (Comm. 1134/2002, U.N. Doc. CCPR/C/83/D/1134/2002 (2005)), *M.S.B. Dissanayake v. Sri Lanka* (Comm. No. 1373/2005, U.N. Doc. CCPR/C/93/D/1373/2005 (2008) (a seven year long prohibition on standing in elections following a breach of the Constitution was considered disproportionate under the circumstances), *Valery Lukyanchik v. Belarus* (Comm. 1392/2005, U.N. Doc. CCPR/C/97/D/1392/2005(2009)), *Devianand Narrain et al. v. Mauritius* (Comm. 1744/2007, U.N. Doc. CCPR/C/105/D/1744/2007(2012)), *Leonid Sudalenko v. Belarus* (Comm. 1354/2005, U.N. Doc. CCPR/C/100/D/1354/2005(2010))

1 and *Rolandas Paksas v. Lithuania* (Comm. 2155/2012, U.N. Doc. CCPR/C/110/D/2155/2012(2014) (under the specific circumstances of the case, lifelong disqualifications to stand as a candidate for various elected and appointed offices lacked the necessary foreseeability and objectivity and thus amounted to an unreasonable restriction).

See also from the ambit of the **Inter-American Convention** on Human Rights the case of *Andres Aylwin Azocar et al. v. Chile* (Rep. No. 137/99 of 27 Dec. 1999, by the Inter-Am. Comm. on HR), *Whitbeck Piñol v. Guatemala* (Rep. No. 21/94 of 22 Sept. 1994, by the Inter-Am. Comm. on HR), *María Merciadri de Morini v. Argentina* (Rep. No. 103/01 of 11 Oct. 2001, by the Inter-Am. Comm. on HR; friendly settlement), *Yatama v. Nicaragua* (Inter-Am. CtHR, Jdg. of 23 June 2005, Series C No. 127), *Castañeda Gutman v. Mexico* (Inter-Am. CtHR, Jdg. of 6 Aug. 2008) and *López Mendoza v. Venezuela* (Inter-Am. CtHR, Jdg. of 1 Sept. 2011).

For the right to stand as a candidate under the **African Charter**, see *Reverend Christopher Mtikila and others v. Tanzania* (joined cases, African Court on HPR, Jdg. of 14 June 2013).

Under the **ECHR**, see *Gitonas and others v. Greece* (ECtHR, Jdg. of 1 July 1997), *Ahmed and others v. the United Kingdom* (ECtHR, Jdg. of 2 Sept. 1998), *Selim Sadak and others v. Turkey* (ECtHR, Jdg. of 11 June 2002, para. 4), *Podkolzina v. Latvia* (ECtHR, Jdg. of 9 Apr. 2002), *Melnychenko v. Ukraine* (ECtHR, Jdg. of 30 March 2005), *Sukhovetsky v. Ukraine* (ECtHR, Jdg. of 28 March 2006), *Ždanoka v. Latvia* (ECtHR, Jdg. of 16 March 2006), *Russian Conservative Party of Entrepreneurs and Others v. Russia* (ECtHR, Jdg. of 11 Jan. 2007), *Krasnov and Skuratov v. Russia* (ECtHR, Jdg. of 19 July 2007), *Sarukhanyan v. Armenia* (ECtHR, Jdg. of 27 May 2008), *Adamsons v. Latvia* (ECtHR, Jdg. of 24 June 2008), *Tanase and Chirtoaca v. Moldova* (ECtHR, Jdg. of 27 Apr. 2010), *Petkov and others v. Bulgaria* (ECtHR, Jdg. of 11 June 2009), *Sejdic and Finci v. Bosnia and Herzegovina* (ECtHR, Jdg. of 22 Dec. 2009), *Namat Aliyeva v. Azerbaijan* (ECtHR, Jdg. of 8 Apr. 2010), *Kerimova v. Azerbaijan* (ECtHR, Jdg. of 30 Sept. 2010), *Paksas v. Lithuania* (ECtHR, Jdg. of 6 Jan. 2011), *Mammadov v. Azerbaijan* (No. 2) (ECtHR, Jdg. of 10 Jan. 2012), *Orujov v. Azerbaijan* (ECtHR, Jdg. of 26 July 2011), *Hajili v. Azerbaijan* (ECtHR, Jdg. of 10 Jan. 2012), *Abil v. Azerbaijan* (ECtHR, Jdg. of 21 Feb. 2012), *Khanhuseyn Aliyev v. Azerbaijan* (ECtHR, Jdg. of 21 Feb. 2012), *Atakishi v. Azerbaijan* (ECtHR, Jdg. of 28 Feb. 2012), *Oran v. Turkey* (ECtHR, Jdg. of 15 Apr. 2014), and *Zornic v. Bosnia and Herzegovina* (ECtHR, Jdg. of 15 July 2014).

See also: *Herritarren Zerrenda v. Spain* (ECtHR, Jdg. of 30 June 2009), *Etxebarria and Others v. Spain* (ECtHR, Jdg. of 30 June 2009), and *Eusko Abertzale*

Ekintza – Acción Nacionalista Vasca (EAE-ANV) v. Spain (ECtHR, Jdg. of 7 Dec. 2010), three cases which deal with the disqualification of candidates, *inter alia*, of a political party that had been declared illegal; the Court did not find any violation of Article 3 of the First Protocol of the ECHR in the three cases.

Under the ICCPR, the Inter-American Human Rights System and the ECHR, see the cases mentioned in relation to universal suffrage, and, in particular, the cases against Azerbaijan in relation to the right to stand as a candidate as well as *Russian Conservative Party of Entrepreneurs and Others v. Russia* (ECtHR, Judgment of 11 January 2007), *Sitaropoulos and Giakoumopoulos* (ECtHR, Jdg. of 15 March 2012), and *Oran v. Turkey* (ECtHR, Jdg. of 15 Apr. 2014).

See also from the ambit of the African Charter of Human Rights and Peoples' Rights the case of *Peoples' Democratic Organisation for Independence and Socialism v. The Gambia* (Comm. No. 44/90(1996), Report on an Amicable Resolution, and *Purohit and Moore v. the Gambia* (Comm. No. 241/01(2003)).

Jurisprudence concerning the element of Equal Suffrage:

Under the **ICCPR**, see *Istvan Mátyus v. Slovakia* (Comm. 923/2000, U.N. Doc. CCPR/C/75/D/923/2000), which, however, was not resolved on the basis of article 25(b), but on the basis of article 25(c).

From the ambit of the ECHR, see also the case of *Paschalidis, Koutmeridis and Zaharakis v. Greece* (ECtHR, Jdg. of 10 Apr. 2008).

Jurisprudence concerning the element of voting Secrecy:

See, under the ECHR a case where isolated polling booths were not available for all voters, *Babenko v. Ukraine* (ECtHR, Jdg. of 4 May 1999), which was considered inadmissible as a case and was not tried by the Court.

Jurisprudence concerning the element of the Free Expression of the Will of the Electors:

Under **ICCPR**, see *Leonid Sinitsin v. Belarus* (Comm. 1047/2002, U.N. Doc. CCPR/C/88/D/1047/2002).

See also from the ambit of the **Inter-American Convention** on Human Rights the case of *Susana Higuchi Miyagawa v. Peru* (Inter-Am.Comm.HR, Report No. 119/99 of 6 Oct. 1999), *Chitay Nech and others v. Guatemala* (Inter-Am.CtHR, Jdg. of 25 May 2010) and *Manuel Cepeda Vargas v. Colombia* (Inter-Am. CtHR, Jdg. of 26 May 2010).

1 From the ambit of the **African Charter** of Human Rights and Peoples' Rights the case of *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria* (Afr.Comm.HPR, Comm. No. 102/93 (1998)).

For the same area under the **ECHR**, see *Mathieu-Mohin and Clerfayt v. Belgium* (ECtHR, Jdg. of 2 March 1987, Series A, vol. 113) which is a leading case summarising the interpretation of electoral rules under Art. 3 of the First Protocol to the ECHR. See also *Selim Sadak and others v. Turkey* (ECtHR, Jdg. of 11 June 2002, para. 4), *Lykourazos v. Greece* (ECtHR, Jdg. of 15 June 2006), *Yumak and Sadak v. Turkey* (ECtHR, Jdg. of 30 January 2007), *Ilicak v. Turkey* (ECtHR, Judgment of 5 April 2007), *Kavakci v. Turkey* (ECtHR, Judgment of 5 Apr. 2007), *Kovach v. Ukraine* (ECtHR, Jdg. of 7 Feb. 2008) *Georgian Labour Party v. Georgia* (ECtHR, Jdg. of 8 July 2008), *Namat Aliyeva v. Azerbaijan* (ECtHR, Jdg. of 8 Apr. 2010), *Kerimova v. Azerbaijan* (ECtHR, Jdg. of 30 Sept. 2010), *Communist Party of Russia and Others v. Russia* (ECtHR, Jdg. of 19 June 2012), *Kerimli and Alibeyli v. Azerbaijan* (ECtHR, Jdg. of 10 Jan. 2012), *Mammadov v. Azerbaijan* (No. 2) (ECtHR, Jdg. of 10 Jan. 2012), *Hajili v. Azerbaijan* (ECtHR, Jdg. of 10 Jan. 2012, *Özgürlük ve Dayanisma Partisi (ÖDP) v. Turkey* (ECtHR, Jdg. of 10 May 2012), and *Karimov v. Azerbaijan* (ECtHR, Jdg. of 25 Sept. 2014) as well as *Grosaru v. Romania* (ECtHR, Jdg. of 2 March 2010), which deals with the allocation of the one mandate of a minority population in the national parliament.



HOW TO USE INTERNATIONAL STANDARDS IN ASSESSING AN ELECTION PROCESS

When first considering an election process, it is helpful to begin by identifying the international commitments the concerned State has made, so that its obligations are clear. Then when the election process is being examined, all areas of the election can be considered in regards to the international commitments the concerned State has made, as well as other international standards. Such an analysis can take place in advance of an election (considering the stages that have happened so far and the potential for future compliance), during an election process (for example in election observation mission reporting) or retrospectively, after the election has been concluded.

Why use international standards

Assessing an election process is a complex task, requiring consideration of technical, political and contextual factors. Analysis of strengths, problems, potential problems and possible solutions is not an exact science, with judgement needed to identify key issues and potential remedies. However, international standards give some solution to this in that they contain agreed benchmarks for elections. Such benchmarks can serve as a standardised framework for examination of an election process. Individual skill is still of course required for analysis of how an election meets international standards, and what recommendations are advisable. Therefore, variance in conclusions is still to be

expected, but the use of international standards means that at least the goals are explicit and agreed upon, and subjective interpretation is minimised.

Using international standards for assessing an election process has the following advantages:

The rules of the game are known to all and agreed in advance. This enables stakeholders to know how to develop an election process and how an election will be assessed. All those involved in the election have the same reference points.

Conclusions are likely to be more comprehensive, reliable and useful. There is less subjectivity, and therefore risk of personal misjudgements or omissions.

There is likely to be greater acceptance of conclusions and recommendations. There is reduced risk of an election analysis being interpreted as foreign interference if reference is made to international standards, particularly those contained in treaties and agreements to which the country has explicitly committed to.

Conclusions on an election process can be more easily considered by human rights treaty monitoring bodies. Reports that make explicit reference to obligations contained in a treaty or agreement can be more easily referenced by bodies that are responsible for assessing compliance, as well as others who are interested.

How to prepare for using international standards

Referring to international standards can seem daunting, particularly for non-lawyers. However explanations and reference materials are easily accessible.

1. *Understand the framework of international human rights.*

Read Compendium chapter 1 (International Human Rights Norms and the Right to Participation through Elections). It explains the framework of international standards and the weight that different types of instruments and documents have.

2. *Read the texts*

Read chapters 3 to 8, which contains the key universal and regional texts. Of particular importance are ICCPR Article 25 and accompanying General Comment 25.

Identifying relevant international standards when looking at an election

1. *Look up the specific commitments of the country you are interested in.*

Look up the country you are interested in and find out what commitments it has made so that you know the legally and politically binding commitments the country has made that therefore you should be referring to in your analysis. You can check treaty databases online, to see if the country you are interested in has signed a treaty since this Compendium was published. Read the relevant parts of the applicable treaties.

2. *Go through the different areas of electoral assessment and consider if international standards relating to each area are being upheld or breached (or if there is a risk they will be breached in the future).*

Chapter 10 goes through the various different areas of assessment that should be considered when looking at an election process. It identifies key universal international standards texts. In particular it lists key treaty standards (as stipulated in the ICCPR and other treaties), and key non-treaty standards (authoritative general comments/recommendations, UDHR and UN General Assembly resolutions).

Referring to international standards in analysis

When referring to international standards it is important to remember a few points:

- *Identify areas of non-compliance and distinguish which of these are most serious.* The reasons for non-compliance are critical, with careful assessment needed of aggravating and mitigating factors (this is often referred to as the ‘grey zone’). Even when there are mitigating circumstances, it is important to still identify shortcomings in an election so there is clarity about where further development is needed.
- *Make sure references to international standards are specific.* Where possible, refer to regional standards as well as universal standards. Simply saying that an election ‘did not meet international standards’ is not helpful and does not make an assessment more credible. Instead, spell out the relevant obligation(s) and cite the reference. For example ‘the elections fall short of a number of international standards, including freedom of expression (UDHR Article 19) and the right to universal and equal suffrage (African Charter on Democracy, Elections and Governance Article 4 and UDHR Article 21).’



Considering Contextual Factors	
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • country has an ‘established’ electoral history • no external cause • unrealistic electoral budget • problem was foreseeable • persistence of problem from previous election • problem is of regional or national scale • problem affects a specific group • refusal to acknowledge problem despite evidence of its occurrence • undue government or partisan interference in the process • opaque problem-solving procedure • exclusion or repression of stakeholders • problem remains unaddressed or is addressed using inappropriate or unlawful means • problem caused by deliberate political action • public confidence in the system is diminished • coercion and violence • dishonesty 	<ul style="list-style-type: none"> • post-conflict or first multi-party election • poor infrastructure and/or poverty preventing sufficient financial investment in elections • <i>force majeure</i> • no previous history of electoral problem • problem is isolated or limited in nature • problem is non-discriminatory • willingness to admit and address problem • there is no undue interference with the process • problem is addressed with openness, transparency and includes stakeholders • problem is addressed through appropriate and/or lawful channels • problem caused by inadvertent error • problem is not deliberate or dishonest • public confidence in system is maintained despite problem • peaceful atmosphere

- *Be explicit in identifying which international standards are legally binding - these are more powerful as the State has chosen to commit to these obligations.*

For example: ‘the shortcomings in the voter registration process resulted in a failure to provide for universal and equal suffrage as required under Article 25 of ICCPR (ratified by X country on X date).’

- *If the concerned State has not signed up to any legally binding treaty, reference can still be made to non-treaty standard instruments.*

If the concerned State has not signed up to any legally binding treaty, the UDHR may still be referred to. In addition, the comments of the UN Human Rights Committee (particularly General Comment 25) can still be relevant and valid as the ICCPR is an elaboration of the rights contained in the UDHR. References may also be made to political agreements the concerned State has chosen to sign up to. UN General Assembly resolutions have a normative persuasive value, the significance of which is increased if the concerned State voted in favour of the relevant resolution.

- *Limited reference may be made to treaties even if the concerned State has not signed up to the treaty.*

If the concerned State has not signed up to a treaty, it has no obligation to the standards contained in the treaty. However the treaty may still be referred to, not as an obligation, but as an example of practice undertaken by other States. A recommendation can also be made that a State sign up to a treaty or political agreement.

- *Referring to good practice.*

Good practice corresponds to practice which has been assessed to be effective in achieving elections that meet international standards. However good practice is not codified in any document to which States subscribe, therefore there is no obligation by a State to implement any particular good practice.

How to use international standards in election work

Preparation

Understand the human rights framework (chapter 1) and read the relevant texts (chapters 3-9).

Identifying relevant international standards

- Look up the specific commitments of the country you are interested in (chapters 3-7) and check for updates (see relevant websites). Read the applicable treaties.
- Go through the different areas of electoral assessment and consider if international standards relating to each area are being upheld or breached (chapter 10).
- Look up what other documents and instruments refer to the obligation, so that you can cite all applicable documents and instruments.

Referring to international standards

- Identify areas of non-compliance and distinguish which of these are most serious.
- Make sure references to international standards are specific. Where possible, refer to regional standards as well as universal standards.
- Be explicit in identifying which international standards are legally binding - these are more powerful as the State has chosen to commit to these obligations.



Universal instruments have been developed and adopted within the United Nations usually as a result of negotiation and diplomatic exchanges. Since almost all states are represented in the UN, instruments and texts adopted tend to have a large degree of support at the universal level.

The United Nations was established on 24 October 1945. Its purposes and principles are set out in its Charter and include the promotion and encouragement of respect for human rights and fundamental freedoms without distinction. The Universal Declaration of Human Rights (UDHR) was passed as a resolution by the General Assembly in December 1948 and is the cornerstone of the international human rights protection system. Various UN treaties have subsequently elaborated on the provisions of the UDHR. These instruments are open for ratification by all member states and are legally binding to those states which become parties to them, subject to reservations and declarations. The implementation of these core human rights treaties is monitored by committees of experts, who consider States Parties' periodic reports on the measures they have adopted to give effect to the rights in the instruments. States Parties can also choose to recognise the competence of the committees to receive communications from other States Parties or individuals alleging that it has not fulfilled its obligations.

The General Assembly has also passed a number of resolutions and declarations pertinent to elections.

3.1 The Universal Declaration of Human Rights (UDHR) (1948)

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. 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.

3.2 Treaty standards

3.2.1 The International Covenant on Civil and Political Rights (ICCPR) (1966)

Article 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.
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.

Article 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.

Article 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.

Article 20

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 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.

Article 22

1. Everyone shall have the right to freedom of association with others.
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.

Article 25

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

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25) (1996)

3. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opin-

ion, national or social origin, property, birth or other status. 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.

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.
6. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. This right of direct participation is supported by paragraph (b). Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government.
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).
9. Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such 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. The rights and obligations provided for in paragraph (b) should be guaranteed by law.
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.
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.

12. Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. 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.
14. If 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. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.
15. The 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. Any restrictions on the right to stand for election, 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. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy.
16. Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. 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). The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.
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. 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. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.
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. 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. 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. The results of genuine elections should be respected and implemented.

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. 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. 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. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.
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.
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.
26. 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. 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 there under.

General comment No. 34

Article 19: Freedoms of opinion and expression

General remarks

1. This general comment replaces general comment No. 10 (nineteenth session).
2. Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society.¹ They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.
3. Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.
4. Among the other articles that contain guarantees for freedom of opinion and/or expression, are articles 18, 17, 25 and 27. The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote.
5. Taking account of the specific terms of article 19, paragraph 1, as well as the relationship of opinion and thought (article 18), a reservation to paragraph 1 would be incompatible with the object and purpose of the Covenant.² Furthermore, although freedom of opinion is not listed among those rights that may not be derogated from pursuant to the provisions of article 4 of the Covenant, it is recalled that, "in those provisions of the Covenant that are not listed in article 4, paragraph 2, there are elements that in the Committee's opinion cannot be made subject to lawful derogation under article 4".³ Freedom of opinion is one such element, since it can never become necessary to derogate from it during a state of emergency.⁴
6. Taking account of the relationship of freedom of expression to the other rights in the Covenant, while reservations to particular elements of article 19, paragraph 2, may be acceptable, a general reservation to the rights set out in paragraph 2 would be incompatible with the object and purpose of the Covenant.⁵
7. The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. All branches of the State (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.⁶ Such

1 See communication No. 1173/2003, *Benhadj v. Algeria*, Views adopted on 20 July 2007: No. 628/1995, *Park v. Republic of Korea*, Views adopted on 5 July 1996.

2 See the Committee's general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to the declarations under article 41 of the Covenant, *Official Records of the General Assembly, Fiftieth Session, Supplement No. 40, vol. I (A/50/40 (Vol. I)), annex V*.

3 See the Committee's general comment No. 29 (2001) on derogation during a state of emergency, para. 13, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40, vol. I (A/56/40 (Vol. I)), annex VI*.

4 General comment No. 29, para. 11.

5 General comment No. 24.

6 See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 4, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40, vol. I (A/59/40 (Vol. I)), annex III*

responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities.⁷ The obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.⁸

8. States parties are required to ensure that the rights contained in article 19 of the Covenant are given effect to in the domestic law of the State, in a manner consistent with the guidance provided by the Committee in its general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant. It is recalled that States parties should provide the Committee, in accordance with reports submitted pursuant to article 40, with the relevant domestic legal rules, administrative practices and judicial decisions, as well as relevant policy level and other sectorial practices relating to the rights protected by article 19, taking into account the issues discussed in the present general comment. They should also include information on remedies available if those rights are violated.

Freedom of opinion

9. Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. This is a right to which the Covenant permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion.⁹ The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.¹⁰
10. Any form of effort to coerce the holding or not holding of any opinion is prohibited.¹¹ Freedom to express one's opinion necessarily includes freedom not to express one's opinion.

Freedom of expression

11. Paragraph 2 requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20.¹² It

⁷ See communication No. 61/1979, *Hertzberg et al. v. Finland*, Views adopted on 2 April 1982.

⁸ General comment No. 31, para. 8; See communication No. 633/1995, *Gauthier v. Canada*, Views adopted on 7 April 1999.

⁹ See communication No. 550/93, *Faurisson v. France*, Views adopted on 8 November 1996.

¹⁰ See communication No. 157/1983, *Mpaka-Nsusu v. Zaire*, Views adopted on 26 March 1986; No. 414/1990, *Mika Miha v. Equatorial Guinea*, Views adopted on 8 July 1994.

¹¹ See communication No. 878/1999, *Kang v. Republic of Korea*, Views adopted on 15 July 2003.

¹² See communications Nos. 359/1989 and 385/1989, *Ballantyne, Davidson and McIntyre v. Canada*, Views adopted on 18 October 1990.

includes political discourse,¹³ commentary on one's own¹⁴ and on public affairs,¹⁵ canvassing,¹⁶ discussion of human rights,¹⁷ journalism,¹⁸ cultural and artistic expression,¹⁹ teaching,²⁰ and religious discourse.²¹ It may also include commercial advertising. The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive,²² although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.

12. Paragraph 2 protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art.²³ Means of expression include books, newspapers,²⁴ pamphlets,²⁵ posters, banners,²⁶ dress and legal submissions.²⁷ They include all forms of audio-visual as well as electronic and internet-based modes of expression.

Freedom of expression and the media

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.²⁸ The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function.²⁹ 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.³⁰ The public also has a corresponding right to receive media output.³¹
14. As a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media.
15. States parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to

13 See communication No. 414/1990, *Mika Miha v. Equatorial Guinea*.

14 See communication No. 1189/2003, *Fernando v. Sri Lanka*, Views adopted on 31 March 2005.

15 See communication No. 1157/2003, *Coleman v. Australia*, Views adopted on 17 July 2006.

16 Concluding observations on Japan (CCPR/C/JPN/CO/5).

17 See communication No. 1022/2001, *Velichkin v. Belarus*, Views adopted on 20 October 2005.

18 See communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*, Views adopted on 19 March 2009.

19 See communication No. 926/2000, *Shin v. Republic of Korea*, Views adopted on 16 March 2004.

20 See communication No. 736/97, *Ross v. Canada*, Views adopted on 18 October 2000.

21 Ibid.

22 Ibid.

23 See communication No. 926/2000, *Shin v. Republic of Korea*.

24 See communication No. 1341/2005, *Zundel v. Canada*, Views adopted on 20 March 2007.

25 See communication No. 1009/2001, *Shchetoko et al. v. Belarus*, Views adopted on 11 July 2006.

26 See communication No. 412/1990, *Kivenmaa v. Finland*, Views adopted on 31 March 1994.

27 See communication No. 1189/2003, *Fernando v. Sri Lanka*.

28 See communication No. 1128/2002, *Marques v. Angola*, Views adopted on 29 March 2005.

29 See communication No. 633/95, *Gauthier v. Canada*.

30 See the Committee's general comment No. 25 (1996) on article 25 (Participation in public affairs and the right to vote), para. 25, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40, vol. I (A/51/40 (Vol. I))*, annex V.

31 See communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*.

foster the independence of these new media and to ensure access of individuals thereto.

16. States parties should ensure that public broadcasting services operate in an independent manner.³² 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.
17. Issues concerning the media are discussed further in the section of this general comment that addresses restrictions on freedom of expression.

Right of access to information

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. 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 affairs³³ and the right of the general public to receive media output.³⁴ Elements of the right of access to information are also addressed elsewhere in the Covenant. As the Committee observed in its general comment No. 16, regarding article 17 of the Covenant, 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. Pursuant to article 10 of the Covenant, a prisoner does not lose the entitlement to access to his medical records.³⁵ The Committee, in general comment No. 32 on article 14, set out the various entitlements to information that are held by those accused of a criminal offence.³⁶ Pursuant to the provisions of article 2, persons should be in receipt of information regarding their Covenant rights in general.³⁷ Under article 27, a State party's decision-making that may substantively compromise the way of life and culture of a minority group should be undertaken in a process of information-sharing and consultation with affected communities.³⁸
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. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means

32 Concluding observations on Republic of Moldova (CCPR/CO/75/MDA).

33 See communication No. 633/95, *Gauthier v. Canada*.

34 See communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*.

35 See communication No. 726/1996, *Zheludkov v. Ukraine*, Views adopted on 29 October 2002.

36 See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 33, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40, vol. I (A/62/40 (Vol. I)), annex VI*

37 General comment No. 31.

38 See communication No. 1457/2006, *Poma v. Peru*, Views adopted on 27 March 2009.

of freedom of information legislation.³⁹ The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.

Freedom of expression and political rights

20. The Committee, in general comment No. 25 on participation in public affairs and the right to vote, elaborated on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote. 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 and to inform public opinion without censorship or restraint.⁴⁰ The attention of States parties is drawn to the guidance that general comment No. 25 provides with regard to the promotion and the protection of freedom of expression in that context.

The application of article 19 (3)

21. Paragraph 3 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. However, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. The Committee recalls that the relation between right and restriction and between norm and exception must not be reversed.⁴¹ 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”.
22. Paragraph 3 lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be “provided by law”; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality.⁴² Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.⁴³
23. States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Para-

39 Concluding observations on Azerbaijan (CCPR/C/79/Add.38 (1994)).

40 See General comment No. 25 on article 25 of the Covenant, para. 25.

41 See the Committee's general comment No. 27 on article 12, *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40, vol. I (A/55/40 (Vol. I)), annex VI, sect. A*

42 See communication No. 1022/2001, *Velichkin v. Belarus*, Views adopted on 20 October 2005.

43 See the Committee's general comment No. 22, *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), annex VI*

graph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.⁴⁴ 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 19.⁴⁵ Journalists are frequently subjected to such threats, intimidation and attacks because of their activities.⁴⁶ 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.⁴⁷ All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted,⁴⁸ and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.⁴⁹

24. Restrictions must be provided by law. Law may include laws of parliamentary privilege⁵⁰ and laws of contempt of court.⁵¹ Since any restriction on freedom of expression constitutes a serious curtailment of human rights, it is not compatible with the Covenant for a restriction to be enshrined in traditional, religious or other such customary law.⁵²
25. For the purposes of paragraph 3, a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly⁵³ and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.⁵⁴ Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.
26. Laws restricting the rights enumerated in article 19, paragraph 2, including the laws referred to in paragraph 24, must not only comply with the strict requirements of article 19, paragraph 3 of the Covenant but must also themselves be compatible with the provisions, aims and objectives of the Covenant.⁵⁵ Laws must not violate the non-discrimination provisions of the Covenant. Laws must not provide for penalties that are incompatible with the Covenant, such as corporal punishment.⁵⁶
27. It is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression.⁵⁷ If, with regard to a particular State party, the Committee has to consider whether a particular restriction is imposed by law, the State party should provide details of the law and of actions that fall within the scope of the law.⁵⁸

44 See communication No. 458/91, *Mukong v. Cameroon*, Views adopted on 21 July 1994.

45 See communication No. 1353/2005, *Njaru v. Cameroon*, Views adopted on 19 March 2007.

46 See, for instance, concluding observations on Algeria (CCPR/C/DZA/CO/3); concluding observations on Costa Rica (CCPR/C/CRI/CO/5); concluding observations on Sudan (CCPR/C/SDN/CO/3).

47 See communication No. 1353/2005, *Njaru v. Cameroon*; concluding observations on Nicaragua (CCPR/C/NIC/CO/3); concluding observations on Tunisia (CCPR/C/TUN/CO/5); concluding observations on the Syrian Arab Republic (CCPR/CO/84/SYR); concluding observations on Colombia (CCPR/CO/80/COL).

48 Ibid. and concluding observations on Georgia (CCPR/C/GEO/CO/3).

49 Concluding observations on Guyana (CCPR/C/79/Add.121).

50 See communication No. 633/95, *Gauthier v. Canada*.

51 See communication No. 1373/2005, *Dissanayake v. Sri Lanka*, Views adopted on 22 July 2008.

52 See general comment No. 32.

53 See communication No. 578/1994, *de Groot v. The Netherlands*, Views adopted on 14 July 1995.

54 See general comment No. 27.

55 See communication No. 488/1992, *Toonen v. Australia*, Views adopted on 30 March 1994.

56 General comment No. 20, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI, sect. A*.

57 See communication No. 1553/2007, *Korneenko et al. v. Belarus*, Views adopted on 31 October 2006.

58 See communication No. 132/1982, *Jaana v. Madagascar*, Views adopted on 1 April 1985.

28. The first of the legitimate grounds for restriction listed in paragraph 3 is that of respect for the rights or reputations of others. The term “rights” includes human rights as recognized in the Covenant and more generally in international human rights law. For example, it may be legitimate to restrict freedom of expression in order to protect the right to vote under article 25, as well as rights article under 17 (see para. 37).⁵⁹ Such restrictions must be constructed with care: while it may be permissible to protect voters from forms of expression that constitute intimidation or coercion, such restrictions must not impede political debate, including, for example, calls for the boycotting of a non-compulsory vote.⁶⁰ The term “others” relates to other persons individually or as members of a community.⁶¹ Thus, it may, for instance, refer to individual members of a community defined by its religious faith⁶² or ethnicity.⁶³
29. The second legitimate ground is that of protection of national security or of public order (*ordre public*), or of public health or morals.
30. Extreme care must be taken by States parties to ensure that treason laws⁶⁴ and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.⁶⁵ Nor is it generally appropriate to include in the remit of such laws such categories of information as those relating to the commercial sector, banking and scientific progress.⁶⁶ The Committee has found in one case that a restriction on the issuing of a statement in support of a labour dispute, including for the convening of a national strike, was not permissible on the grounds of national security.⁶⁷
31. On the basis of maintenance of public order (*ordre public*) it may, for instance, be permissible in certain circumstances to regulate speech-making in a particular public place.⁶⁸ Contempt of court proceedings relating to forms of expression may be tested against the public order (*ordre public*) ground. In order to comply with paragraph 3, such proceedings and the penalty imposed must be shown to be warranted in the exercise of a court’s power to maintain orderly proceedings.⁶⁹ Such proceedings should not in any way be used to restrict the legitimate exercise of defence rights.
32. The Committee observed in general comment No. 22, that “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination

59 See communication No. 927/2000, *Svetik v. Belarus*, Views adopted on 8 July 2004.

60 Ibid.

61 See communication No. 736/97, *Ross v. Canada*, Views adopted on 18 October 2000.

62 See communication No. 550/93, *Faurisson v. France*; concluding observations on Austria (CCPR/CO/AUT/CO/4).

63 Concluding observations on Slovakia (CCPR/CO/78/SVK); concluding observations on Israel (CCPR/CO/78/ISR).

64 Concluding observations on Hong Kong (CCPR/CO/HKG/CO/2).

65 Concluding observations on the Russian Federation (CCPR/CO/79/RUS).

66 Concluding observations on Uzbekistan (CCPR/CO/71/UZB).

67 See communication No. 518/1992, *Sohn v. Republic of Korea*, Views adopted on 18 March 1994.

68 See communication No. 1157/2003, *Coleman v. Australia*.

69 See communication No. 1373/2005, *Dissanayake v. Sri Lanka*.

33. Restrictions must be “necessary” for a legitimate purpose. Thus, for instance, a prohibition on commercial advertising in one language, with a view to protecting the language of a particular community, violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.⁷⁰ On the other hand, the Committee has considered that a State party complied with the test of necessity when it transferred a teacher who had published materials that expressed hostility toward a religious community to a non-teaching position in order to protect the right and freedom of children of that faith in a school district.⁷¹
34. Restrictions must not be overbroad. The Committee observed in general comment No. 27 that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law”.⁷² The principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination. For instance, the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.⁷³
35. When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.⁷⁴
36. The Committee reserves to itself an assessment of whether, in a given situation, there may have been circumstances which made a restriction of freedom of expression necessary.⁷⁵ In this regard, the Committee recalls that the scope of this freedom is not to be assessed by reference to a “margin of appreciation”⁷⁶ and in order for the Committee to carry out this function, a State party, in any given case, must demonstrate in specific fashion the precise nature of the threat to any of the enumerated grounds listed in paragraph 3 that has caused it to restrict freedom of expression.⁷⁷

Limitative scope of restrictions on freedom of expression in certain specific areas

37. Among restrictions on political discourse that have given the Committee cause for concern are the prohibition of door-to-door canvassing,⁷⁸ restrictions on the number and type of written materials that may be distributed during election

70 See communication No. 359, 385/89, *Ballantyne, Davidson and McIntyre v. Canada*.

71 See communication No. 736/97, *Ross v. Canada*, Views adopted on 17 July 2006.

72 General comment No. 27, para. 14. See also Communications No. 1128/2002, *Marques v. Angola*; No. 1157/2003, *Coleman v. Australia*.

73 See communication No. 1180/2003, *Bodrozic v. Serbia and Montenegro*, Views adopted on 31 October 2005.

74 See communication No. 926/2000, *Shin v. Republic of Korea*.

75 See communication No. 518/1992, *Sohn v. Republic of Korea*.

76 See communication No. 511/1992, *Ilmari Lämsä, et al. v. Finland*, Views adopted on 14 October 1993.

77 See communications Nos. 518/92, *Sohn v. Republic of Korea*; No. 926/2000, *Shin v. Republic of Korea*.

78 Concluding observations on Japan (CCPR/C/JPN/CO/5).

campaigns,⁷⁹ blocking access during election periods to sources, including local and international media, of political commentary,⁸⁰ and limiting access of opposition parties and politicians to media outlets.⁸¹ Every restriction should be compatible with paragraph 3. However, it may be legitimate for a State party to restrict political polling imminently preceding an election in order to maintain the integrity of the electoral process.⁸²

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.⁸³ 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.⁸⁴ 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.⁸⁵ Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty,⁸⁶ *desacato*,⁸⁷ disrespect for authority,⁸⁸ disrespect for flags and symbols, defamation of the head of state⁸⁹ and the protection of the honour of public officials,⁹⁰ 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.⁹¹
39. States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3.⁹² 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.⁹³ The criteria for the application of such conditions and

79 Ibid.

80 Concluding observations on Tunisia (CCPR/C/TUN/CO/5).

81 Concluding observations on Togo (CCPR/CO/76/TGO); concluding observations on Moldova (CCPR/CO/75/MDA).

82 See communication No. 968/2001, *Kim v. Republic of Korea*, Views adopted on 14 March 1996.

83 See communication No. 1180/2003, *Bodrozic v. Serbia and Montenegro*, Views adopted on 31 October 2005.

84 Ibid.

85 See communication No. 1128/2002, *Marques v. Angola*.

86 See communications Nos. 422-424/1990, *Aduayom et al. v. Togo*, Views adopted on 30 June 1994.

87 Concluding observations on the Dominican Republic (CCPR/CO/71/DOM).

88 Concluding observations on Honduras (CCPR/C/HND/CO/1).

89 See concluding observations on Zambia (CCPR/ZMB/CO/3), para.25.

90 See concluding observations on Costa Rica (CCPR/C/CRI/CO/5), para. 11.

91 Ibid., and see concluding observations on Tunisia (CCPR/C/TUN/CO/5), para. 91..

92 See concluding observations on Viet Nam (CCPR/CO/75/VNM), para. 18, and concluding observations on Lesotho (CCPR/CO/79/Add.106), para. 23.

93 Concluding observations on Gambia (CCPR/CO/75/GMB).

licence fees should be reasonable and objective,⁹⁴ clear,⁹⁵ transparent,⁹⁶ non-discriminatory and otherwise in compliance with the Covenant.⁹⁷ 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. 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 licenses.⁹⁸

- 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”. The State should not have monopoly control over the media and should promote plurality of the media.⁹⁹ 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.
41. Care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements¹⁰⁰ are not employed to the effect of impeding freedom of expression.¹⁰¹ 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.¹⁰²
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 government¹⁰³ can never be considered to be a necessary restriction of freedom of expression.
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.¹⁰⁴
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

94 See concluding observations on Lebanon (CCPR/CO/79/Add.78), para. 25.

95 Concluding observations on Kuwait (CCPR/CO/69/KWT); concluding observations on Ukraine (CCPR/CO/73/UKR).

96 Concluding observations on Kyrgyzstan (CCPR/CO/69/KGZ).

97 Concluding observations on Ukraine (CCPR/CO/73/UKR).

98 Concluding observations on Lebanon (CCPR/CO/79/Add.78).

99 See concluding observations on Guyana (CCPR/CO/79/Add.121), para. 19; concluding observations on the Russian Federation (CCPR/CO/79/RUS); concluding observations on Viet Nam (CCPR/CO/75/VNM); concluding observations on Italy (CCPR/C/79/Add. 37).

100 See concluding observations on Lesotho (CCPR/CO/79/Add.106), para. 22.

101 Concluding observations on Ukraine (CCPR/CO/73/UKR).

102 Concluding observations on Sri Lanka (CCPR/CO/79/LKA); and see concluding observations on Togo (CCPR/CO/76/TGO), para. 17.

103 Concluding observations on Peru (CCPR/CO/70/PER).

104 Concluding observations on the Syrian Arab Republic (CCPR/CO/84/SYR).

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.

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)¹⁰⁵ to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries¹⁰⁶ 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.¹⁰⁷
46. States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as “encouragement of terrorism”¹⁰⁸ and “extremist activity”¹⁰⁹ as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided. The media plays a crucial role in informing the public about acts of terrorism and its capacity to operate should not be unduly restricted. In this regard, journalists should not be penalized for carrying out their legitimate activities.
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.¹¹⁰ 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.¹¹¹ 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.¹¹² States parties should consider the decriminalization of defamation¹¹³ and, in any case, the application of the criminal law should only be countenanced in the most serious

105 Concluding observations on Uzbekistan (CCPR/CO/83/UZB); concluding observations on Morocco (CCPR/CO/82/MAR).

106 Concluding observations on Democratic People's Republic of Korea (CCPR/CO/72/PRK).

107 Concluding observations on Kuwait (CCPR/CO/69/KWT).

108 Concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6).

109 Concluding observations on the Russian Federation (CCPR/CO/79/RUS).

110 Concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6).

111 Ibid.

112 Ibid.

113 Concluding observations on Italy (CCPR/C/ITA/CO/5); concluding observations on the Former Yugoslav Republic of Macedonia (CCPR/C/MKD/CO/2).

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.¹¹⁴

48. Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.¹¹⁵
49. Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression.¹¹⁶ The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Restrictions on the right of freedom of opinion should never be imposed and, with regard to freedom of expression, they should not go beyond what is permitted in paragraph 3 or required under article 20.

The relationship between articles 19 and 20

50. Articles 19 and 20 are compatible with and complement each other. The acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3.¹¹⁷
51. What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19.
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. In every case in which the State restricts freedom of expression it is necessary to justify the prohibitions and their provisions in strict conformity with article 19.

¹¹⁴ See communication No. 909/2000, *Kankanamge v. Sri Lanka*, Views adopted on 27 July 2004.

¹¹⁵ Concluding observations on the United Kingdom of Great Britain and Northern Ireland-the Crown Dependencies of Jersey, Guernsey and the Isle of Man (CCPR/C/79/Add.119). See also concluding observations on Kuwait (CCPR/CO/69/KWT).

¹¹⁶ So called “memory-laws”, see communication No. , No. 550/93, *Faurisson v. France*. See also concluding observations on Hungary (CCPR/C/HUN/CO/5) paragraph 19.

¹¹⁷ See communication No. 736/1997, *Ross v. Canada*, Views adopted on 18 October 2000.

3.2.2. International Convention on the Elimination of Racial Discrimination (ICERD) (1966)¹

Article 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:

- (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;

[...]

Article 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) Other civil rights, in particular: [...]
- (viii) The right to freedom of opinion and expression;
- (ix) The right to freedom of peaceful assembly and association;

General Recommendation No.23: Indigenous Peoples (1997)²

The Committee calls in particular upon States parties to:

[...]

- (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

3.2.3 Convention on the Political Rights of Women (CPRW) (1952)³

Article 1

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

1 Entry into force 4 January 1969

2 Issued by the Committee established to monitor State's compliance with the Commitments of CERD

3 Entry into force 7 July 1954

Article 2

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Article 3

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

3.2.4 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (1979)⁴

Article 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.

Article 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:

To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

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;

To participate in non-governmental organizations and associations concerned with the public and political life of the country.

General Recommendation 23 on Political and Public Life (1997)⁵

5. Article 7 obliges States parties to take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life. The obligation specified in article 7 extends to all areas of public and political life and is not limited to those areas specified in subparagraphs (a), (b) and (c). The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.

⁴ Entry into force 3 September 1981

⁵ Issued by the Committee established to monitor State's compliance with the Commitments of CEDAW

6. The Convention envisages that, to be effective, this equality must be achieved within the framework of a political system in which each citizen enjoys the right to vote and be elected at genuine periodic elections held on the basis of universal suffrage and by secret ballot, in such a way as to guarantee the free expression of the will of the electorate.
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*.

The system of balloting, the distribution of seats in Parliament, the choice of district, all have a significant impact on the proportion of women elected to Parliament. Political parties must embrace the principles of equal opportunity and democracy and endeavour to balance the number of male and female candidates.

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.

28. While States parties generally hold the power to appoint women to senior cabinet and administrative positions, 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.
32. As political parties are an important vehicle in decision-making roles, Governments should encourage political parties to examine the extent to which women are full and equal participants in their activities and, where this is not the case, should identify the reasons for this. 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.
34. Other organizations such as trade unions and political parties have an obligation to demonstrate their commitment to the principle of gender equality in their constitutions, in the application of those rules and in the composition of their memberships with gender-balanced representation on their executive boards so that these bodies may benefit from the full and equal participation of all sectors of society and from contributions made by both sexes.

Recommendations

42. States parties are under an obligation to take all appropriate measures, including the enactment of appropriate legislation that complies with their Constitution, to ensure that organizations such as political parties and trade unions, which may not be subject directly to obligations under the Convention, do not discriminate against women and respect the principles contained in articles 7 and 8.
43. States parties should identify and implement temporary special measures to ensure the equal representation of women in all fields covered by articles 7 and 8.

45. Measures that should be identified, implemented and monitored for effectiveness include, under article 7, paragraph (a), those designed to:
- (a) Achieve a balance between women and men holding publicly elected positions;
 - (b) Ensure that women understand their right to vote, the importance of this right and how to exercise it;
 - (c) Ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement;
 - (d) Assist women experiencing such disadvantages to exercise their right to vote and to be elected.
46. Under article 7, paragraph (b), such measures include those designed to ensure:
- (a) Equality of representation of women in the formulation of government policy;
 - (b) Women's enjoyment in practice of the equal right to hold public office;
 - (c) Recruiting processes directed at women that are open and subject to appeal.
47. Under article 7, paragraph (c), such measures include those designed to:
- Ensure that effective legislation is enacted prohibiting discrimination against women;
 - Encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work.

General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures (2004)

4. The scope and meaning of article 4, paragraph 1, must be determined in the context of the overall object and purpose of the Convention, which is to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms. States parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of de jure as well as de facto equality with men.
6. A joint reading of articles 1 to 5 and 24, which form the general interpretative framework for all of the Convention's substantive articles, indicates that three obligations are central to States parties' efforts to eliminate discrimination against women. These obligations should be implemented in an integrated fashion and extend beyond a purely formal legal obligation of equal treatment of women with men.
7. Firstly, States parties' obligation is to ensure that there is no direct or indirect⁶ 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

⁶ Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women, which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men.

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 relations⁷ 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.

8. In the Committee's view, a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. 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.
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.
- III. The meaning and scope of temporary special measures in the Convention on the Elimination of All Forms of Discrimination against Women

Article 4, paragraph 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.

B. Terminology

17. The *travaux préparatoires* of the Convention use different terms to describe the "temporary special measures" included in article 4, paragraph 1. The Committee itself, in its previous general recommendations, used various terms. States parties often equate "special measures" in its corrective, compensatory and promotional sense with the terms "affirmative action", "positive action", "positive measures",

⁷ "Gender is defined as the social meaning given to biological sex differences. It is an ideological and cultural construct, but is also reproduced within the realm of material practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier, and in this sense it is similar to other stratifiers such as race, class, ethnicity, sexuality, and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes". 1999 World Survey on the Role of Women in Development, United Nations, New York, 199, page ix.

“reverse discrimination”, and “positive discrimination”. These terms emerge from the discussions and varied practices found in different national contexts⁸. In the present general recommendation, and in accordance with its practice in the consideration of reports of States parties, the Committee uses solely the term “temporary special measures”, as called for in article 4, paragraph 1.

C. Key elements of article 4, paragraph 1

18. [...] While the application of temporary special measures often remedies the effects of past discrimination against women, the obligation of States parties under the Convention to improve the position of women to one of de facto or substantive equality with men exists irrespective of any proof of past discrimination.
19. States parties should clearly distinguish between temporary special measures taken under article 4, paragraph 1, to accelerate the achievement of a concrete goal for women of de facto or substantive equality, and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non- discrimination, cannot be called temporary special measures.
20. Article 4, paragraph 1, explicitly states the “temporary” nature of such special measures. Such measures should therefore not be deemed necessary forever, even though the meaning of “temporary” may, in fact, result in the application of such measures for a long period of time. The duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be discontinued when their desired results have been achieved and sustained for a period of time.
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.

IV. Recommendations to States parties

- 27 States parties should analyse the context of women’s situation in all spheres of life, as well as in the specific, targeted area, when applying temporary special measures to accelerate achievement of women’s de facto or substantive equality.

⁸ The term “affirmative action” is used in the United States of America and in a number of United Nations documents, whereas the term “positive action” is currently widely used in Europe as well as in many United Nations documents. However, the term “positive action” is used in yet another sense in international human rights law to describe “positive State action” (the obligation of a State to initiate action versus a State’s obligation to abstain from action). Hence, the term “positive action” is ambiguous inasmuch as its meaning is not confined to temporary special measures as understood in article 4, paragraph 1, of the Convention. The terms “reverse discrimination” or “positive discrimination” are criticized by a number of commentators as inappropriate.

They should evaluate the potential impact of temporary special measures with regard to a particular goal within their national context and adopt those temporary special measures which they consider to be the most appropriate in order to accelerate the achievement of de facto or substantive equality for women.

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.
31. States parties should include, in their constitutions or in their national legislation, provisions that allow for the adoption of temporary special measures. The Committee reminds States parties that legislation, such as comprehensive anti-discrimination acts, equal opportunities acts or executive orders on women's equality, can give guidance on the type of temporary special measures that should be applied to achieve a stated goal, or goals, in given areas. Such guidance can also be contained in specific legislation on employment or education. Relevant legislation on non-discrimination and temporary special measures should cover governmental actors as well as private organizations or enterprises.
33. The Committee reiterates that action plans for temporary special measures need to be designed, applied and evaluated within the specific national context and against the background of the specific nature of the problem which they are intended to overcome. The [...] Reports should also explain whether such action plans include considerations of unintended potential adverse side-effects of such measures as well as on possible action to protect women against them. States parties should also describe in their reports the results of temporary special measures and assess the causes of the possible failure of such measures.
34. [...] States parties are invited to [...] report on the institution(s) responsible for designing, implementing, monitoring, evaluating and enforcing such temporary special measures.
 [...] The Committee recommends that States parties ensure that women in general, and affected groups of women in particular, have a role in the design, implementation and evaluation of such programmes. Collaboration and consultation with civil society and non-governmental organizations representing various groups of women is especially recommended.
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.

3.2.5 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (1990)⁹

Article 41

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.

The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

Article 42

States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

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.

3.2.6 Convention on the Rights of Persons with Disabilities (CRPD) (2006)¹⁰

Article 21 Freedom of expression and opinion, and access to information States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

⁹ Entry into force 1 July 2003

¹⁰ Entry into force 3 May 2008

Article 29 Participation in political and public life

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;
 - (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;
- (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.

3

3.2.7 Convention concerning Indigenous and Tribal Peoples in Independent Countries, ILO C169 (1989)¹¹

Article 1

1. This Convention applies to:
 - (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
 - (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

¹¹ Entry into force 5 September 1991

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for:
 - (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples. [^]

Article 6

1. In applying the provisions of this Convention, governments shall: [^]
 - (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them.

3.2.8 UN Convention against Corruption (UNCAC) (2003)¹²*Article 7. Public sector*

[...]

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.
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.
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.

¹² Entry into force 14 December 2005

3.3 Matrix on the Status of Ratification of Instruments within the UN System¹³

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
Afghanistan	*	*	*	*		*		*
Albania	*	*	*	*	*	*		*
Algeria	*	*	*	*	*	*		*
Andorra	*	*	*			*		
Angola	*	§ ¹⁵	*	*		*		*
Antigua and Barbuda		*	*	*		*		*
Argentina	*	*	*	*	*	*	*	*
Armenia	*	*	*	*	§ ¹⁶	*		*
Australia	* ¹⁷	*	*	*		*		*
Austria	*	*	*	*		*		*
Azerbaijan	*	*	*		*	*		*
Bahamas	*	*	*	*		*		*
Bahrain	*	*	*			*		*
Bangladesh	*	*	*	* ¹⁸	*	*		*
Barbados	*	*	*	*		*		§ ¹⁹
Belarus	*	*	*	*		§ ²⁰		*

13 For updated information concerning ratification and signature status of the instruments mentioned in this matrix, please consult the UN Treaty Collection database at <http://untreaty.un.org/>

14 On the web page for the Committee on the Elimination of Racial Discrimination it is noted that 16 countries have neither signed nor ratified the Convention. Niue is listed among those countries, but the country is not formally a member of the UN

15 Signed 24 September 2013

16 Signed 26 September 2013

17 Ratified with the following reservation: Article 10: "In relation to paragraph 2 (a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraph 2 (b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned".
Article 14: "Australia makes the reservation that the provision of compensation for miscarriage of justice in the circumstances contemplated in paragraph 6 of article 14 may be by administrative procedures rather than pursuant to specific legal provision."

Article 20: "Australia interprets the rights provided for by articles 19, 21 and 22 as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (ordre public), the right is reserved not to introduce any further legislative provision on these matters."

18 Ratified with the following declaration: "The Government of the People's Republic of Bangladesh will apply article III of the Convention in consonance with the relevant provisions of the Constitution of Bangladesh and in particular, article 28 (4) allowing special provision in favour of women; article 29.3 (c) allowing reservation of any class of employment or office for one sex on the ground that it is considered by its nature to be unsuited to members of the opposite sex; and article 65 (3) providing for reservation of 30 seats in the National Assembly for women in addition to the provision allowing women to be elected to any and all of the 300 seats."

19 Signed 10 December 2003

20 Signed 28 September 2015

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
Belgium	*	*	*	*		*		*
Belize	*	*	*		*	*		
Benin	*	*	*		S ²¹	*		*
Bhutan		S ²²	*			S ²³		S ²⁴
Bolivia	*	*	*	*	*	*	*	*
Bosnia and Herzegovina	*	*	*	*	*	*		*
Botswana	*	*	*					*
Brazil	*	*	*	*		*	*	*
Brunei Darussalam			*			*		*
Bulgaria	*	*	*	*		*		*
Burkina Faso	*	*	*	*	*	*		*
Burundi	*	*	*	*		*		*
Cambodia	*	*	*	S ²⁵	S ²⁶	*		*
Cameroon	*	*	*		S ²⁷	S ²⁸		*
Canada	*	*	*	*		*		*
Cape Verde	*	*	*		*	*		*
Central African Republic	*	*	*	*		S ²⁹	*	*
Chad	*	*	*		S ³⁰	S ³¹		
Chile	*	*	*	*	*	*	*	*
China	S ³²	*	*			*		*
Colombia	*	*	*	*	*	*	*	*
Comoros	S ³³	*	*		S ³⁴	S ³⁵		*
Congo	*	*	*	*	S ³⁶	*		*

21 Signed 15 September 2005

22 Signed 26 March 1973

23 Signed 21 September 2010

24 Signed 15 September 2005

25 Signed 11 November 2001

26 Signed 27 September 2004

27 Signed 15 December 2009

28 Signed 1 October 2008

29 Signed 9 May 2007

30 Signed 26 September 2009

31 Signed 26 September 2012

32 Signed 5 October 1998

33 Signed 25 September 2008

34 Signed 22 September 2000

35 Signed 26 September 2007

36 Signed 29 September 2008

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
Cook Islands			*			*		*
Costa Rica	*	*	*	*		*	*	*
Côte d'Ivoire	*	*	*	*		*		*
Croatia	*	*	*	*		*		*
Cuba	S ³⁷	*	*	*		*		*
Cyprus	*	*	*	*		*		*
Czech Republic	*	*	*	*		*		*
Democratic People's Republic of Korea	* ³⁸		*			S ³⁹		
Democratic Republic of the Congo	*	*	*	*		*		*
Denmark	*	*	*	*		*	*	*
Djibouti	*	*	*			*		*
Dominica	*		*			*	*	*
Dominican Republic	*	*	*	*		*		*
Ecuador	*	*	*	*	*	*	*	*
Egypt	*	*	*	*	*	*		*
El Salvador	*	*	*	*	*	*		*
Equatorial Guinea	*	*	*					
Eritrea	*	*	*					
Estonia	*	*	*			*		*
Ethiopia	*	*	*	*		*		*
European Community						*		*
Fiji		* ⁴⁰	*	*		S ⁴¹	*	*
Finland	*	*	*	*		S ⁴²		*

37 Signed 28 February 2008

38 The government ratified CCPR in December 1981 but then submitted a notification of withdrawal in September 1997. The Secretary-General expressed his opinion that withdrawal from the Covenant would not appear possible unless all States Parties to the Covenant agree with such a withdrawal.

39 Signed 3 July 2013

40 Ratified with the following reservation, but withdrawn on 10 August 2012: "To the extent, if any law relating to elections in Fiji may not fulfil the obligations referred to in article 5(c) [...] the Government of Fiji reserves the right not to implement the aforementioned provisions of the Convention."

41 Signed 2 June 2006

42 Signed 30 March 2007

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
France	*	*	*	*		*		*
Gabon	*	*	*	*	S ⁴³	*		*
Gambia	*	*	*			*		*
Georgia	*	*	*	*		*		*
Germany	*	*	*	*		*		*
Ghana	*	*	*	*	*	*		*
Greece	*	*	*	*		*		*
Grenada	*	*	*			*		*
Guatemala	*	*	*	*	*	*	*	*
Guinea	*	*	*	*	*	*		*
Guinea-Bissau	*	*	*		S ⁴⁴	*		*
Guyana	*	*	*		*	*		*
Haiti	*	*	*	*	S ⁴⁵	*		*
Holy See		*						
Honduras	*	*	*		*	*	*	*
Hungary	*	*	*	*		*		*
Iceland	*	*	*	*		S ⁴⁶		*
India	*	*	*	*		*		*
Indonesia	*	*	*	*	*	*		*
Iran (Islamic Republic of)	*	*				*		*
Iraq	*	*	*			*		*
Ireland	*	* ⁴⁷	*	*		S ⁴⁸		*
Israel	*	*	*	*		*		*
Italy	*	*	*	*		*		*
Jamaica	*	*	*	*	*	*		*

43 Signed 15 December 2004

44 Signed 12 September 2000

45 Signed 5 December 2013

46 Signed 30 March 2007

47 Ratified with the following reservation: "Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the measures specifically described in sub-paragraphs (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention. Ireland therefore considers that through such measures, the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised.

These rights are laid down in Articles 19 and 20 of the Universal Declaration of Human Rights; they were reaffirmed by the General Assembly of the United Nations when it adopted Articles 19 and 21 of the International Covenant on Civil and Political Rights and are referred to in Article 5 (d)(viii) and (ix) of the present Convention."

48 Signed 30 March 2007

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
Japan	*	* ⁴⁹	*	*		*		§ ⁵⁰
Jordan	*	*	*	*		*		*
Kazakhstan	*	*	*	*		*		*
Kenya	*	*	*			*		*
Kiribati			*			*		*
Kuwait	* ⁵¹	*	*			*		*
Kyrgyzstan	*	*	*	*	*	§ ⁵²		*
Lao People's Democratic Republic	*	*	*	*		*		*
Latvia	*	*	*	*		*		*
Lebanon	*	*	*	*		§ ⁵³		*
Lesotho	*	*	*	*	*	*		*
Liberia	*	*	*	§ ⁵⁴	§ ⁵⁵	*		*
Libyan Arab Jamahiriya	*	*	*	*	*	§ ⁵⁶		*
Liechtenstein	*	*	*					*
Lithuania	*	*	*			*		*
Luxembourg	*	*	*	*		*		*
Madagascar	*	*	*	*	*	*		*
Malawi	*	*	*	*		*		*
Malaysia			* ⁵⁷			*		*

49 Ratified with the following reservation: "In applying the provisions of paragraphs (a) and (b) of article 4 of the [said Convention] Japan fulfils the obligations under those provisions to the extent that fulfilment of the obligations is compatible with the guarantee of the rights to freedom of assembly, association and expression and other rights under the Constitution of Japan, noting the phrase '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' referred to in article 4."

50 Signed 9 December 2003

51 Ratified with the following reservation to article 25(b): "The provisions of this paragraph conflict with the Kuwaiti electoral law, which restricts the right to stand and vote in elections to males. It further declares that the provisions of the article shall not apply to members of the armed forces or the police."

52 Signed 21 September 2011

53 Signed 14 June 2007

54 Signed 9 Dec 1953

55 Signed 22 September 2004

56 Signed 1 May 2008

57 Ratified with the following reservation: "Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia' law and the Federal Constitution of Malaysia. With regards thereto, further, the Government of Malaysia does not consider itself bound by the provisions of articles [...] 7 (b) [...]."

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
Maldives	*	*	* ⁵⁸			*		*
Mali	*	*	*	*	*	*		*
Malta	*	*	*	*		* ⁵⁹		*
Marshall Islands			*			*		*
Mauritania	*	*	* ⁶⁰	*	*	*		*
Mauritius	*	*	*	*		*		*
Mexico	* ⁶¹	*	*	*	*	*	*	*
Micronesia (Federated States of)			*			§ ⁶²		*
Monaco	*	* ⁶³	*			§ ⁶⁴		

- 58 Ratified with the following reservation: “The Government of the Republic of Maldives expresses its reservation to article 7 (a) of the Convention, to the extent that the provision contained in the said paragraph conflicts with the provision of article 34 of the Constitution of the Republic of Maldives.”
- 59 Reservations made upon ratification: “[...] Pursuant to Article 29 (a) (i) and (iii) of the Convention, while the Government of Malta is fully committed to ensure the effective and full participation of persons with disabilities in political and public life, including the exercise of their right to vote by secret ballot in elections and referenda, and to stand for elections, Malta makes the following reservations:
With regard to (a) (i): Malta reserves the right to continue to apply its current electoral legislation in so far as voting procedures, facilities and materials are concerned.
With regard to (a) (iii): Malta reserves the right to continue to apply its current electoral legislation in so far as assistance in voting procedures is concerned.”
Interpretative statement and reservation made upon signature:
“(a) Pursuant to Article 25 of the Convention, Malta makes the following Interpretative Statement - Malta understands that the phrase “sexual and reproductive health” in Art 25 (a) of the Convention does not constitute recognition of any new international law obligation, does not create any abortion rights, and cannot be interpreted to constitute support, endorsement, or promotion of abortion. Malta further understands that the use of this phrase is intended exclusively to underline the point that where health services are provided, they are provided without discrimination on the basis of disability.
Malta’s national legislation, considers the termination of pregnancy through induced abortion as illegal.
(b) Pursuant to Article 29 (a) (i) and (iii) of the Convention, while the Government of Malta is fully committed to ensure the effective and full participation of persons with disabilities in political and public life, including the exercise of their right to vote by secret ballot in elections and referenda, and to stand for elections, Malta makes the following reservations:
With regard to (a) (i):
At this stage, Malta reserves the right to continue to apply its current electoral legislation in so far as voting procedures, facilities and materials are concerned.
With regard to (a) (iii):
Malta reserves the right to continue to apply its current electoral legislation in so far as assistance in voting procedures is concerned.”
- 60 Ratified with the following reservation: [Government of Mauritania] “have approved and do approve it in each and every one of its parts which are not contrary to Islamic Sharia and are in accordance with our Constitution.”
- 61 Ratified with the following reservation to article 25(b): The Government of Mexico [...] makes a reservation to this provision, since article 130 of the Political Constitution of the United Mexican States provides that ministers of religion shall have neither an active nor a passive vote, nor the right to form associations for political purposes
- 62 Signed 23 September 2011
- 63 Ratified with the following reservation: “Monaco interprets the reference in that article to the principles of the Universal Declaration of Human Rights, and to the rights enumerated in article 5 of the Convention as releasing States Parties from the obligation to promulgate repressive laws which are incompatible with freedom of opinion and expression and freedom of peaceful assembly and association, which are guaranteed by those instruments.”
- 64 Signed 23 September 2009

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
Mongolia	*	*	*	*		*		*
Montenegro	*	*	*	*	s ⁶⁵	*		*
Morocco	*	*	*	*	*	*		*
Mozambique	*	*	*		*	*		*
Myanmar			*	s ⁶⁶		*		*
Namibia	*	*	*			*		*
Nauru	s ⁶⁷	s ⁶⁸	*			*		*
Nepal	*	*	*	*		*	*	*
Netherlands	*	*	*	*		s ⁶⁹	*	*
New Zealand	*	*	*	*		*		*
Nicaragua	*	*	*	*	* ⁷⁰	*	*	*
Niger	*	*	*	*	*	*		*
Nigeria	*	*	*	*	*	*		*
Norway	*	*	*	*		*	*	*
Oman		*	* ⁷¹			*		*
Pakistan	*	*	* ⁷²	*		*		*
Palau	s ⁷³	s ⁷⁴	s ⁷⁵		s ⁷⁶	*		*
(State of) Palestine				*		*		*
Panama	*	*	*			*		*

65 Signed 23 October 2006

66 Signed 14 September 1954

67 Signed 12 November 2001

68 Signed 12 November 2001

69 Signed 30 March 2007

70 Ratified with the following reservation: “The Republic of Nicaragua, in the exercise of its sovereignty, does not allow foreigners to enjoy political rights; this is embodied in articles 27 and 182 of the Constitution. Article 91 of the Convention establishes the possibility of formulating reservations at the time of signature, ratification or accession. Consequently, by virtue of the provisions of article 42, paragraph 3, of this Convention, the Republic of Nicaragua will not grant political rights to migratory workers owing to the express prohibition contained in article 27, paragraph 2, of its Constitution, which states: “Foreigners have the same rights and obligations as Nicaraguans, with the exception of political rights and others established by law; they may not intervene in the political affairs of the country.” The Republic of Nicaragua considers that this reservation is not incompatible with the object and purpose of the Convention.”

71 Ratified with the following reservation: “All provisions of the Convention not in accordance with the provisions of the Islamic Sharia and legislation in force in the Sultanate of Oman.”

72 Ratified with the following declaration: “The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.”

73 Signed 20 September 2011

74 Signed 20 September 2011

75 Signed 20 September 2011

76 Signed 20 September 2011

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
Papua New Guinea	*	* ⁷⁷	*	*		*		*
Paraguay	*	*	*	*	*	*	*	*
Peru	*	*	*	*	*	*	*	*
Philippines	*	*	*	*	*	*		*
Poland	*	*	*	*		*		*
Portugal	*	*	*			*		*
Qatar		*	*			*		*
Republic of Korea	*	*	*	*		*		*
Republic of Moldova	*	*	*	*		*		*
Romania	*	*	*	*		*		*
Russian Federation	*	*	*	*		*		*
Rwanda	*	*	*	*	*	*		*
Saint Kitts and Nevis		*	*					
Saint Lucia	§ ⁷⁸	*	*			§ ⁷⁹		*
Saint Vincent and the Grenadines	*	*	*	*	*	*		
Samoa	*		*			§ ⁸⁰		
San Marino	*	*	*			*		
Sao Tome and Principe	§ ⁸¹	§ ⁸²	*		§ ⁸³	*		*
Saudi Arabia		* ⁸⁴	* ⁸⁵			*		*
Senegal	*	*	*	*	*	*		*

77 Ratified with the following reservation: "The Government of Papua New Guinea interprets article 4 of the Convention as requiring a party to the Convention to adopt further legislative measures in the areas covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles contained in the Universal Declaration set out in Article 5 of the Convention that some legislative addition to, or variation of existing law and practice, is necessary to give effect to the provisions of article 4. [...]"

78 Signed 22 September 2011

79 Signed 22 September 2011

80 Signed 24 September 2014

81 Signed 31 October 1995

82 Signed 6 September 2000

83 Signed 6 September 2000

84 Ratified with the following reservation: "[The Government of Saudi Arabia declares that it will] implement the provisions [of the above Convention], providing these do not conflict with the precepts of the Islamic *Shariah*."

85 Ratified with the following reservation: "In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention."

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
Serbia	*	*	*	*	S ⁸⁶	*		*
Seychelles	*	*	*		*	*		*
Sierra Leone	*	*	*	*	S ⁸⁷	*		*
Singapore			*			*		*
Slovakia	*	*	*	*		*		*
Slovenia	*	*	*	*		*		*
Solomon Islands		*	*	*		S ⁸⁸		*
Somalia	*	*						
South Africa	*	*	*	S ⁸⁹		*		*
Spain	*	*	*	*		*	*	*
Sri Lanka	*	*	*		*	*		*
Sudan	*	*				*		*
South Sudan			*					
Suriname	*	*	*			S ⁹⁰		
Swaziland	*	*	*	* ⁹¹		*		*
Sweden	*	*	*	*		*		*
Switzerland	* ⁹²	* ⁹³	*			*		*
Syrian Arab Republic	*	*	*		*	*		S ⁹⁴
Tajikistan	*	*	*	*	*			*
Thailand	*	* ⁹⁵	*	*		*		*

86 Signed 11 November 2004

87 Signed 15 September 2000

88 Signed 23 September 2008

89 Signed 29 Jan 1993

90 Signed 30 March 2007

91 Ratified with following reservation: "The Convention shall have no application to matters which are regulated by Swaziland Law and Custom in accordance with Section 62 (2) of the Constitution of the Kingdom of Swaziland. [(a) The office of Nggwenyama; (b) the office of Ndllovukazi (the Queen Mother); (c) the authorization of a person to perform the functions of Regent for the purposes of section 30 of this Constitution; (d) the appointment, revocation of appointment and suspension of Chiefs; (e) the composition of the Swazi National Council, the appointment and revocation of appointment of members of the Council, and the procedure of the Council; (f) the Ncwala Ceremony; (g) the Libutfo (regimental) system."

92 Ratified with the following reservation to article 25(b): "The present provision shall be applied without prejudice to the cantonal and communal laws, which provide for or permit elections within assemblies to be held by a means other than secret ballot."

93 Ratified with the following reservation: "Switzerland reserves the right to take the legislative measures necessary for the implementation of article 4, taking due account of freedom of opinion and freedom of association, provided for *inter alia* in the Universal Declaration of Human Rights."

94 Signed 9 December 2003

95 Ratified with the following reservation: "1. The Kingdom of Thailand interprets Article 4 of the Convention as requiring a party to the Convention to adopt measures in the fields covered by subparagraphs (a), (b) and (c) of that article only where it is considered that the need arises to enact such legislation."

	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
The former Yugoslav Republic of Macedonia	*	*	*	*		*		*
Timor-Leste	*	*	*		*			*
Togo	*	*	*		S ⁹⁶	*		*
Tonga		*				S ⁹⁷		
Trinidad and Tobago	*	*	*	*		*		*
Tunisia	*	*	* ⁹⁸	*		*		*
Turkey	*	*	*	*	*	*		*
Turkmenistan	*	*	*	*		*		*
Tuvalu			*			*		*
Uganda	*	*	*	*	*	*		*
Ukraine	*	*	*	*		*		*
United Arab Emirates		*	*			*		*
United Kingdom of Great Britain and Northern Ireland	*	* ⁹⁹	*	* ¹⁰⁰		*		*
United Republic of Tanzania	*	*	*	*		*		*

96 Signed 15 November 2001

97 Signed 15 November 2007

98 Ratified with the following general declaration: "The Tunisian Government declares that it shall not take any organizational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of chapter I of the Tunisian Constitution."

99 Ratified with the following reservation: "[...] the United Kingdom wishes to state its understanding of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4. [...]"

100 Ratified with the following reservation to article 3: "In so far as it relates to: "(b) certain offices primarily of a ceremonial nature; "(c) the function of sitting and voting in the House of Lords pertaining to holders of hereditary peerages and holders of certain offices in the Church of England[...]"



	ICCPR	ICERD ¹⁴	CEDAW	CPRW	ICRMW	CRPD	C169	UNCAC
United States of America	*	* ¹⁰¹	§ ¹⁰²	*		§ ¹⁰³		*
Uruguay	*	*	*	§ ¹⁰⁴	*	*		*
Uzbekistan	*	*	*	*		§ ¹⁰⁵		*
Vanuatu	*		*			*		*
Venezuela	*	*	*	*	§ ¹⁰⁶	*	*	*
Viet Nam	*	*	*			*		*
Yemen	*	*	*	*		*		*
Zambia	*	*	*	*		*		*
Zimbabwe	*	*	*	*		*		*



101 Ratified with the following reservation: “[...] (1) That the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States. [...]”

102 Signed 17 July 1980

103 Signed 30 July 2009

104 Signed 26 May 1953

105 Signed 27 February 2009

106 Signed 4 November 2011

3.4 Non-Treaty Standards - UN

3.4.1 Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly Resolution A/RES/36/55 [1981])

Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

3.4.2 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly Resolution A/RES/47/135 [1992])

Article 2

[...]

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.

[...]

3.4.3 Declaration on the Elimination of Discrimination against Women (General Assembly Resolution A/RES/22/2263 [1967])

Article 4

All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination:

- (a) The right to vote in all elections and be eligible for election to all publicly elected bodies;
- (b) The right to vote in all public referenda;
- (c) The right to hold public office and to exercise all public functions. Such rights shall be guaranteed by legislation.

3.4.4 Declaration on the Rights of Disabled Persons (General Assembly Resolution A/RES/30/3447 [1975])

4. Disabled persons have the same civil and political rights as other human beings.

3.4.5 Declaration on the Elimination of Racial Discrimination (General Assembly Resolution A/RES/18/1904 [1963])

Article 6

No discrimination by reason of race, colour of ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in the elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.

3.4.6 Vienna Declaration of Programme and Action (General Assembly A/CONF.157/23 [1993])

8. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. [^] The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.
34. Increased efforts should be made to assist countries which so request to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms. Governments and the United Nations system as well as other multilateral organisations are urged to increase considerably the resources allocated to programmes aiming at the establishment and strengthening of national legislation, national institutions and related infrastructures which uphold the rule of law and democracy, electoral assistance, human rights awareness through training, teaching and education, popular participation and civil society.
67. Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections, is of particular importance.

3.4.7 Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections (General Assembly Resolution A/RES/46/137 [1991])

The General Assembly, [...]

3. Stresses its conviction that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of every-one to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights;
4. Declares that determining the will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views, individually and in cooperation with others, as provided in national constitutions and laws;

6. Reaffirms that apartheid must be abolished, that the systematic denial or abridgement of the right to vote on the grounds of race or colour is a gross violation of human rights and an affront to the conscience and dignity of mankind, and that the right to participate in a political system based on common and equal citizenship and universal franchise is essential for the exercise of the principle of periodic and genuine elections;

3.4.8 Promoting and Consolidating Democracy (General Assembly Resolution A/RES/55/96 [2001])

The General Assembly, [...]

1. Calls upon States to promote and consolidate democracy, inter alia, by:
 - (a) Promoting pluralism, the protection of all human rights and fundamental freedoms, maximizing the participation of individuals in decision-making and the development of effective public institutions, including an independent judiciary, accountable legislature and public service and an electoral system that ensures periodic, free and fair elections; [...]
 - (d) Developing, nurturing and maintaining an electoral system that provides for the free and fair expression of the people's will through genuine and periodic elections, in particular by:
 - (i) Guaranteeing that everyone can exercise his or her right to take part in the government of his or her country, directly or through freely chosen representatives;
 - (ii) Guaranteeing the right to vote freely and to be elected in a free and fair process at regular intervals, by universal and equal suffrage, conducted by secret ballot and with full respect for the right to freedom of association;
 - (iii) Taking measures, as appropriate, to address the representation of under-represented segments of society;
 - (iv) Ensuring, through legislation, institutions and mechanisms, the freedom to form democratic political parties that can participate in elections, as well as the transparency and fairness of the electoral process, including through appropriate access under the law to funds and free, independent and pluralistic media;

[...]

3.4.9 Respect for the Principles of National Sovereignty and Non-Interference in the Internal Affairs of States in Electoral Processes as an Important Element for the Promotion and Protection of Human Rights (General Assembly Resolution A/RES/56/154 [2002])

The General Assembly, [...]

2. *Reiterates* that periodic, fair and free elections are important elements for the promotion and protection of human rights;

3. *Reaffirms* the right of peoples to determine methods and to establish institutions regarding electoral processes and, consequently, that there is no single model of democracy or of democratic institutions and that States should ensure all the necessary mechanisms and means to facilitate full and effective popular participation in those processes;
5. *Calls upon* all States to refrain from financing political parties or other organizations in any other State in a way that is contrary to the principles of the Charter and that undermines the legitimacy of its electoral processes;
7. *Reaffirms* that the will of the people shall be the basis of the authority of government and that 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;

3.4.10 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Annex to General Assembly Resolution A/RES/53/144 [1999])

The General Assembly [...] [declares:

Article 2

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

To meet or assemble peacefully;

To form, join and participate in non-governmental organizations, associations or groups;

- (c) To communicate with non-governmental or intergovernmental organizations.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

3.4.11 Basic Principles for the Treatment of Prisoners (Annex to General Assembly Resolution A/RES/45/111 [1990])

5. 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 Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

3.4.12 United Nations Millennium Declaration (General Assembly Resolution A/RES/55/2 [2000])

25. We [heads of State and Government,] resolve therefore [...]
 - To work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries.
 - To ensure the freedom of the media to perform their essential role and the right of the public to have access to information.

3.4.13 Women and political participation (General Assembly Resolution A/RES/66/130 [2011])

The General Assembly, [...]

Guided by the Convention on the Elimination of All Forms of Discrimination against Women, which affirms human rights and fundamental freedoms and equality for women around the world, and which states, inter alia, that States parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country,

Stressing the critical importance of women's political participation in all contexts, including in times of peace and of conflict and at all stages of political transition, concerned that many obstacles still prevent women from participating in political life on equal terms with men, and noting in that regard that situations of political transition may provide a unique opportunity to address such obstacles,

Reaffirming that the active participation of women, on equal terms with men, at all levels of decision-making is essential to the achievement of equality, sustainable development, peace and democracy,

1. Reaffirms its resolution 58/142 of 22 December 2003 on women and political participation, and calls upon all States to implement it fully;
2. Calls upon all States to eliminate laws, regulations and practices that, in a discriminatory manner, prevent or restrict women's participation in the political process;
3. Also calls upon all States to enhance the political participation of women, to accelerate the achievement of equality between men and women and, in all situations, including in situations of political transition, to promote and protect the human rights of women with respect to:
 - (a) Engaging in political activities;

- (b) Taking part in the conduct of public affairs;
 - (c) Associating freely;
 - (d) Assembling peacefully;
 - (e) Expressing their opinions and seeking, receiving and imparting information and ideas freely;
 - (f) Voting in elections and public referendums and being eligible for election to publicly elected bodies on equal terms with men;
 - (g) Participating in the formulation of government policy and the implementation thereof, holding public office and performing public functions at all levels of government;
4. Calls upon States in situations of political transition to take effective steps to ensure the participation of women on equal terms with men in all phases of political reform, from decisions on whether to call for reforms in existing institutions to decisions regarding transitional governments, to the formulation of government policy, to the means of electing new democratic governments;
6. Also urges all States to take, inter alia, the following actions to ensure women's equal participation, and encourages the United Nations system and other international and regional organizations, within their existing mandates, to enhance their assistance to States in their national efforts:
- (a) To review the differential impact of their electoral systems on the political participation of women and their representation in elected bodies and to adjust or reform those systems where appropriate;
 - (c) To strongly encourage political parties to remove all barriers that directly or indirectly discriminate against the participation of women, to develop their capacity to analyse issues from a gender perspective, and to adopt policies, as appropriate, to promote the ability of women to participate fully at all levels of decision-making within those political parties;
 - (d) To promote awareness and recognition of the importance of women's participation in the political process at the community, local, national and international levels;
 - (e) To develop mechanisms and training to encourage women to participate in the electoral process, political activities and other leadership activities, and empower women to assume public responsibilities by developing and providing appropriate tools and skills, in consultation with women;
 - (f) To implement appropriate measures within governmental bodies and public sector institutions to eliminate direct or indirect barriers to and enhance women's participation in all levels of political decision-making;
 - (g) To accelerate the implementation of strategies, as appropriate, that promote gender balance in political decision-making, and take all appropriate measures to encourage political parties to ensure that women have a fair and equal opportunity to compete for all elective public positions;
 - (h) To improve and broaden women's access to information and communications technologies, including e-government tools, in order to enable political partici-

pation and to promote engagement in broader democratic processes, while also improving the responsiveness of these technologies to women's needs, including those of marginalized women;

- (i) To investigate allegations of violence, assault or harassment of women elected officials and candidates for political office, create an environment of zero tolerance for such offences and, to ensure accountability, take all appropriate steps to prosecute those responsible;
 - (j) To encourage greater involvement of women who may be marginalized, including indigenous women, women with disabilities, women from rural areas and women of any ethnic, cultural or religious minority, in decision-making at all levels, and address and counter the barriers faced by marginalized women in accessing and participating in politics and decision-making at all levels;
 - (o) To monitor and evaluate progress in the representation of women in decision-making positions;
10. Encourages States and relevant civil society organizations to support programmes that facilitate women's participation in political and other leadership activities, including peer support and capacity development for new office holders, and to promote public/private civil society partnerships for women's empowerment;
13. Encourages States to disseminate the present resolution among all relevant institutions, in particular national, regional and local authorities, as well as among political parties;

3.4.14 (General Assembly Resolution: Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization (A/RES/68/164 [2013]))

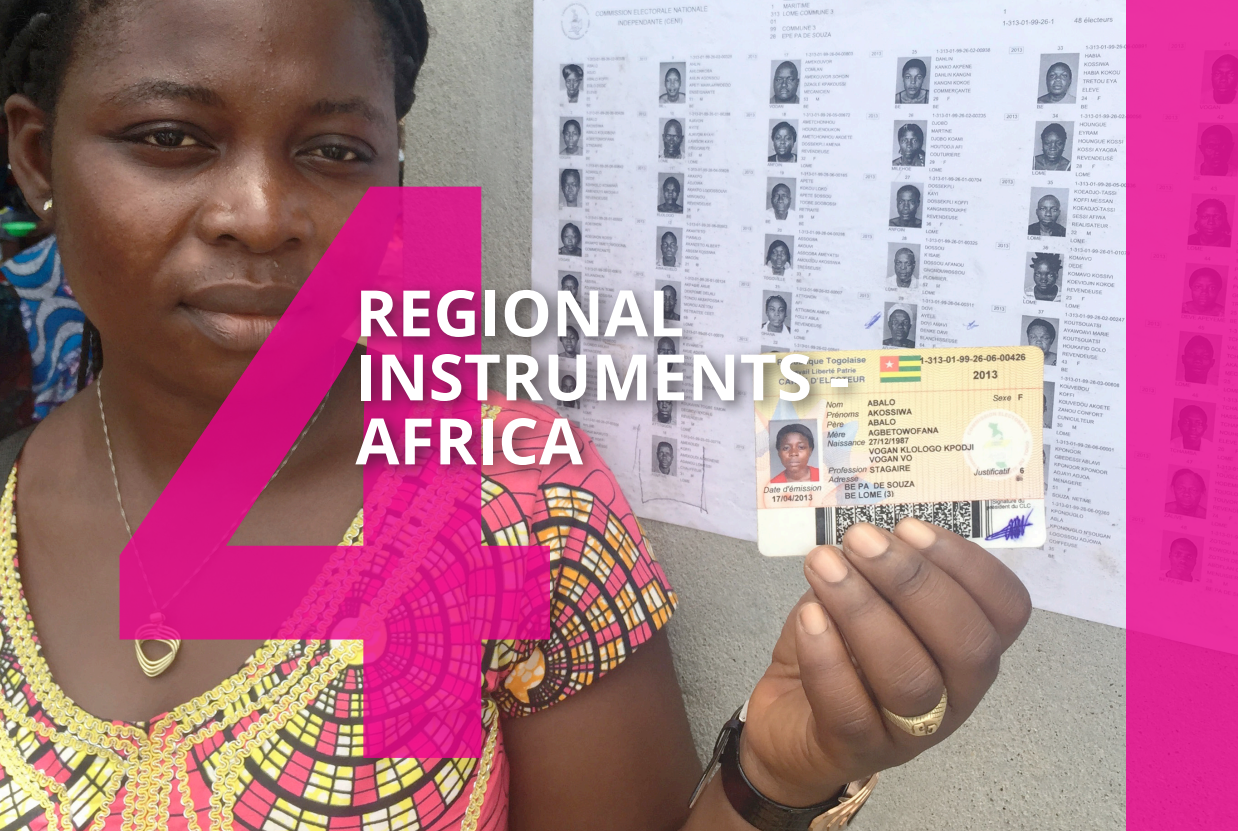
The General Assembly, [...]

Recognizing the need for strengthening democratic processes, electoral institutions and national capacity-building in requesting countries, including the capacity to administer fair elections, promote voter education, the development of electoral expertise and technology and the participation of women on equal terms with men, provide the necessary conditions to ensure the effective and full participation of all persons with disabilities on an equal basis with others, increase citizen participation and provide civic education, including to youth, in requesting countries in order to consolidate and regularize the achievements of previous elections and support subsequent elections,

- 6. Notes the importance of adequate resources for the administration of efficient and transparent elections at the national and local levels, and recommends that Member States provide adequate resources for those elections, including considering the possibility of establishing internal funding, where feasible;
- 7. Reaffirms 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;
- 8. Calls upon all States to enhance the political participation of women, accelerate the achievement of equality between men and women and, in all situations, pro-

mote and protect the human rights of women with respect to voting in elections and public referendums and being eligible for election to publicly elected bodies on equal terms with men;

11. Acknowledges the aim of harmonizing the methods and standards of the many intergovernmental and non-governmental organizations engaged in observing elections, and in this regard expresses appreciation for the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers, which elaborate guidelines for international electoral observation;



REGIONAL INSTRUMENTS AFRICA

Regional instruments have been compiled and adopted within regional organisations, such as the African Union, the Organisation of American States, the Council of Europe and the Commonwealth of Independent States. They are applicable only in the participating States of the respective organisations.

4.1 The African Union

The African Union was launched on 9 July, 2002, to replace the Organisation of African Unity (OAU). It was established with a view to accelerating the process of integration in the continent while addressing social, economic and political problems. Its aims include the promotion of democratic principles and institutions, popular participation and good governance. The AU covers the entire continent except for Morocco, which withdrew from the OAU with effect from November 1985 after the OAU had granted the Territory of Western Sahara full membership in the organisation. Morocco has not applied to re-join the AU. It has, however, a special status within the AU and benefits from the services available to all AU member states from the institutions of the AU, such as the African Development Bank.

The African Charter on Human and Peoples' Rights established the African Commission on Human and Peoples' Rights. It is empowered, among other

things, to receive and consider communications submitted by states, individuals and organisations alleging that a State Party has violated one or more of the rights guaranteed by the Charter. A protocol establishing an African Court on Human and Peoples' Rights came into force on 25 January 2004. In January 2006, the first eleven judges of the Court were elected, and in July 2006 the Court held its first meeting. The Court is located in Arusha, Tanzania. It issued its first ruling on the merits in June 2013.

The New Partnership for Africa's Development (NEPAD) is a programme of the African Union designed to be a comprehensive, integrated development plan that addresses key social, economic and political priorities in coherent and balanced manner. It is aimed at the redevelopment of the African continent through accelerated growth and sustainable development, the eradication of wide-spread and severe poverty, and the halting of the marginalisation of Africa in the globalisation process.

4.1.1 Treaty standards

4.1.1.1 African Charter on Human and Peoples' Rights (ACHPR) (1981)¹

Article 9

1. Each individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10

1. Each individual shall have the right to free association provided that he abides by the law.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.

¹ Entry into force 21 October 1986

4.1.1.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (ACHPR - PW) (2003)²

Article 9

Right to Participation in the Political and Decision-Making Process

1. 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:
 - a) women participate without any discrimination in all elections;
 - b) women are represented equally at all levels with men in all electoral processes; [^]
2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

4.1.1.3 African Charter on Democracy, Elections and Governance (2007)³

Chapter 2: Objectives

Article 2

The objectives of this Charter are to:

1. Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights;
2. Promote and enhance adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order in the political arrangements of the State Parties;
3. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments;
4. Prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development;
5. Promote and protect the independence of the judiciary;
6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance;
7. Encourage effective coordination and harmonization of governance policies amongst State Parties with the aim of promoting regional and continental integration;
8. Promote State Parties' sustainable development and human security;

² Entry into force 25 November 2005

³ Entry into force 15 February 2012

9. Promote the fight against corruption in conformity with the provisions of the AU Convention on Preventing and Combating Corruption adopted in Maputo, Mozambique in July 2003;
10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;
11. Promote gender balance and equality in the governance and development processes;
12. Enhance cooperation between the Union, Regional Economic Communities and the International Community on democracy, elections and governance; and
13. Promote best practices in the management of elections for purposes of political stability and good governance.

Chapter 3: Principles

Article 3

State Parties shall implement this Charter in accordance with the following principles:

1. Respect for human rights and democratic principles;
2. Access to and exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law;
3. Promotion of a system of government that is representative;
4. Holding of regular, transparent, free and fair elections;
5. Separation of powers;
6. Promotion of gender equality in public and private institutions;
7. Effective participation of citizens in democratic and development processes and in governance of public affairs;
8. Transparency and fairness in the management of public affairs;
9. Condemnation and rejection of acts of corruption, related offenses and impunity;
10. Condemnation and total rejection of unconstitutional changes of government;
11. Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.

Chapter 4: Democracy, Rule of Law and Human Rights

Article 4

1. State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights.
2. State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people.

Article 5

State Parties shall take all appropriate measures to ensure constitutional rule, particularly constitutional transfer of power.

Article 8

1. State Parties shall eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance.
2. State Parties shall adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups.
3. State Parties shall respect ethnic, cultural and religious diversity, which contributes to strengthening democracy and citizen participation.

Chapter 6: Democratic Institutions

Article 14

1. State Parties shall strengthen and institutionalize constitutional civilian control over the armed and security forces to ensure the consolidation of democracy and constitutional order.
2. State Parties shall take legislative and regulatory measures to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.
3. State Parties shall cooperate with each other to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.

Chapter 7: Democratic Elections

Article 17

State Parties reaffirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa:

To this end, State Parties shall:

1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
2. Establish and strengthen national mechanisms that redress election-related disputes in a timely manner.
3. Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.
4. Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels.



Chapter 8: Sanctions in Cases of Unconstitutional Changes of Government

Article 23

State Parties agree that the use of, inter alia, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1. Any putsch or coup d'Etat against a democratically elected government.
2. Any intervention by mercenaries to replace a democratically elected government.
3. Any replacement of a democratically elected government by armed dissidents or rebels.
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or
5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

Chapter 9: Political, Economic and Social Governance

Article 29

State Parties shall recognize the crucial role of women in development and strengthening of democracy.

State Parties shall create the necessary conditions for full and active participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture. State Parties shall take all possible measures to encourage the full and active participation of women in the electoral process and ensure gender parity in representation at all levels, including legislatures.

Article 32

State Parties shall strive to institutionalize good political governance through:

1. Accountable, efficient and effective public administration;
2. Strengthening the functioning and effectiveness of parliaments;
3. An independent judiciary;
4. Relevant reforms of public institutions including the security sector;
5. Harmonious relationships in society including civil-military relations
6. Consolidating sustainable multiparty political systems;
7. Organising regular, free and fair elections; and
8. Entrenching and respecting the principle of the rule of law.

Article 34

State Parties shall decentralize power to democratically elected local authorities as provided in national laws.

4.1.1.4 African Union Convention on Preventing and Combating Corruption (2003)⁴

The objectives of this Convention are to:

Article 2 Objectives

The objectives of this Convention are to: [...]

5. Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

Article 10 Funding of Political Parties

Each State Party shall adopt legislative and other measures to:

- (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and
- (b) Incorporate the principle of transparency into funding of political parties.

4.1.1.5 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights⁵

Article 1 ESTABLISHMENT OF THE COURT

There shall be established within the Organization of African Unity an African Court Human and Peoples' Rights hereinafter referred to as "the Court", the organization, jurisdiction and functioning of which shall be governed by the present Protocol.

Article 2 RELATIONSHIP BETWEEN THE COURT AND THE COMMISSION

The Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights hereinafter referred to as "the Commission", conferred upon it by the African Charter on Human and Peoples' Rights, hereinafter referred to as "the Charter".

Article 3 JURISDICTION

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 4 ADVISORY OPINIONS

1. At the request of a Member State of the OAU, the OAU, any of its organs, or any African organization recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.

⁴ Entry into force 5 August 2006

⁵ Entry into force 25 January 2016

2. The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate of dissenting decision.

Article 5 ACCESS TO THE COURT

1. The following are entitled to submit cases to the Court: a) The Commission b) The State Party which had lodged a complaint to the Commission c) The State Party against which the complaint has been lodged at the Commission d) The State Party whose citizen is a victim of human rights violation e) African Intergovernmental Organizations
2. When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.
3. The Court may entitle relevant Non Governmental organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

Article 6 ADMISSIBILITY OF CASES

1. The Court, when deciding on the admissibility of a case instituted under article 5 (3) of this Protocol, may request the opinion of the Commission which shall give it as soon as possible.
2. The Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.
3. The Court may consider cases or transfer them to the Commission.

Article 7 SOURCES OF LAW T

The Court shall apply the provision of the Charter and any other relevant human rights instruments ratified by the States concerned.

Article 9 AMICABLE SETTLEMENT

The Court may try to reach an amicable settlement in a case pending before it in accordance with the provisions of the Charter.

Article 29 NOTIFICATION OF JUDGMENT

1. The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the Member States of the OAU and the Commission.
2. The Council of Ministers shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly.

Article 30 EXECUTION OF JUDGMENT

The States Parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.

Article 34 RATIFICATION

- (...) 6. At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party, which has not made such a declaration.
7. Declarations made under sub-article (6) above shall be deposited with the Secretary-General, who shall transmit copies thereof to the State parties.

4.1.2 Matrix on the Status of Ratification of Instruments within the African Union⁶

	ACHPR	ACHPR- PW	African Charter on Democracy, Elections and Governance	AU Convention on Preventing and Combating Corruption	Protocol on the African Court on Human and People's Rights (Declaration) ⁷
Algeria	*	S ⁸	S ⁹	*	*
Angola	*	*	S ¹⁰	S ¹¹	S ¹²
Benin	*	*	*	*	*
Botswana	*			*	S ¹³
Burkina Faso	*	*	*	*	*
Burundi	*	S ¹⁴	S ¹⁵	*	*
Cameroon	*	*	*	S ¹⁶	*
Cape Verde	*	*	S ¹⁷		
Central African Republic	*	S ¹⁸	S ¹⁹		S ²⁰
Chad	*	S ²¹	*	*	*
Comoros	*	*		*	*
Congo	*	*	S ²²	*	*
Côte d'Ivoire	*	*	*	*	*
Democratic Republic of the Congo	*	*	S ²³	S ²⁴	S ²⁵

6 For updated information concerning ratification and signature status of the instruments mentioned in this matrix, please consult the database of the African Union at <http://au.int/en/treaties>.

7 This identifies States which have ratified the protocol and also declared their acceptance of the competence of the Court for individual cases.

8 Signed 29 December 2003

9 Signed 14 July 2012

10 Signed 27 January 2012

11 Signed 22 January 2007

12 Signed 22 January 2007

13 Signed 9 June 1998

14 Signed 3 December 2003

15 Signed 20 June 2007

16 Signed 30 June 2008

17 Signed 27 January 2012

18 Signed 17 June 2008

19 Signed 28 June 2008

20 Signed 4 March 2002

21 Signed 6 December 2004

22 Signed 18 June 2007

23 Signed 29 June 2008

24 Signed 5 December 2003

25 Signed 9 September 1999

	ACHPR	ACHPR- PW	African Charter on Democracy, Elections and Governance	AU Convention on Preventing and Combating Corruption	Protocol on the African Court on Human and People's Rights (Declaration) ⁷
Djibouti	*	*	*	§ ²⁶	§ ²⁷
Egypt	*				§ ²⁸
Equatorial Guinea	*	*	§ ²⁹	§ ³⁰	§ ³¹
Eritrea	*	§ ³²		§ ³³	
Ethiopia	*	§ ³⁴	*	*	§ ³⁵
Gabon	*	*	§ ³⁶	*	*
Gambia	*	*	§ ³⁷	*	*
Ghana	*	*	*	*	*
Guinea	*	*	*	*	§ ³⁸
Guinea-Bissau	*	*	*	*	§ ³⁹
Kenya	*	*	§ ⁴⁰	*	*
Lesotho	*	*	*	*	*
Liberia	*	*	§ ⁴¹	*	§ ⁴²
Libyan Arab Jamahiriya	*	*		*	*
Madagascar	*	§ ⁴³	§ ⁴⁴	*	§ ⁴⁵
Malawi	*	*	*	*	*
Mali	*	*	*	*	*
Mauritania	*	*	*	§ ⁴⁶	*

26 Signed 15 November 2005

27 Signed 15 November 2005

28 Signed 17 February 1999

29 Signed 30 January 2011

30 Signed 30 January 2005

31 Signed 9 June 1998

32 Signed 25 April 2012

33 Signed 25 April 2012

34 Signed 1 June 2004

35 Signed 9 June 1998

36 Signed 2 February 2010

37 Signed 29 January 2008

38 Signed 8 July 2003

39 Signed 9 June 1998

40 Signed 28 June 2008

41 Signed 18 June 2008

42 Signed 9 June 1998

43 Signed 28 February 2004

44 Signed 31 January 2014

45 Signed 9 June 1998

46 Signed 30 December 2005

	ACHPR	ACHPR- PW	African Charter on Democracy, Elections and Governance	AU Convention on Preventing and Combating Corruption	Protocol on the African Court on Human and People's Rights (Declaration) ⁷
Mauritius	*	§ ⁴⁷	§ ⁴⁸	§ ⁴⁹	*
Morocco⁵⁰					
Mozambique	*	*	§ ⁵¹	*	*
Namibia	*	*	§ ⁵²	*	§ ⁵³
Niger	*	§ ⁵⁴	*	*	*
Nigeria	*	*	*	*	*
Rwanda	*	*	*	*	*
Sao Tome and Principe	*	§ ⁵⁵	§ ⁵⁶		§ ⁵⁷
Senegal	*	*	§ ⁵⁸	*	*
Seychelles	*	*		*	§ ⁵⁹
Sierra Leone	*	*	*	*	§ ⁶⁰
Somalia	*	§ ⁶¹	§ ⁶²	§ ⁶³	§ ⁶⁴
South Africa	*	*	*	*	*
South Sudan	§ ⁶⁵	§ ⁶⁶	*	§ ⁶⁷	§ ⁶⁸
Sudan	*	§ ⁶⁹	*	§ ⁷⁰	§ ⁷¹

47 Signed 29 January 2005
 48 Signed 14 December 2007
 49 Signed 6 July 2004
 50 Not a member of African Union
 51 Signed 27 May 2010
 52 Signed 10 May 2007
 53 Signed 9 June 1998
 54 Signed 6 July 2004
 55 Signed 1 February 2010
 56 Signed 1 February 2010
 57 Signed 1 February 2010
 58 Signed 15 December 2008
 59 Signed 9 June 1998
 60 Signed 9 June 1998
 61 Signed 23 February 2006
 62 Signed 28 January 2013
 63 Signed 23 February 2006
 64 Signed 23 February 2006
 65 Signed 24 January 2013
 66 Signed 24 January 2013
 67 Signed 24 January 2013
 68 Signed 24 January 2013
 69 Signed 30 June 2008
 70 Signed 30 June 2008
 71 Signed 9 June 1998



	ACHPR	ACHPR- PW	African Charter on Democracy, Elections and Governance	AU Convention on Preventing and Combating Corruption	Protocol on the African Court on Human and People's Rights (Declaration) ⁷
Swaziland	*	*	§ ⁷²	§ ⁷³	§ ⁷⁴
The Territory of Western Sahara	*	§ ⁷⁵	*	*	*
Togo	*	*	*	*	*
Tunisia	*	§ ⁷⁶	§ ⁷⁷	§ ⁷⁸	*
Uganda	*	*	§ ⁷⁹	*	*
United Republic of Tanzania	*	*		*	*
Zambia	*	*	*	*	§ ⁸⁰
Zimbabwe	*	*		*	§ ⁸¹

4.1.3 Non-Treaty Standards

4.1.3.1 The New Partnership for Africa's Development (NEPAD) Declaration on Democracy, Political, Economic and Corporate Governance signed by Heads of State and Government of the Member States of the African Union (2002)

- 7 At the beginning of the new century and millennium, we reaffirm our commitment to the promotion of democracy and its core values in our respective countries. In particular, we undertake to work with renewed determination to enforce [^]
- individual and collective freedoms, including the right to form and join political parties and trade unions, in conformity with the constitution; [...]
 - the inalienable right of the individual to participate by means of free, credible and democratic political processes in periodically electing their leaders for a fixed term of office; [...]

72 Signed 29 January 2008

73 Signed 7 December 2004

74 Signed 7 December 2004

75 Signed 20 June 2006

76 Signed 30 January 2015

77 Signed 27 January 2014

78 Signed 27 January 2014

79 Signed 16 December 2008

80 Signed 9 June 1998

81 Signed 9 June 1998

11. In Africa's efforts at democracy, good governance and economic reconstruction, women have a central role to play. We accept it as a binding obligation to ensure that women have every opportunity to contribute on terms of full equality to political and socio-economic development in all our countries.

To fulfil these commitments we have agreed to adopt the following action plan:

13. In support of democracy and the democratic process

We will:

- ensure that our respective national constitutions reflect the democratic ethos and provide for demonstrably accountable governance;
- promote political representation, thus providing for all citizens to participate in the political process in a free and fair political environment;
- enforce strict adherence to the position of the African Union (AU) on un-constitutional changes of government and other decisions of our continental organization aimed at promoting democracy, good governance, peace and security;
- strengthen and, where necessary, establish an appropriate electoral administration and oversight bodies, in our respective countries and provide the necessary resources and capacity to conduct elections which are free, fair and credible;
- reassess and where necessary strengthen the AU and sub-regional election monitoring mechanisms and procedures;

[...]

15. To promote and protect human rights We have agreed to:

- ensure responsible free expression, inclusive of the freedom of the press. [...]



4.1.3.2 OAU/AU Declaration on the Principles Governing Democratic Elections in Africa (2002)

I. Preamble

We, the Heads of State and Government of the Organization of African Unity, meeting in Durban, South Africa, at the 38th Ordinary Session of the Assembly of the OAU, have considered the Report of the Secretary General on strengthening the role of the OAU in election observation and monitoring and the advancement of the democratization process.

Considering the principles and objectives of the African Union enshrined in the Constitutive Act of the African Union, particularly in its Articles 3 and 4;

Reaffirming the Algiers Decision of July 1999 and the Lomé Declaration of July 2000 on the Framework for an OAU response to unconstitutional changes of government, which laid down a set of common values and principles for democratic governance;

Considering the CSSDCA Solemn Declaration adopted by the Assembly of Heads of State and Government of the OAU in Lomé, Togo, in July 2000, which underpins the OAU's agenda of promoting democracy and democratic institutions in Africa;

Considering the New African Initiative (NAI) now referred to as the New Partnership for the African's Development (NEPAD) adopted by the Assembly of the Heads of State and

Government in Lusaka, Zambia, in July 2001, by which, through the Democracy and Political Governance Initiative, African Leaders undertook to promote and protect democracy and human rights in their respective countries and regions, by developing clear standards of accountability and participatory governance at the national and sub-regional levels;

Reaffirming the importance of the Universal Declaration of Human Rights adopted in December 1948, as well as the International Covenant on Civil and Political Rights adopted in December 1966, which recognized the will of the people expressed through free and fair elections as the basis of the authority of government;

Reaffirming also the significance of the African Charter on Human and Peoples' Rights adopted in Nairobi, Kenya, in June 1981, which recognized the right of every citizen to participate freely in the government of his or her country whether directly or through democratically elected representatives;

Recalling the Declaration of the Assembly of Heads of State and Government of the Organization of African Unity on the Political and Socio-economic Situation in Africa and the Fundamental Changes Taking Place in the World, adopted in Addis Ababa, Ethiopia, in July 1990 wherein OAU Member States undertook to continue with the democratization of African societies and the consolidation of the democratic institutions;

Recalling further the African Charter for Popular Participation in Development adopted in Addis Ababa, Ethiopia, in July 1990, which emphasized the need to involve the people of Africa in the spheres of economic and political governance;

Referring to the Cairo Agenda for Action adopted in Cairo, Egypt, in 1995, which stressed the imperative of ensuring good governance through popular participation based on the respect for human rights and dignity, free and fair elections, as well as on the respect of the principles of freedom of the press, speech, association and conscience;

Cognizant of the fact that each Member State has the sovereign right to choose its political system in accordance with the will of its people and in conformity with the Constitutive Act of the African Union and the universally accepted principles of democracy;

Considering the ever-growing role already played by the OAU in the observation/monitoring of elections and the need to strengthen the Organization's efforts in advancing democracy in Africa;

Agree and endorse the following Principles Governing Democratic Elections in Africa:

II. Principles of Democratic Elections

1. Democratic elections are the basis of the authority of any representative government;
2. Regular elections constitute a key element of the democratization process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development
3. The holding of democratic elections is an important dimension in conflict prevention, management and resolution;
4. Democratic elections should be conducted:
 - a) freely and fairly;

- b) under democratic constitutions and in compliance with supportive legal instruments;
- c) under a system of separation of powers that ensures in particular, the independence of the judiciary;
- d) at regular intervals, as provided for in National Constitutions;
- e) by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics;

III. Responsibilities of the Member States We commit our Governments to:

- a) take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of our respective countries;
- b) establish where none exist, appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible voters, compilation of voters' registers, etc would be addressed;
- c) establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections;
- d) safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes;
- e) promote civic and voters' education on the democratic principles and values in close cooperation with the civil society groups and other relevant stakeholders;
- f) take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security;
- g) ensure the availability of adequate logistics and resources for carrying out democratic elections, as well as ensure that adequate provision of funding for all registered political parties to enable them organise their work, including participation in electoral process.;
- h) ensure that adequate security is provided to all parties participating in elections;
- i) ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and/other observers/monitors;
- j) encourage the participation of African women in all aspects of the electoral process in accordance with the national laws.

IV. Elections: Rights and Obligations

1. We reaffirm the following rights and obligations under which democratic elections are conducted:
2. Every citizen shall have the right to participate freely in the government of his or her country, either directly or through freely elected representatives in accordance with the provisions of the law.

3. Every citizen has the right to fully participate in the electoral processes of the country, including the right to vote or be voted for, according to the laws of the country and as guaranteed by the Constitution, without any kind of discrimination.
4. Every citizen shall have the right to free association and assembly in accordance with the law.
5. Every citizen shall have the freedom to establish or to be a member of a political party or Organization in accordance with the law.
6. Individuals or political parties shall have the right to freedom of movement, to campaign and to express political opinions with full access to the media and information within the limits of the laws of the land.
7. Individual or political parties shall have the right to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.
8. Candidates or political parties shall have the right to be represented at polling and counting stations by duly designated agents or representatives.
9. No individual or political party shall engage in any act that may lead to violence or deprive others of their constitutional rights and freedoms. Hence all stakeholders should refrain from, among others, using abusive language and/or incitement to hate or defamatory allegations and provocative language. These acts should be sanctioned by designated electoral authorities.
10. All stakeholders in electoral contests shall publicly renounce the practice of granting favours, to the voting public for the purpose of influencing the outcome of elections.
11. In covering the electoral process, the media should maintain impartiality and refrain from broadcasting and publishing abusive language, incitement to hate, and other forms of provocative language that may lead to violence.
12. Every candidate and political party shall respect the impartiality of the public media by undertaking to refrain from any act which might constrain or limit their electoral adversaries from using the facilities and resources of the public media to air their campaign messages.
13. Every individual and political party participating in elections shall recognize the authority of the Electoral Commission or any statutory body empowered to oversee the electoral process and accordingly render full cooperation to such a Commission/Body in order to facilitate their duties.
14. Every citizen and political party shall accept the results of elections proclaimed to have been free and fair by the competent national bodies as provided for in the Constitution and the electoral laws and accordingly respect the final decision of the competent Electoral Authorities or, challenge the result appropriately according to the law.

4.2 The Economic Community of West African States (ECOWAS)

The Economic Community of West African States (ECOWAS) was established in May 1975 to promote trade, co-operation and self-reliance in West Africa. A revised ECOWAS treaty, designed to accelerate economic integration and to increase political co-operation, was signed in July 1993. The revised treaty designates the achievement of a common market and a single currency as economic objectives, while in the political sphere it envisages the establishment of a West African parliament, an economic and social council and an ECOWAS court of justice to enforce Community decisions. Within its regional security framework, the ECOWAS Member States signed in 2001 a Protocol on Democracy and Good Governance, supplementary to the protocol that established in 1999 the Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping and Security. The supplementary protocol is considered as a tool which takes into account the deep-rooted political causes of conflict, instability and insecurity.

4

4.2.1 Treaty Standards

4.2.1.1 Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (2001)⁸²

Article 1

The following shall be declared as constitutional principles shared by all Member States:

[...].

- b) Every accession to power must be made through free, fair and transparent elections.
- c) Zero tolerance for power obtained or maintained by unconstitutional means.
- d) Popular participation in decision-making, strict adherence to democratic principles and decentralization of power at all levels of governance.
- e) The armed forces must be apolitical and must be under the command of a legally constituted political authority; no serving member of the armed forces may seek to run for elective political.

[...].

- h) The rights set out in the African Charter on Human and Peoples' Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States.

⁸² Entry into force 20 February 2008

- i) Political parties shall be formed and shall have the right to carry out their activities freely, within the limits of the law. Their formation and activities shall not be based on ethnic, religious, regional or racial considerations. They shall participate freely and without hindrance or discrimination in any electoral process. The freedom of the opposition shall be guaranteed. Each Member State may adopt a system for financing political parties, in accordance with criteria set under the law.
- j) The freedom of association and the right to meet and organize peaceful demonstrations shall also be guaranteed.
- k) The freedom of the press shall be guaranteed.

[...]

Article 2

1. No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of Political actors.
2. All the elections shall be organized on the dates or at periods fixed by the Constitution or the electoral laws.
3. Member States shall take all appropriate measures to ensure that women have equal rights with men to vote and be voted for in elections, to participate in the formulation of government policies and the implementation thereof and to hold public offices and perform public functions at all levels of governance.

Article 3

The bodies responsible for organizing the elections shall be independent or neutral and shall have the confidence of all the political actors. Where necessary, appropriate national consultations shall be organized to determine the nature and the structure of the bodies.

Article 4

1. Each ECOWAS Member State shall ensure the establishment of a reliable registry of births and deaths. A central registry shall be established in each Member State.
2. Member States shall cooperate in this area with a view to exchanging experiences and where necessary providing technical assistance to each other in the production of reliable voters' lists.

Article 5

The voters' lists shall be prepared in a transparent and reliable manner, with the collaboration of the political parties and voters who may have access to them whenever the need arises.

Article 6

The preparation and conduct of elections and the announcement of results shall be done in a transparent manner.

Article 7

Adequate arrangements shall be made to hear and dispose of all petitions relating to the conduct of elections and announcement of results.

Article 8

Member States shall use the services of civil society organizations involved in electoral matters to educate and enlighten the public on the need for peaceful elections devoid of all acts of violence.

Article 9

The party and/or candidate who loses the elections shall concede defeat to the political party and/or candidate finally declared the winner, following the guidelines and within the deadline stipulated by the law.

Article 10

All holders of power at all levels shall refrain from acts of intimidation or harassment against defeated candidates or their supporters.

Article 20

[...]

2. The civilian authorities shall respect the apolitical nature of the armed forces and police. All political or trade union activities and propaganda shall be forbidden in the barracks and within the armed forces.

Article 21

The armed and security forces personnel as citizens, shall be entitled to all the rights set out in the constitution, except as may be stated otherwise in their special regulations.

Article 22

1. The use of arms to disperse non-violent meetings or demonstrations shall be forbidden. Whenever a demonstration becomes violent, only the use of minimal and/or proportionate force shall be authorized.



4.2.2 Matrix on the Status of Ratification of Instruments within the Economic Community of West African States⁸³ (ECOWAS)

	Protocol on Democracy and Good Governance
Benin	*
Burkina Faso	*
Cape Verde	
Côte d'Ivoire	§ ⁸⁴
Gambia	*
Ghana	*
Guinea	*
Guinea-Bissau	*
Liberia	§ ⁸⁵
Mali	*
Niger	*
Nigeria	§ ⁸⁶
Senegal	*
Sierra Leone	*
Togo	*

4.2.3 Non-Treaty Standards

4.2.3.1 Declaration of Political Principles of the Economic Community of West African States (1991)

We will respect human rights and fundamental freedoms in all their plenitude including in particular freedom of thought, conscience, association, religion or belief for all our peoples without distinction as to race, sex, language or creed.

We will promote and encourage the full enjoyment by all our peoples of their fundamental human rights, especially their political, economic, social, cultural and other rights inherent in the dignity of the human person and essential to his free and progressive development.

We believe in the liberty of the individual and in his inalienable right to participate by means of free and democratic processes in the framing of the society in which he lives. We will therefore strive to encourage and promote in each our countries, political pluralism and those representative institutions and guarantees for personal safety and freedom under the law that are our common heritage.

83 Up to date information concerning ratifications and signatures of the ECOWAS Protocol on Democracy and Good Governance is not easily found. The information contained in the matrix is from 2012.

84 Signed 21 December 2001

85 Signed 21 December 2001

86 Signed 21 December 2001

4.3 The Southern African Development Community (SADC)

The Southern African Development Community was established in 1980, as a loose alliance of nine States in Southern Africa known as the Southern African Development Coordination Conference (SADCC), with the main aim of coordinating development projects in order to lessen economic dependence on the then apartheid South Africa. The transformation of the organisation from a Coordinating Conference into a Development Community (SADC) took place in 1992. The organisation furthers socio-economic cooperation and integration as well as political and security cooperation among 15 southern African countries.

4.3.1 Treaty Standards

4.3.1.1 SADC Protocol on Gender and Development (2008)⁸⁷

Article 13 Participation

1. States Parties shall adopt specific legislative measures and other strategies to enable women to have equal opportunities with men to participate in all electoral processes including the administration of elections and voting.
2. States Parties shall ensure the equal participation of women and men in decision making by putting in place policies, strategies and programmes for:
 - (a) building the capacity of women to participate effectively through leadership and gender sensitivity training and mentoring;
 - (b) providing support structures for women in decision-making positions;
 - (c) the establishment and strengthening of structures to enhance gender mainstreaming; and
 - (d) changing discriminatory attitudes and norms of decision making structures and procedures.

[...]

4.3.1.2 SADC Protocol against Corruption (2001)⁸⁸

Article 3 Acts of corruption

1. This Protocol is applicable to the following acts of corruption:
 - (a) the solicitation or acceptance, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
 - (b) the offering or granting, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage

⁸⁷ Entry into force 22 February 2013

⁸⁸ Entry into force 6 August 2006

- for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (c) any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
 - (d) the diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official received by virtue of his or her position for purposes of administration, custody or for other reasons.
 - (e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;
 - (f) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of the influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;
 - (g) the fraudulent use or concealment of property derived from any of the acts referred to in this Article; and
 - (h) participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this Article.

[...]

Article 4 Preventive measures

1. For the purposes set forth in Article 2 of this Protocol, each State Party undertakes to adopt measures, which will create, maintain and strengthen:
 - (a) standards of conduct for the correct, honourable and proper fulfilment of public functions as well as mechanisms to enforce those standards;
 - (b) systems of Government hiring and procurement of goods and services that ensure the transparency, equity and efficiency of such systems;
 - (c) Government revenue collection and control systems that deter corruption as well as laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the State Parties;
 - (d) mechanisms to promote access to information to facilitate eradication and elimination of opportunities for corruption;
 - (e) systems for protecting individuals who, in good faith, report acts of corruption;
 - (f) laws that punish those who make false and malicious reports against innocent persons;

- (g) institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption;
 - (h) deterrents to the bribery of domestic public officials, and officials of foreign States, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable details, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable the law enforcement agencies to detect acts of corruption;
 - (i) mechanisms to encourage participation by the media, civil society and non-governmental organizations in efforts to prevent corruption; and
 - (j) mechanisms for promoting public education and awareness in the fight against corruption.
2. Each State Party shall adopt such legislative and other measures under its domestic law to prevent and combat acts of corruption committed in and by private sector entities.

4.3.1.3 SADC Protocol on Culture, Information and Sport (2001)⁸⁹

Article 17 Objectives

In fulfillment of the principles of this Protocol, Member States agree to cooperate in the area of information in order to attain the following objectives:

- (a) Cooperation and collaboration in the promotion, establishment and growth of independent media, as well as free flow of information;
- (b) Strengthening Information Departments to be effective gatherers and disseminators of information and news;
- (d) Taking positive measures to narrow the information gap between the rural and urban areas by increasing the coverage of the mass media, whether private, public or community-based;
- (e) Encouragement of the use of indigenous languages in the mass media as vehicles of promoting local, national and regional inter-communication;
- (f) Ensuring the media are adequately sensitised on gender issues so as to promote gender equality and equity in information dissemination.

Article 18 Information policies

- 3. Member States agree to establish and strengthen the institutional framework for the implementation of information policies.
- 4. Member States agree to create political and economic environment conducive to the growth of pluralistic media.

Article 20 Freedom of the media

State Parties shall take necessary measures to ensure the freedom and independence of the media.

⁸⁹ Entry into force 7 January 2006

4.3.2 Matrix on the Status of Ratification of Instruments within the Southern African Development Community (SADC)

	Protocol on Gender and Development	Protocol against Corruption	SADC Protocol on Culture, Information and Sport
Angola	*	*	S ⁹⁰
Botswana		*	*
Democratic Republic of the Congo	*	*	S ⁹¹
Lesotho	*	*	*
Madagascar	S ⁹²		
Malawi	*	*	*
Mauritius		*	*
Mozambique	*	*	*
Namibia	*	*	*
Seychelles	*	S ⁹³	S ⁹⁴
South Africa	*	*	*
Swaziland	*	*	S ⁹⁵
United Republic of Tanzania	*	*	*
Zambia	*	*	S ⁹⁶
Zimbabwe	*	*	S ⁹⁷

90 Signed 14 August 2001

91 Signed 14 August 2001

92 Signed 17 August 2008

93 Signed 14 August 2001

94 Signed 14 August 2001

95 Signed 14 August 2001

97 Signed 14 August 2001

98 Signed 14 August 2001

4.3.3 Non-Treaty Standards

4.3.3.1 SADC Principles and Guidelines Governing Democratic Elections (2004)

1. Introduction

SADC region has made significant strides in the consolidation of the citizens' participation in the decision-making processes and consolidation of democratic practice and institutions. The Constitutions of all SADC Member States enshrine the principles of equal opportunities and full participation of the citizens in the political process.

The Southern African countries, building upon their common historical and cultural identity forged over centuries, agreed to encapsulate their commonality into a single vision, that of a SHARED FUTURE. In this context, in 1992 the Southern African countries meeting in Windhoek, the Republic of Namibia, signed a Treaty establishing the Southern African Development Community (SADC).

Article 4 of the Treaty stipulates that "human rights, democracy and the rule of law" are principles guiding the acts of its members. Article 5 of the Treaty outlines the objectives of SADC, which commits the Member States to "promote common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective. It also commits Member States to "consolidate, defend and maintain democracy, peace, security and stability" in the region.

The Protocol on Politics, Defence and Security Cooperation provides that SADC shall "promote the development of democratic institutions and practices within the territories of State Parties and encourage the observance of universal human rights as provided for in the Charter and Conventions of the Organization of African Unity (African Union) and the United Nations."

In addition, the Strategic Indicative Plan for the Organ (SIPO), as the implementation framework of the Protocol, emphasizes the need for democratic consolidation in the region.

The development of the principles governing democratic elections aims at enhancing the transparency and credibility of elections and democratic governance as well as ensuring the acceptance of election results by all contesting parties.

The Guidelines are not only informed by the SADC legal and policy instruments but also by the major principles and guidelines emanating from the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa -AHG/DECL.1 (XXXVIII) and the AU Guidelines for African Union Electoral Observation and Monitoring Missions - EX/CL/35 (III) Annex II.

2. Principles for Conducting Democratic Elections

- 2.1 SADC Member States shall adhere to the following principles in the conduct of democratic elections:
 - 2.1.1 Full participation of the citizens in the political process;
 - 2.1.2 Freedom of association;
 - 2.1.3 Political tolerance;
 - 2.1.4 Regular intervals for elections as provided for by the respective National Constitutions;

- 2.1.5 Equal opportunity for all political parties to access the state media;
- 2.1.6 Equal opportunity to exercise the right to vote and be voted for;
- 2.1.7 Independence of the Judiciary and impartiality of the electoral institutions;
and
- 2.1.8 Voter education.
- 2.1.9 Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent National Electoral Authorities in accordance with the law of the land.
- 2.1.10 Challenge of the election results as provided for in the law of the land.

7. Responsibilities of the Member States Holding Elections

- 7.1 Take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of the country;
- 7.2 Establish where none exist, appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible voters and compilation of voters' registers, would be addressed;
- 7.3 Establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections;
- 7.4 Safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes as provided for under 2.1.5 above;
- 7.5 Take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security;
- 7.6 Ensure the availability of adequate logistics and resources for carrying out democratic elections;
- 7.7 Ensure that adequate security is provided to all parties participating in elections;
- 7.8 Ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and/ other observers/monitors;
- 7.9 Encourage the participation of women, disabled and youth in all aspects of the electoral process in accordance with the national laws;
- 7.10 Issuing invitation by the relevant Electoral institutions of the country in election to SADC 90 (ninety) days before the voting day in order to allow an adequate preparation for the deployment of the Electoral Observation Mission;
- 7.11 Ensure freedom of movement of the members of the SEOM within the host country;

- 7.12 Accreditation of the members of the SEOM as election observers on a non-discriminatory basis;
- 7.13 Allow the members of the SEOM to communicate freely with all competing political parties, candidates, other political associations and organisations, and civil society organizations;
- 7.14 Allow the members of the SEOM to communicate freely with voters except when the electoral law reasonably prescribes such communication in order to protect the secrecy of the vote;
- 7.15 Allow the members of the SEOM an unhindered access to and communicate freely with the media;
- 7.16 Allow the members of the SEOM to communicate with and have unimpeded access to the National Election Commission or appropriate electoral authority and all other election administrators;
- 7.17 Allow the members of the SEOM free access to all legislation and regulations governing the electoral process and environment;
- 7.18 Allow the members of the SEOM free access to all electoral registers or voters' roll;
- 7.19 Ensure that the members of the SEOM have an unimpeded and unrestricted access to all polling stations and counting centres.





REGIONAL INSTRUMENTS – THE AMERICAS

In the Americas, human rights developed within the framework of the Organization of American States (OAS), which was established in 1948 through the adoption of the OAS Charter and the American Declaration of the Rights and Duties of Man. The two bodies in the Inter-American system responsible for the promotion and protection of human rights are the Inter-American Commission on Human Rights, created in 1959, and the Inter-American Court of Human Rights created by the American Convention on Human Rights. The Commission is responsible, *inter alia*, for receiving, analysing and investigating individual petitions which allege human rights violations. The Court is able to consider cases submitted to it by the Commission or States Parties.

5.1 Treaty Standards

5.1.1 American Convention on Human Rights (AmCHR) (1969)¹

Article 13 Freedom of thought and expression

1. Everyone shall have the right to freedom of thought and expression. This right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

¹ Entry in to force 18 July 1979

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary in order to ensure:
 - a) respect for the rights or reputations of others; or
 - b) the protection of national security, public order, or public morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
[...]
5. Any propaganda for war and any advocacy of national, racial or religious hatred that constitute incitement to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offences punishable by law.

Article 14 Right of reply

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or make a correction using the same communications outlets, under such conditions as the law may establish.
[...]

Article 15 Right of assembly

The right of peaceful assembly, without arms, is recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

Article 16 Freedom of association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Article 23 Right to participate in government

1. Every citizen shall enjoy the following rights and opportunities:
 - a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

- b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c) to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

5.1.2 Inter-American Convention on the Granting of Political Rights to Women (AmCPRW) (1948)²

Article 1

The High Contracting Parties agree that the right to vote and to be elected to national office shall not be denied or abridged by reason of sex.

5.1.3 Inter-American Convention against Corruption (1996)³

Article III Preventive Measures

For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

1. Standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes.
2. Mechanisms to enforce these standards of conduct.
3. Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities. Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public.
5. Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.
6. Government revenue collection and control systems that deter corruption.
7. Laws that deny favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the States Parties.

² Entry into force 29 December 1954

³ Entry into force 6 March 1997

8. Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems.
9. Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.
10. Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts.
11. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.
12. The study of further preventive measures that take into account the relationship between equitable compensation and probity in public service.

Article VI Acts of Corruption

1. This Convention is applicable to the following acts of corruption:
 - a) The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
 - b) The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
 - c) Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party;
 - d) The fraudulent use or concealment of property derived from any of the acts referred to in this article; and
 - e) Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article. [...]

Article XI Progressive Development

1. In order to foster the development and harmonization of their domestic legislation and the attainment of the purposes of this Convention, the States Parties view as desirable, and undertake to consider, establishing as offenses under their laws the following acts:
 - a) The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of classified or confidential information which that official or person who performs public functions has obtained because of, or in the performance of, his functions;

- b) The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of, or in the performance of, his functions;

5.1.4 Inter-American Convention on the elimination of all forms of discrimination against persons with disabilities (1999)⁴

Article ii

The objectives of this Convention are to prevent and eliminate all forms of discrimination against persons with disabilities and to promote their full integration into society.

Article iii

To achieve the objectives of this Convention, the states parties undertake:

1. To adopt the legislative, social, educational, labor-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society, including, but not limited to:
 - a) Measures to eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available goods, services, facilities, programs, and activities such as employment, transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities;
 - b) Measures to ensure that new buildings, vehicles, and facilities constructed or manufactured within their respective territories facilitate transportation, communications, and access by persons with disabilities;



5.1.5 Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (A-68) (2013)

CHAPTER I

Definitions

Article 1

For purposes of this Convention:

1. Racial discrimination shall mean any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties.

Racial discrimination may be based on race, color, lineage, or national or ethnic origin.

2. Indirect racial discrimination shall be taken to occur, in any realm of public and private life, when a seemingly neutral provision, criterion, or practice has the

⁴ Entry into force 14 September 2001

capacity to entail a particular disadvantage for persons belonging to a specific group based on the reasons set forth in Article 1.1, or puts them at a disadvantage, unless said provision, criterion, or practice has some reasonable and legitimate objective or justification under international human rights law.

5. Special measures or affirmative action adopted for the purpose of ensuring equal enjoyment or exercise of one or more human rights and fundamental freedoms of groups requiring such protection shall not be deemed racial discrimination provided that such measures do not lead to the maintenance of separate rights for different groups and are not continued once their objectives have been achieved.

CHAPTER II

Protected Rights

Article 2

Every human being is equal under the law and has a right to equal protection against racism, racial discrimination, and related forms of intolerance in any sphere of life, public or private.

Article 3

Every human being has the right to the equal recognition, enjoyment, exercise, and protection, at both the individual and collective levels, of all human rights and fundamental freedoms enshrined in their domestic law and in international law applicable to the States Parties.

CHAPTER III

Duties of the State

Article 4

The states undertake to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of racism, racial discrimination, and related forms of intolerance, including:

- i. Public or private support provided to racially discriminatory and racist activities or that promote intolerance, including the financing thereof.
- ii. Publication, circulation or dissemination, by any form and/or means of communication, including the internet, of any racist or racially discriminatory materials that:
 - a. Advocate, promote, or incite hatred, discrimination, and intolerance.
- vii. Any distinction, exclusion, restriction, or preference applied to persons, because of their status as victims of multiple or aggravated discrimination, the purpose or result of which is to deny or impair the equal recognition, enjoyment, exercise, or protection of rights and fundamental freedoms.
- viii. Any racially discriminatory restriction on the enjoyment of the human rights enshrined in applicable international and regional instruments and in the jurisprudence of international and regional human rights courts, particularly those applicable to minorities or groups that are in vulnerable situations and subject to racial discrimination.
- ix. Any restriction or limitation on the use of the language, traditions, customs, and culture of persons in public or private activities.

Article 5

The States Parties undertake to adopt the special policies and affirmative actions needed to ensure the enjoyment or exercise of rights and fundamental freedoms of persons or groups that are subject to racism, racial discrimination, and related forms of intolerance for the purpose of promoting equitable conditions for equal opportunity, inclusion, and progress for such persons or groups. Such measures or policies shall not be considered discriminatory or incompatible with the purpose or intent of this Convention, shall not lead to maintaining separate rights for different groups, and shall not be continued beyond a reasonable period or after that objective has been achieved.

Article 6

The States Parties undertake to formulate and implement policies the purpose of which is to provide equitable treatment and generate equal opportunity for all persons in accordance with the scope of this Convention, including policies of an educational nature, labor or social measures, or any other kind of promotional policies and the dissemination of legislation on the subject by all possible means, including the mass media and the internet.

Article 10

The States Parties undertake to ensure that the victims of racism, racial discrimination, and related forms of intolerance receive equitable and non-discriminatory treatment, equal access to the justice system, expeditious and effective proceedings, and fair compensation in the civil or criminal sphere, as applicable.

CHAPTER V

General Provisions

Article 16. Interpretation

1. No provision of this Convention shall be interpreted as restricting or limiting a domestic law of any State Party that affords protections and guarantees equal to or greater than those established in this Convention.
2. Nothing in this Convention shall be interpreted as restricting or limiting international human rights conventions that afford equal or greater protections in this regard.



5.2 Matrix on the Status of Ratification of Instruments within the Organisation of American States⁵

	AmCHR	AmCPRW	Inter-American Convention against Corruption	Convention of all forms of discrimination against persons with disabilities	Convention against racism, racial discrimination and related forms of intolerance (A-68)
Antigua and Barbuda			*		S ⁶
Argentina	* ⁷	*	*	*	S ⁸
Bahamas			*		
Barbados	*		S ⁹		
Belize			*		
Bolivia	*	*	*	*	S ¹⁰
Brazil	*	*	*	*	S ¹¹
Canada		*	*		
Chile	*	*	*	*	S ¹²
Colombia	*	*	*	*	S ¹³
Costa Rica	*	*	*	*	S ¹⁴
Cuba¹⁵		*			
Dominica	*	*	*	S ¹⁶	
Dominican Republic	*	*	*	*	
Ecuador	*	*	*	*	S ¹⁷
El Salvador	*	*	*	*	

5 For updated information concerning ratification and signature status of the instruments mentioned in this matrix, please consult the database of the Organization of American States at <http://www.oas.org/DIL/treaties.htm>

6 Signed 7 June 2013

7 Ratified with the following reservation:

Article 21 is subject to the following reservation: "The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international tribunal. Neither shall it consider reviewable anything the national courts may determine to be matters of 'public utility' and 'social interest', nor anything they may understand to be 'fair compensation'."

8 Signed 7 June 2013

9 Signed 6 April 2001

10 Signed 10 March 2015

11 Signed 7 June 2013

12 Signed 22 October 2015

13 Signed 8 September 2014

14 Signed 7 June 2013

15 In 1962 Cuba was excluded from participation in the OAS at a meeting of the Ministers of Foreign Affairs of OAS states. In 2009, the OAS voted unanimously to lift the suspension, with the condition that Cuba be subject to a "process of dialogue" on OAS principles before renewing its participation. Cuban officials said they were not interested in rejoining the organisation.

16 Signed 8 June 1999

17 Signed 7 June 2013

	AmCHR	AmCPRW	Inter-American Convention against Corruption	Convention of all forms of discrimination against persons with disabilities	Convention against racism, racial discrimination and related forms of intolerance (A-68)
Grenada	*		*		
Guatemala	*	*18	*	*	
Guyana			*		
Haiti	*	*	*	*	§19
Honduras	*	*20	*	*	
Jamaica	*		*	§21	
Mexico	*22	*	*	*	
Nicaragua	*	*	*	*	
Panama	*	*	*	*	§23
Paraguay	*	*	*	*	
Peru	*	*	*	*	
Saint Kitts and Nevis		§24	*		
Saint Lucia			*		
Saint Vincent and the Grenadines			*		
Suriname	*	*	*		
Trinidad and Tobago	*25		*		
United States of America	§26	*	*		
Uruguay	*27	*	*	*	§28
Venezuela	*29	*	*	*	

18 Ratified with the following reservation: "The Government of Guatemala makes a reservation with respect to the political rights of women who are illiterate, inasmuch as Article 9(2) of the Constitution of the Republic grants citizenship to Guatemalan women over eighteen years of age who know how to read and write."

19 Signed 25 April 2014

20 Ratified with the following reservation: "The Delegation of Honduras makes a reservation with respect to the granting of political rights to women, in view of the fact that the political Constitution of its country grants the prerogatives of citizen-ship to men only."

21 Signed 8 June 1999

22 Ratified with the following reservation: "The Government of Mexico makes express reservation to Article 23, paragraph 2, since the Mexican Constitution provides, in Article 130, that ministers of denominations shall not have a passive vote, nor the right to associate for political purposes."

23 Signed 5 June 2014

24 Signed 18 October 1980

25 The government ratified the Charter on 4 March 1991 but submitted a notice of denunciation on 26 May 1998.

26 Signed 1 June 1977

27 Ratified with the following reservation: "Article 80.2 of the Constitution of Uruguay provides that a person's citizenship is suspended if the person is "under indictment on a criminal charge which may result in a penitentiary sentence." Such a restriction on the exercise of the rights recognized in Article 23 of the Convention is not envisaged among the circumstances provided for in Article 23, paragraph 2, for which reason the Delegation of Uruguay expresses a reservation on this matter."

28 Signed 7 June 2013

29 The government ratified the Charter on 23 June 1977 but submitted a notice of denunciation on 10 September 2012.

5.3 Non-Treaty Standards

Both the Inter-American Court and the Inter-American Commission on Human Rights have held that, although originally adopted as a declaration and not as a legally binding treaty, the American Declaration is today a source of international obligations for the OAS member States.

5.3.1 American Declaration of the Rights and Duties of Man (1948)

Article IV.

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

Article XX.

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

Article XXI.

Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

Article XXII.

Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labour union or other nature.

Article XXVIII.

The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.

Article XXXII.

It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

Article XXXIV.

It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.

Article XXXVIII.

It is the duty of every person to refrain from taking part in political activities that, according to law, are reserved exclusively to the citizens of the state in which he is an alien.

5.3.2 Inter-American Democratic Charter (2001)

Article 2

The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.

Article 3

Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

Article 5

The strengthening of political parties and other political organizations is a priority for democracy. Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing.

Article 6

It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.

Article 23

Member states are responsible for organizing, conducting, and ensuring free and fair electoral processes.

Member states, in the exercise of their sovereignty, may request that the Organization of American States provide advisory services or assistance for strengthening and developing their electoral institutions and processes, including sending preliminary missions for that purpose.

Article 28

States shall promote the full and equal participation of women in the political structures of their countries as a fundamental element in the promotion and exercise of a democratic culture.



REGIONAL INSTRUMENTS - EUROPE

6.1 The Council of Europe

The Council of Europe was founded in 1949. The Council was set up to defend human rights, parliamentary democracy and the rule of law, to develop continent-wide agreements to standardise member countries' social and legal practices, and to promote awareness of a European identity based on shared values and cutting across different cultures.

Protocol No. 11 to the European Convention on Human Rights establishing a full time court came into force on 1 November, 1998. Any Contracting State or individual claiming to be a victim of a violation of the Convention may lodge an application directly with the Court in Strasbourg, alleging a breach by a Contracting State of one of the Convention rights. All final judgments of the Court are binding on the respondent States concerned.

6.1.1 Treaty Standards

6.1.1.1. Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950)¹

Article 10 Freedom of Expression

1. Everyone has right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

¹ Entry into force 3 September 1953

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others;
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

Article 16 Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

6.1.1.2. First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR - P1) (1952)²

Article 3 Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of legislature.

6.1.1.3. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (2000)³

Article 1 General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

² Entry into force 18 May 1954

³ Entry into force 1 April 2005

6.1.1.4. Framework Convention for the Protection of National Minorities (FCPNM) (1995)⁴

Article 4

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 9

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media. [...]

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in public affairs, in particular those affecting them.

6.1.1.5. European Charter of Local Self-Government (ECLSG) (1985)⁵

Article 3 Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

4 Entry into force 1 February 1998

5 Entry into force 1 September 1988

6.1.1.6. Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (2009)⁶

Article 1 Right to participate in the affairs of a local authority

1. The States Parties shall secure to everyone within their jurisdiction the right to participate in the affairs of a local authority.
2. The right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities.
3. The law shall provide means of facilitating the exercise of this right. Without unfairly discriminating against any person or group, the law may provide particular measures for different circumstances or categories of persons. In accordance with the constitutional and/or international obligations of the party, the law may, in particular, provide for measures specifically limited to voters.
- 4.1 Each Party shall recognise by law the right of nationals of the party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside.
- 4.2 The law shall also recognise the right of other persons to so participate where the party, in accordance with its own constitutional order, so decides or where this accords with the party's international legal obligations.
- 5.1 Any formalities, conditions or restrictions to the exercise of the right to participate in the affairs of a local authority shall be prescribed by law and be compatible with the party's international legal obligations.
- 5.2 The law shall impose such formalities, conditions and restrictions as are necessary to ensure that the ethical integrity and transparency of the exercise of local authorities' powers and responsibilities are not jeopardised by the exercise of the right to participate.
- 5.3 Any other formalities, conditions or restrictions must be necessary for the operation of an effective political democracy, for the maintenance of public safety in a democratic society or for the party to comply with the requirements of its international legal obligations.

Article 2 Implementing measures for the right to participate

1. The Parties shall take all such measures as are necessary to give effect to the right to participate in the affairs of a local authority.
2. These measures for the exercise of the right to participate shall include:
 - i) empowering local authorities to enable, promote and facilitate the exercise of the right to participate set out in this Protocol;
 - ii) securing the establishment of:
 - a) procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants

⁶ Entry into force 1 June 2012

- and/or covers a large geographical area, measures to involve people at a level close to them;
- b) procedures for access, in accordance with the Party's constitutional order and international legal obligations, to official documents held by local authorities;
 - c) measures for meeting the needs of categories of persons who face particular obstacles in participating; and
 - d) mechanisms and procedures for dealing with and responding to complaints and suggestions regarding the functioning of local authorities and local public services; [...]

6.1.1.7. Convention on the Participation of Foreigners in Public Life at Local Level (CPFPL) (1992)⁷

Article 2

For the purposes of this Convention, the term “foreign residents” means persons who are not nationals of the State and who are lawfully resident on its territory.

Article 3

Each Party undertakes, subject to the provisions of Article 9, to guarantee to foreign residents, on the same terms as to its own nationals:

- a) the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
- b) the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests. In particular, the right to freedom of association shall imply the right of foreign residents to form local associations of their own for purposes of mutual assistance, maintenance and expression of their cultural identity or defense of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association.

Article 6

1. Each Party undertakes, subject to the provisions of Article 9, paragraph 1, to grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfills the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the 5 years preceding the elections.
2. However, a Contracting State may declare, when depositing its instrument of ratification, acceptance, approval or accession, that it intends to confine the application of paragraph 1 to the right to vote only.

Article 7

Each Party may, either unilaterally or by bilateral or multilateral agreement, stipulate that the residence requirements laid down in Article 6 are satisfied by a shorter period of residence.

⁷ Entry into force 1 May 1997

Article 9

1. In time of war or other public emergency threatening the life of the nation, the rights accorded to foreign residents under Part I may be subjected to further restrictions to the extent strictly required by the exigencies of the situation, provided that such restrictions are not inconsistent with the Party's other obligations under international law.
2. As the right recognised by Article 3 (a) carries with it duties and responsibilities, it may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
3. The right recognised by Article 3.b may not be subject to any restrictions other than such as are prescribed by law and are necessary in a democratic society, in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.
[...]

Article 15

The provisions of this Convention shall apply to all the categories of local authorities existing within the territory of each Party. However, each Contracting State may, when depositing its instrument of ratification, acceptance, approval or accession, specify the categories of territorial authorities to which it intends to confine the scope of this Convention or which it intends to exclude from its scope.

6.1.1.8. Council of Europe Convention on Access to Official Documents (2009)⁸

Article 2 Right of access to official documents

1. Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.
2. Each Party shall take the necessary measures in its domestic law to give effect to the provisions or access to official documents set out in this Convention.
3. These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.

Article 3 Possible limitations to access to official documents

1. Each Party may limit the right of access to official documents. Limitations shall be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:
 - a) national security, defence and international relations;
 - b) public safety;
 - c) the prevention, investigation and prosecution of criminal activities;

⁸ Not yet in force

- d) disciplinary investigations;
- e) inspection, control and supervision by public authorities;
- f) privacy and other legitimate private interests;
- g) commercial and other economic interests;
- h) the economic, monetary and exchange rate policies of the State;
- i) the equality of parties in court proceedings and the effective administration of justice;
- j) environment; or
- k) the deliberations within or between public authorities concerning the examination of a matter.

Concerned States may, at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that communication with the reigning Family and its Household or the Head of State shall also be included among the possible limitations.

2. Access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.
3. The Parties shall consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

Article 10 Documents made public at the initiative of the public authorities

At its own initiative and where appropriate, a public authority shall take the

necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.

6.1.1.9. Criminal Law Convention on Corruption (1999)⁹

Article 2 Active bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

Article 3 Passive bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 4 Bribery of members of domestic public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers.

⁹ Entry into force 1 July 2002

6.1.2 Matrix on the Status of Ratification of Instruments within the Council of Europe ¹⁰

	ECHR	ECHR – P1	ECHR – P12	FCPNM	ECLSG	ECLSG – Additional protocol	CPFPL	Convention on Access to Official Documents	Criminal Law Convention on Corruption
Albania	*	*	*	*	*		*		*
Andorra	*	*	*		*				*
Armenia	*	*	*	*	*	*			*
Austria	*	*	S ¹¹	*	*				*
Azerbaijan	*	*	S ¹²	*	*				*
Belgium	*	*	S ¹³	S ¹⁴	*	S ¹⁵		S ¹⁶	*
Bosnia and Herzegovina	*	*	*	*	*			*	*
Bulgaria	*	*		*	*	*			*
Croatia	*	*	*	*	*				*
Cyprus	*	*	*	*	*	*	S ¹⁷		*
Czech Republic	*	*	S ¹⁸	*	*		*		*
Denmark	*	*		*	*		*		*
Estonia	*	*	S ¹⁹	*	*	*		*	*
Finland	*	*	*	*	*	*	*	*	*
France	*	*			*	S ²⁰			*
Georgia	*	*	*	*	*			S ²¹	*
Germany	*	*	S ²²	*	*				S ²³
Greece	*	*	S ²⁴	S ²⁵	*				*

¹⁰ For updated information concerning ratification and signature status of the instruments mentioned in this matrix, please consult the database of the Council of Europe at <http://conventions.coe.int/>

¹¹ Signed 4 November 2000

¹² Signed 12 November 2003

¹³ Signed 4 November 2000

¹⁴ Signed 31 July 2001

¹⁵ Signed 16 November 2009

¹⁶ Signed 18 June 2009

¹⁷ Signed 15 November 1996

¹⁸ Signed 4 November 2000

¹⁹ Signed 4 November 2000

²⁰ Signed 16 November 2009

²¹ Signed 18 June 2009

²² Signed 4 November 2000

²³ Signed 27 January 1999

²⁴ Signed 4 November 2000

²⁵ Signed 22 September 1997

	ECHR	ECHR –P1	ECHR – P12	FCPNM	ECLSG	ECLSG – Additional protocol	CPFPL	Convention on Access to Official Documents	Criminal Law Convention on Corruption
Hungary	*	*	S ²⁶	*	*	*		*	*
Iceland	*	*	S ²⁷	S ²⁸	*	S ²⁹	*		*
Ireland	*	*	S ³⁰	*	*				*
Italy	*	*	S ³¹	*	*		* ³²		*
Latvia	*	*	S ³³	*	*				*
Liechtenstein	*	*	S ³⁴	*	*				S ³⁵
Lithuania	*	*		*	*	*	S ³⁶	*	*
Luxembourg	*	*	*	S ³⁷	*				*
Malta	* ³⁸	*		* ³⁹	*				*
Monaco	*	S ⁴⁰			*				*
Montenegro	*	*	*	*	*	*		*	*
Netherlands	*	*	*	*	*	*	*		*
Norway	*	*	S ⁴¹	*	*	*	*	*	*
Poland	*	*		*	*				*
Portugal	*	*	S ⁴²	*	*	S ⁴³			*

26 Signed 4 November 2000
 27 Signed 4 November 2000
 28 Signed 1 February 1995
 29 Signed 16 November 2009
 30 Signed 4 November 2000
 31 Signed 4 November 2000
 32 Ratified with the following reservation: “Italy declares, in application of the provisions of Article 1, paragraph 1, of the Convention, that it will confine the application of this instrument to the Chapters “A” and “B.”
 33 Signed 4 November 2000
 34 Signed 4 November 2000
 35 Signed 17 November 2009
 36 Signed 12 February 2008
 37 Signed 20 July 1995
 38 Ratified with the following reservation: “...the Constitution of Malta allows such restrictions to be imposed upon public officers with regard to their freedom of expression as are reasonably justifiable in a democratic society. The Code of conduct of public officers in Malta precludes them from taking an active part in political discussions or other political activity during working hours or on official premises.”
 39 Ratified with the following reservation: “The Government of Malta reserves the right not to be bound by the provisions of Article 15 insofar as these entail the right to vote or to stand for election either for the House of Representatives or for Local Councils.”
 40 Signed 5 October 2004
 41 Signed 15 January 2003
 42 Signed 4 November 2000
 43 Signed 26 May 2015

	ECHR	ECHR –P1	ECHR – P12	FCPNM	ECLSG	ECLSG – Additional protocol	CPFPL	Convention on Access to Official Documents	Criminal Law Convention on Corruption
Republic of Moldova	*	*	§ ⁴⁴	*	*			§ ⁴⁵	*
Romania	*	*	*	*	*				*
Russian Federation	*	*	§ ⁴⁶	*	*				*
San Marino	*	*	*	*	*				§ ⁴⁷
Serbia	*	*	*	*	*			§ ⁴⁸	*
Slovakia	*	*	§ ⁴⁹	*	*				*
Slovenia	*	*	*	*	*	*	§ ⁵⁰	§ ⁵¹	*
Spain	* ⁵²	*	*	*	*				*
Sweden	*	*		*	*	*	*	*	*
Switzerland	*	§ ⁵³		*	*				*
The former Yugoslav Republic of Macedonia	*	*	*	*	*	*		§ ⁵⁴	*
Turkey	*	*	§ ⁵⁵		*				*
Ukraine	*	*	*	*	*	*			*
United Kingdom of Great Britain and Northern Ireland	*	*		*	*	§ ⁵⁶	§ ⁵⁷		*

44 Signed 4 November 2000

45 Signed 21 December 2010

46 Signed 4 November 2000

47 Signed 15 May 2003

48 Signed 18 June 2009

49 Signed 4 November 2000

50 Signed 23 November 2006

51 Signed 18 June 2009

52 Ratified with the following reservation to article 11: "...it may be incompatible with Articles 28 and 127 of the Spanish Constitution. Article 127, paragraph 1, specifies that serving judges, law officers and prosecutors may not belong to either political parties or trade unions and provides that legislation shall lay down the system and modalities as to the professional association of these groups."

53 Signed 19 May 1976

54 Signed 18 June 2009

55 Signed 18 April 2001

56 Signed 16 November 2009

57 Signed 5 February 1992

6.1.3 Non-Treaty Standards

6.1.3.1 Recommendation on the Electoral, Civil and Social Rights of Prisoners (1962)

A. General Principles

1. The rules set out herein define the effect of detention on the electoral, civil and social rights which the prisoner, untried or convicted, would enjoy if he were free. They constitute examples of the application of common minimum rules.
2. When, in a given State, a person is deprived by law of the rights referred to at Point 1, it is desirable that these rules be taken into consideration should the relevant legislation be modified. In the absence of any national law on a particular point, these rules should be regarded as expressing European legal conscience in that respect.
3. These provisions are founded on the principle that the mere fact of detention does not affect the possession of these rights, but that their exercise may be limited when it is incompatible with the purpose of imprisonment or the maintenance of the order and the security of the prison.
4. Under no circumstances shall the rules set out in this resolution be interpreted as restricting or derogating from the rights and freedoms recognized in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocol thereto.

B. Electoral Rights

5. If the law allows electors to vote without personally visiting the polling-booth, a detainee shall be allowed this prerogative unless he has been deprived of the right to vote by law or by court order.
6. A prisoner permitted to vote shall be afforded opportunities to inform himself of the situation, in order to exercise his right.

6.1.3.2 Recommendation on Measures concerning Media Coverage of Election Campaigns (2007)

Definition

For the purposes of this recommendation:

The term “media” refers to those responsible for the periodic creation of information and content and its dissemination over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. This could, inter alia, include print media (newspapers, periodicals) and media disseminated over electronic communication networks, such as broadcast media (radio, television and other linear audiovisual media services), online news services (such as online editions of newspapers and newsletters) and non-linear audiovisual media services (such as on-demand television).

Scope of the recommendation

The principles of this recommendation apply to all types of political elections taking place in member states, including presidential, legislative, regional and, where practicable, local elections and referenda.

These principles should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address persons in the country where the election is taking place.

In member states where the notion of the “pre-election period” is defined under domestic legislation, the principles contained in this recommendation should also apply.

Principles

I. General provisions

1. Non-interference by public authorities

Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections.

2. Protection against attacks, intimidation or other types of unlawful pressure on the media

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises, as this assumes a greater significance during elections. At the same time, this protection should not obstruct the media in carrying out their work.

3. Editorial independence

Regulatory frameworks on media coverage of elections should respect the editorial independence of the media.

Member states should ensure that there is an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence.

4. Ownership by public authorities

Member states should adopt measures whereby the media which are owned by public authorities, when covering election campaigns, should do so in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate.

If such media outlets accept paid political advertising in their publications, they should ensure that all political contenders and parties that request the purchase of advertising space are treated in an equal and non-discriminatory manner.

5. Professional and ethical standards of the media

All media are encouraged to develop self-regulatory frameworks and incorporate self-regulatory professional and ethical standards regarding their coverage of election campaigns, including, inter alia, respect for the principles of human dignity and non-discrimination. These standards should reflect their particular roles and responsibilities in democratic processes.

6. Transparency of, and access to, the media

If the media accept paid political advertising, regulatory or self-regulatory frameworks should ensure that such advertising is readily recognisable as such.

Where media is owned by political parties or politicians, member states should ensure that this is made transparent to the public.

7. The right of reply or equivalent remedies

Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply or equivalent remedies under national law or systems should be able to exercise this right or equivalent remedies during the campaign period without undue delay.

8. Opinion polls

Regulatory or self-regulatory frameworks should ensure that the media will, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular :

- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member states forbidding the publication/dissemination of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.

Similarly, in respect of exit polls, member states may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

9. “Day of reflection”

Member states may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting or to provide for their correction.

II. Measures concerning broadcast media

1. General framework

During election campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media.

With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover election campaigns in a fair, balanced and impartial manner in the overall programme services of

broadcasters. Such an obligation should apply to both public service media and private broadcasters in their relevant transmission areas.

Member states may derogate from these measures with respect to those broadcast media services exclusively devoted to, and clearly identified as, the self-promotion of a political party or candidate.

2. News and current affairs programmes

Where self-regulation does not provide for this, member states should adopt measures whereby public service media and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates.

No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures. In this connection, member states might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.

3. Non-linear audiovisual services of public service media

Member states should apply the principles contained in points 1 and 2 above or similar provisions to non-linear audiovisual media services of public service media.

4. Free airtime and equivalent presence for political parties/candidates on public service media

Member states may examine the advisability of including in their regulatory frameworks provisions whereby public service media may make available free airtime on their broadcast and other linear audiovisual media services and/or an equivalent presence on their non-linear audiovisual media services to political parties/candidates during the election period.

Wherever such airtime and/or equivalent presence is granted, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.

5. Paid political advertising

In member states where political parties and candidates are permitted to buy advertising space for election purposes, regulatory frameworks should ensure that all contending parties have the possibility of buying advertising space on and according to equal conditions and rates of payment.

Member states may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space and time which a given party or candidate can purchase.

Regular presenters of news and current affairs programmes should not take part in paid political advertising.

6.1.3.3 Recommendation on Legal, Operational and Technical Standards for E-voting (2004)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
[...]

Recommends that the governments of member states, where they are already using, or are considering using, e-voting comply, subject to paragraph iv. below, with paragraphs i. to iii. below, and the standards and requirements on the legal, operational and technical aspects of e-voting, as set out in the appendices to the present Recommendation:

- i. e-voting shall respect all the principles of democratic elections and referendums. E-voting shall be as reliable and secure as democratic elections and referendums which do not involve the use of electronic means. This general principle encompasses all electoral matters, whether mentioned or not in the appendices;
- ii. the interconnection between the legal, operational and technical aspects of e-voting, as set out in the appendices, has to be taken into account when applying the Recommendation;
- iii. member states should consider reviewing their relevant domestic legislation in the light of this Recommendation;
- iv. the principles and provisions contained in the appendices to this Recommendation do not, however, require individual member states to change their own domestic voting procedures which may exist at the time of the adoption of this Recommendation, and which can be maintained by those member states when e-voting is used, as long as these domestic voting procedures comply with all the principles of democratic elections and referendums;
- v. in order to provide the Council of Europe with a basis for possible further action on e-voting within two years after the adoption of this Recommendation, the Committee of Ministers recommends that member states:
 - keep under review their policy on, and experience of, e-voting, and in particular the implementation of the provisions of this Recommendation; and
 - report to the Council of Europe Secretariat the results of their reviews, who will forward them to member states and follow up the issue of e-voting.

In this Recommendation the following terms are used with the following meanings:

- authentication: the provision of assurance of the claimed identity of a person or data;
- ballot: the legally recognised means by which the voter can express his or her choice of voting option;
- candidate: a voting option consisting of a person and/or a group of persons and/or a political party;
- casting of the vote: entering the vote in the ballot box;
- e-election or e-referendum: a political election or referendum in which electronic means are used in one or more stages;
- electronic ballot box: the electronic means by which the votes are stored pending being counted;

- e-voting: an e-election or e-referendum that involves the use of electronic means in at least the casting of the vote;
- remote e-voting: e-voting where the casting of the vote is done by a device not controlled by an election official;
- sealing: protecting information so that it cannot be used or interpreted without the help of other information or means available only to specific persons or authorities;
- vote: the expression of the choice of voting option;
- voter: a person who is entitled to cast a vote in a particular election or referendum;
- voting channel: the way by which the voter can cast a vote;
- voting options: the range of possibilities from which a choice can be made through the casting of the vote in an election or referendum;
- voters' register: a list of persons entitled to vote (electors).

Appendix I: Legal standards

A. Principles

I. Universal suffrage

1. The voter interface of an e-voting system shall be understandable and easily usable.
2. Possible registration requirements for e-voting shall not pose an impediment to the voter participating in e-voting.
3. E-voting systems shall be designed, as far as it is practicable, to maximize the opportunities that such systems can provide for persons with disabilities.
4. Unless channels of remote e-voting are universally accessible, they shall be only an additional and optional means of voting.

II. Equal suffrage

5. In relation to any election or referendum, a voter shall be prevented from inserting more than one ballot into the electronic ballot box. A voter shall be authorised to vote only if it has been established that his/her ballot has not yet been inserted into the ballot box.
6. The e-voting system shall prevent any voter from casting a vote by more than one voting channel.
7. Every vote deposited in an electronic ballot box shall be counted, and each vote cast in the election or referendum shall be counted only once.
8. Where electronic and non-electronic voting channels are used in the same election or referendum, there shall be a secure and reliable method to aggregate all votes and to calculate the correct result.

III. Free suffrage

9. The organisation of e-voting shall secure the free formation and expression of the voter's opinion and, where required, the personal exercise of the right to vote.
10. The way in which voters are guided through the e-voting process shall be such as to prevent their voting precipitately or without reflection.
11. Voters shall be able to alter their choice at any point in the e-voting process before casting their vote, or to break off the procedure, without their previous choices being recorded or made available to any other person.
12. The e-voting system shall not permit any manipulative influence to be exercised over the voter during the voting.
13. The e-voting system shall provide the voter with a means of participating in an election or referendum without the voter exercising a preference for any of the voting options, for example, by casting a blank vote.
14. The e-voting system shall indicate clearly to the voter when the vote has been cast successfully and when the whole voting procedure has been completed.
15. The e-voting system shall prevent the changing of a vote once that vote has been cast.

IV. Secret suffrage

16. E-voting shall be organised in such a way as to exclude at any stage of the voting procedure and, in particular, at voter authentication, anything that would endanger the secrecy of the vote.
17. The e-voting system shall guarantee that votes in the electronic ballot box and votes being counted are, and will remain, anonymous, and that it is not possible to reconstruct a link between the vote and the voter.
18. The e-voting system shall be so designed that the expected number of votes in any electronic ballot box will not allow the result to be linked to individual voters.
19. Measures shall be taken to ensure that the information needed during electronic processing cannot be used to breach the secrecy of the vote.

B. Procedural safeguards**I. Transparency**

20. Member states shall take steps to ensure that voters understand and have confidence in the e-voting system in use.
21. Information on the functioning of an e-voting system shall be made publicly available.
22. Voters shall be provided with an opportunity to practise any new method of e-voting before, and separately from, the moment of casting an electronic vote.
23. Any observers, to the extent permitted by law, shall be able to be present to observe and comment on the e-elections, including the establishing of the results.

II. Verifiability and accountability

24. The components of the e-voting system shall be disclosed, at least to the competent electoral authorities, as required for verification and certification purposes.

25. Before any e-voting system is introduced, and at appropriate intervals thereafter, and in particular after any changes are made to the system, an independent body, appointed by the electoral authorities, shall verify that the e-voting system is working correctly and that all the necessary security measures have been taken.
26. There shall be the possibility for a recount. Other features of the e-voting system that may influence the correctness of the results shall be verifiable.
27. The e-voting system shall not prevent the partial or complete re-run of an election or a referendum.

III. Reliability and security

28. The member state's authorities shall ensure the reliability and security of the e-voting system.
29. All possible steps shall be taken to avoid the possibility of fraud or unauthorized intervention affecting the system during the whole voting process.
30. The e-voting system shall contain measures to preserve the availability of its services during the e-voting process. It shall resist, in particular, malfunction, breakdowns or denial of service attacks.
31. Before any e-election or e-referendum takes place, the competent electoral authority shall satisfy itself that the e-voting system is genuine and operates correctly.
32. Only persons appointed by the electoral authority shall have access to the central infrastructure, the servers and the election data. There shall be clear rules established for such appointments. Critical technical activities shall be carried out by teams of at least two people. The composition of the teams shall be regularly changed. As far as possible, such activities shall be carried out outside election periods.
33. While an electronic ballot box is open, any authorised intervention affecting the system shall be carried out by teams of at least two people, be the subject of a report, be monitored by representatives of the competent electoral authority and any election observers.
34. The e-voting system shall maintain the availability and integrity of the votes. It shall also maintain the confidentiality of the votes and keep them sealed until the counting process. If stored or communicated outside controlled environments, the votes shall be encrypted.
35. Votes and voter information shall remain sealed as long as the data is held in a manner where they can be associated. Authentication information shall be separated from the voter's decision at a pre-defined stage in the e-election or referendum.

Appendix II: Operational standards

I. Notification

36. Domestic legal provisions governing an e-election or e-referendum shall provide for clear timetables concerning all stages of the election or referendum, both before and after the election or referendum.

37. The period in which an electronic vote can be cast shall not begin before the notification of an election or a referendum. Particularly with regard to remote e-voting, the period shall be defined and made known to the public well in advance of the start of voting.
38. The voters shall be informed, well in advance of the start of voting, in clear and simple language, of the way in which the e-voting will be organised, and any steps a voter may have to take in order to participate and vote.

II. Voters

39. There shall be a voters' register which is regularly updated. The voter shall be able to check, as a minimum, the information which is held about him/her on the register, and request corrections.
40. The possibility of creating an electronic register and introducing a mechanism allowing online application for voter registration and, if applicable, for application to use e-voting, shall be considered. If participation in e-voting requires a separate application by the voter and/or additional steps, an electronic, and, where possible, interactive procedure shall be considered.
41. In cases where there is an overlap between the period for voter registration and the voting period, provision for appropriate voter authentication shall be made.

III. Candidates

42. The possibility of introducing online candidate nomination may be considered.
43. A list of candidates that is generated and made available electronically shall also be publicly available by other means.

IV. Voting

44. It is particularly important, where remote e-voting takes place while polling stations are open, that the system shall be so designed that it prevents any voter from voting more than once.
45. Remote e-voting may start and/or end at an earlier time than the opening of any polling station. Remote e-voting shall not continue after the end of the voting period at polling stations.
46. For every e-voting channel, support and guidance arrangements on voting procedures shall be set up for, and be available to, the voter. In the case of remote e-voting, such arrangements shall also be available through a different, widely available communication channel.
47. There shall be equality in the manner of presentation of all voting options on the device used for casting an electronic vote.
48. The electronic ballot by which an electronic vote is cast shall be free from any information about voting options, other than that strictly required for casting the vote. The e-voting system shall avoid the display of other messages that may influence the voters' choice.
49. If it is decided that information about voting options will be accessible from the e-voting site, this information shall be presented with equality.

50. Before casting a vote using a remote e-voting system, voters' attention shall be explicitly drawn to the fact that the e-election or e-referendum in which they are submitting their decision by electronic means is a real election or referendum. In case of tests, participants shall have their attention drawn explicitly to the fact that they are not participating in a real election or referendum and shall - when tests are continued at election times - at the same time be invited to cast their ballot by the voting channel(s) available for that purpose.
51. A remote e-voting system shall not enable the voter to be in possession of a proof of the content of the vote cast.
52. In a supervised environment, the information on the vote shall disappear from the visual, audio or tactile display used by the voter to cast the vote as soon as it has been cast. Where a paper proof of the electronic vote is provided to the voter at a polling station, the voter shall not be able to show it to any other person, or take this proof outside of the polling station.

V. Results

53. The e-voting system shall not allow the disclosure of the number of votes cast for any voting option until after the closure of the electronic ballot box. This information shall not be disclosed to the public until after the end of the voting period.
54. The e-voting system shall prevent processing information on votes cast within deliberately chosen sub-units that could reveal individual voters' choices.
55. Any decoding required for the counting of the votes shall be carried out as soon as practicable after the closure of the voting period.
56. When counting the votes, representatives of the competent electoral authority shall be able to participate in, and any observers able to observe, the count.
57. A record of the counting process of the electronic votes shall be kept, including information about the start and end of, and the persons involved in, the count.
58. In the event of any irregularity affecting the integrity of votes, the affected votes shall be recorded as such.

VI. Audit

59. The e-voting system shall be auditable.
60. The conclusions drawn from the audit process shall be applied in future elections and referendums.

Appendix III: Technical requirements

The design of an e-voting system shall be underpinned by a comprehensive assessment of the risks involved in the successful completion of the particular election or referendum. The e-voting system shall include the appropriate safeguards, based on this risk assessment, to manage the specific risks identified. Service failure or service degradation shall be kept within pre-defined limits.

A. Accessibility

61. Measures shall be taken to ensure that the relevant software and services can be used by all voters and, if necessary, provide access to alternative ways of voting.

62. Users shall be involved in the design of e-voting systems, particularly to identify constraints and test ease of use at each main stage of the development process.
63. Users shall be supplied, whenever required and possible, with additional facilities, such as special interfaces or other equivalent resources, such as personal assistance. User facilities shall comply as much as possible with the guidelines set out in the Web Accessibility Initiative (WAI).
64. Consideration shall be given, when developing new products, to their compatibility with existing ones, including those using technologies designed to help people with disabilities.
65. The presentation of the voting options shall be optimised for the voter.

B. Interoperability

66. Open standards shall be used to ensure that the various technical components or services of an e-voting system, possibly derived from a variety of sources, interoperate.
67. At present, the Election Markup Language (EML) standard is such an open standard and in order to guarantee interoperability, EML shall be used whenever possible for e-election and e-referendum applications. The decision of when to adopt EML is a matter for member states. The EML standard valid at the time of adoption of this recommendation, and supporting documentation are available on the Council of Europe website.
68. In cases which imply specific election or referendum data requirements, a localisation procedure shall be used to accommodate these needs. This would allow for extending or restricting the information to be provided, whilst still remaining compatible with the generic version of EML. The recommended procedure is to use structured schema languages and pattern languages.

C. Systems operation (for the central infrastructure and clients in controlled environments)

69. The competent electoral authorities shall publish an official list of the software used in an e-election or e-referendum. Member states may exclude from this list data protection software for security reasons. At the very least it shall indicate the software used, the versions, its date of installation and a brief description. A procedure shall be established for regularly installing updated versions and corrections of the relevant protection software. It shall be possible to check the state of protection of the voting equipment at any time.
70. Those responsible for operating the equipment shall draw up a contingency procedure. Any backup system shall conform to the same standards and requirements as the original system.
71. Sufficient backup arrangements shall be in place and be permanently available to ensure that voting proceeds smoothly. The staff concerned shall be ready to intervene rapidly according to a procedure drawn up by the competent electoral authorities.
72. Those responsible for the equipment shall use special procedures to ensure that during the polling period the voting equipment and its use satisfy requirements. The backup services shall be regularly supplied with monitoring protocols.

73. Before each election or referendum, the equipment shall be checked and approved in accordance with a protocol drawn up by the competent electoral authorities. The equipment shall be checked to ensure that it complies with technical specifications. The findings shall be submitted to the competent electoral authorities.
74. All technical operations shall be subject to a formal control procedure. Any substantial changes to key equipment shall be notified.
75. Key e-election or e-referendum equipment shall be located in a secure area and that area shall, throughout the election or referendum period, be guarded against interference of any sort and from any person. During the election or referendum period a physical disaster recovery plan shall be in place. Furthermore, any data retained after the election or referendum period shall be stored securely.
76. Where incidents that could threaten the integrity of the system occur, those responsible for operating the equipment shall immediately inform the competent electoral authorities, who will take the necessary steps to mitigate the effects of the incident. The level of incident which shall be reported shall be specified in advance by the electoral authorities.

D. Security

I. General requirements (referring to pre-voting, voting, and post-voting stages)

77. Technical and organisational measures shall be taken to ensure that no data will be permanently lost in the event of a breakdown or a fault affecting the e-voting system.
78. The e-voting system shall maintain the privacy of individuals. Confidentiality of voters' registers stored in or communicated by the e-voting system shall be maintained.
79. The e-voting system shall perform regular checks to ensure that its components operate in accordance with its technical specifications and that its services are available.
80. The e-voting system shall restrict access to its services, depending on the user identity or the user role, to those services explicitly assigned to this user or role. User authentication shall be effective before any action can be carried out.
81. The e-voting system shall protect authentication data so that unauthorised entities cannot misuse, intercept, modify, or otherwise gain knowledge of all or some of this data. In uncontrolled environments, authentication based on cryptographic mechanisms is advisable.
82. Identification of voters and candidates in a way that they can unmistakably be distinguished from other persons (unique identification) shall be ensured.
83. E-voting systems shall generate reliable and sufficiently detailed observation data so that election observation can be carried out. The time at which an event generated observation data shall be reliably determinable. The authenticity, availability and integrity of the data shall be maintained.
84. The e-voting system shall maintain reliable synchronised time sources. The accuracy of the time source shall be sufficient to maintain time marks for audit trails and observations data, as well as for maintaining the time limits for registration, nomination, voting, or counting.

85. Electoral authorities have overall responsibility for compliance with these security requirements, which shall be assessed by independent bodies.

II. Requirements in pre-voting stages (and for data communicated to the voting stage)

86. The authenticity, availability and integrity of the voters' registers and lists of candidates shall be maintained. The source of the data shall be authenticated. Provisions on data protection shall be respected.

87. The fact that candidate nomination and, if required, the decision of the candidate and/or the competent electoral authority to accept a nomination has happened within the prescribed time limits shall be ascertainable.

88. The fact that voter registration has happened within the prescribed time limits shall be ascertainable.

III. Requirements in the voting stage (and for data communicated during post-election stages)

89. The integrity of data communicated from the pre-voting stage (e.g. voters' registers and lists of candidates) shall be maintained. Data-origin authentication shall be carried out.

90. It shall be ensured that the e-voting system presents an authentic ballot to the voter. In the case of remote e-voting, the voter shall be informed about the means to verify that a connection to the official server has been established and that the authentic ballot has been presented.

91. The fact that a vote has been cast within the prescribed time limits shall be ascertainable.

92. Sufficient means shall be provided to ensure that the systems that are used by the voters to cast the vote can be protected against influence that could modify the vote.

93. Residual information holding the voter's decision or the display of the voter's choice shall be destroyed after the vote has been cast. In the case of remote e-voting, the voter shall be provided with information on how to delete, where that is possible, traces of the vote from the device used to cast the vote.

94. The e-voting system shall at first ensure that a user who tries to vote is eligible to vote. The e-voting system shall authenticate the voter and shall ensure that only the appropriate number of votes per voter is cast and stored in the electronic ballot box.

95. The e-voting system shall ensure that the voter's choice is accurately represented in the vote and that the sealed vote enters the electronic ballot box.

96. After the end of the e-voting period, no voter shall be allowed to gain access to the e-voting system. However, the acceptance of electronic votes into the electronic ballot box shall remain open for a sufficient period of time to allow for any delays in the passing of messages over the e-voting channel.

IV. Requirements in post-voting stages

97. The integrity of data communicated during the voting stage (e.g. votes, voters' registers, lists of candidates) shall be maintained. Data-origin authentication shall be carried out.

98. The counting process shall accurately count the votes. The counting of votes shall be reproducible.
99. The e-voting system shall maintain the availability and integrity of the electronic ballot box and the output of the counting process as long as required.

E. Audit

I. General

100. The audit system shall be designed and implemented as part of the e-voting system. Audit facilities shall be present on different levels of the system: logical, technical and application.
101. End-to-end auditing of an e-voting system shall include recording, providing monitoring facilities and providing verification facilities. Audit systems with the features set out in sections II - V below shall therefore be used to meet these requirements.

II. Recording

102. The audit system shall be open and comprehensive, and actively report on potential issues and threats.
103. The audit system shall record times, events and actions, including:
 - a. all voting-related information, including the number of eligible voters, the number of votes cast, the number of invalid votes, the counts and recounts, etc.;
 - b. any attacks on the operation of the e-voting system and its communications infrastructure;
 - c. system failures, malfunctions and other threats to the system.

III. Monitoring

104. The audit system shall provide the ability to oversee the election or referendum and to verify that the results and procedures are in accordance with the applicable legal provisions.
105. Disclosure of the audit information to unauthorised persons shall be prevented.
106. The audit system shall maintain voter anonymity at all times.

IV. Verifiability

107. The audit system shall provide the ability to cross-check and verify the correct operation of the e-voting system and the accuracy of the result, to detect voter fraud and to prove that all counted votes are authentic and that all votes have been counted.
108. The audit system shall provide the ability to verify that an e-election or e-referendum has complied with the applicable legal provisions, the aim being to verify that the results are an accurate representation of the authentic votes.

V. Other

109. The audit system shall be protected against attacks which may corrupt, alter or lose records in the audit system.

110. Member states shall take adequate steps to ensure that the confidentiality of any information obtained by any person while carrying out auditing functions is guaranteed.

F. Certification

111. Member states shall introduce certification processes that allow for any ICT (Information and Communication Technology) component to be tested and certified as being in conformity with the technical requirements described in this recommendation.
112. In order to enhance international co-operation and avoid duplication of work, member states shall consider whether their respective agencies shall join, if they have not done so already, relevant international mutual recognition arrangements such as the European Co-operation for Accreditation (EA), the International Laboratory Accreditation Co-operation (ILAC), the Inter-national Accreditation Forum (IAF) and other bodies of a similar nature.

6.1.3.4 Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (2003)

I. External sources of funding of political parties

Article 1 Public and private support to political parties

The state and its citizens are both entitled to support political parties.

The state should provide support to political parties. State support should be limited to reasonable contributions. State support may be financial.

Objective, fair and reasonable criteria should be applied regarding the distribution of state support.

States should ensure that any support from the state and/or citizens does not interfere with the independence of political parties.

Article 2 Definition of donation to a political party

Donation means any deliberate act to bestow advantage, economic or otherwise, on a political party.

Article 3 General principles on donations

- a) Measures taken by states governing donations to political parties should provide specific rules to:
 - avoid conflicts of interests;
 - ensure transparency of donations and avoid secret donations;
 - avoid prejudice to the activities of political parties;
 - ensure the independence of political parties.
- b) States should:
 - i) provide that donations to political parties are made public, in particular, donations exceeding a fixed ceiling;

- ii) consider the possibility of introducing rules limiting the value of donations to political parties;
- iii) adopt measures to prevent established ceilings from being circumvented.

Article 4 Tax deductibility of donations

Fiscal legislation may allow tax deductibility of donations to political parties. Such tax deductibility should be limited.

Article 5 Donations by legal entities

- a) In addition to the general principles on donations, states should provide:
 - i) that donations from legal entities to political parties are registered in the books and accounts of the legal entities; and
 - ii) that shareholders or any other individual member of the legal entity be informed of donations.
- b) States should take measures aimed at limiting, prohibiting or otherwise strictly regulating donations from legal entities which provide goods or services for any public administration.
- c) States should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties.

Article 6 Donations to entities connected with a political party

Rules concerning donations to political parties, with the exception of those

concerning tax deductibility referred to in Article 4, should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party.

Article 7 Donations from foreign donors

States should specifically limit, prohibit or otherwise regulate donations from foreign donors.

II. Sources of funding of candidates for elections and elected officials

Article 8 Application of funding rules to candidates for elections and elected representatives

The rules regarding funding of political parties should apply mutatis mutandis to:

- the funding of electoral campaigns of candidates for elections;
- the funding of political activities of elected representatives.

III. Electoral campaign expenditure

Article 9 Limits on expenditure

States should consider adopting measures to prevent excessive funding needs of political parties, such as, establishing limits on expenditure on electoral campaigns.

Article 10 Records of expenditure

States should require particular records to be kept of all expenditure, direct and indirect, on electoral campaigns in respect of each political party, each list of candidates and each candidate.

IV. Transparency**Article 11 Accounts**

States should require political parties and the entities connected with political parties mentioned in Article 6 to keep proper books and accounts. The accounts of political parties should be consolidated to include, as appropriate, the accounts of the entities mentioned in Article 6.

Article 12 Records of donations

- a) States should require the accounts of a political party to specify all donations received by the party, including the nature and value of each donation.
- b) In case of donations over a certain value, donors should be identified in the records.

Article 13 Obligation to present and make public accounts

- a) States should require political parties to present the accounts referred to in Article 11 regularly, and at least annually, to the independent authority referred to in Article 14.
- b) States should require political parties regularly, and at least annually, to make public the accounts referred to in Article 11 or as a minimum a summary of those accounts, including the information required in Article 10, as appropriate, and in Article 12.

V. Supervision**Article 14 Independent monitoring**

- a) States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns.
- b) The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.

Article 15 Specialised personnel

States should promote the specialisation of the judiciary, police or other personnel in the fight against illegal funding of political parties and electoral campaigns.

VI. Sanctions**Article 16 Sanctions**

States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.

6.2 The European Union

The European Union is a treaty-based institutional framework that defines and manages economic and political cooperation among its European member states. It was established by six countries in 1957 as an economic community and emerged as the European Union in 1992. In July 2013, the EU expanded its membership to become a union of 28 countries.

6.2.1 Treaty Standards

6.2.1.1 Charter of Fundamental Rights of the European Union (2000/2010)⁵⁸

Article 11 Freedom of Expression and Information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12 Freedom of Assembly and of Association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 39 Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40 Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

6.2.1.2 Act concerning the election of the Members of the European Parliament by direct universal suffrage (2002)⁵⁹

Article 1

1. In each Member State, members of the European Parliament shall be elected on the basis of proportional representation, using the list system or the single transferable vote.

⁵⁸ As established in article 1(8) of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, which introduces a new article 6 of the Treaty on European Union.

⁵⁹ Entry into force 23 September 2002

2. Member States may authorise voting based on a preferential list system in accordance with the procedure they adopt.
3. Elections shall be by direct universal suffrage and shall be free and secret.

Article 2

In accordance with its specific national situation, each Member State may establish constituencies for elections to the European Parliament or subdivide its electoral area in a different manner, without generally affecting the proportional nature of the voting system.

Article 3

Member States may set a minimum threshold for the allocation of seats. At national level this threshold may not exceed 5 per cent of votes cast.

Article 4

Each Member State may set a ceiling for candidates' campaign expenses.

Article 5

1. The five-year term for which members of the European Parliament are elected shall begin at the opening of the first session following each election.

It may be extended or curtailed pursuant to the second subparagraph of Article 11(2).
2. The term of office of each member of the European Parliament shall begin and end at the same time as the period referred to in paragraph 1.

Article 6

1. Members of the European Parliament shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate.
2. Members of the European Parliament shall enjoy the privileges and immunities applicable to them by virtue of the Protocol of 8 April 1965 on the privileges and immunities of the European Communities.

Article 7

1. The office of member of the European Parliament shall be incompatible with that of:
 - member of the government of a Member State,
 - Member of the Commission of the European Communities,
 - Judge, Advocate-General or Registrar of the Court of Justice of the European Communities or of the Court of First Instance,
 - member of the Board of Directors of the European Central Bank,
 - Member of the Court of Auditors of the European Communities,
 - Ombudsman of the European Communities,
 - member of the Economic and Social Committee of the European Community and of the European Atomic Energy Community,



- member of the Committee of the Regions,
 - member of committees or other bodies set up pursuant to the Treaties establishing the European Community and the European Atomic Energy Community for the purpose of managing the Communities' funds or carrying out a permanent direct administrative task,
 - member of the Board of Directors, Management Committee or staff of the European Investment Bank,
 - active official or servant of the institutions of the European Communities or of the specialised bodies attached to them or of the European Central Bank.
2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament.

By way of derogation from that rule and without prejudice to paragraph 3: members of the Irish National Parliament who are elected to the European Parliament at a subsequent poll may have a dual mandate until the next election to the Irish National Parliament, at which juncture the first subparagraph of this paragraph shall apply;

Members of the United Kingdom Parliament who are also members of the European Parliament during the five-year term preceding election to the European Parliament in 2004 may have a dual mandate until the 2009 European Parliament elections, when the first subparagraph of this paragraph shall apply.

3. In addition, each Member State may, in the circumstances provided for in Article 8, extend rules at national level relating to incompatibility.
4. Members of the European Parliament to whom paragraphs 1, 2 and 3 become applicable in the course of the five year period referred to in Article 5 shall be replaced in accordance with Article 13.

Article 8

Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.

These national provisions, which may if appropriate take account of the specific situation in the Member States, shall not affect the essentially proportional nature of the voting system.

Article 9

No one may vote more than once in any election of members of the European Parliament.

Article 10

1. Elections to the European Parliament shall be held on the date and at the times fixed by each Member State; for all Member States this date shall fall within the same period starting on a Thursday morning and ending on the following Sunday.
2. Member States may not officially make public the results of their count until after the close of polling in the Member State whose electors are the last to vote within the period referred to in paragraph 1.

Article 11

1. The Council, acting unanimously after consulting the European Parliament, shall determine the electoral period for the first elections.
2. Subsequent elections shall take place in the corresponding period in the last year of the five-year period referred to in Article 5.

Should it prove impossible to hold the elections in the Community during that period, the Council acting unanimously shall, after consulting the European Parliament, determine, at least one month before the end of the five-year term referred to in Article 5, another electoral period which shall not be more than two months before or one month after the period fixed pursuant to the preceding subparagraph.

3. Without prejudice to Article 196 of the Treaty establishing the European Community and Article 109 of the Treaty establishing the European Atomic Energy Community, the European Parliament shall meet, without requiring to be convened, on the first Tuesday after expiry of an interval of one month from the end of the electoral period.
4. The powers of the outgoing European Parliament shall cease upon the opening of the first sitting of the new European Parliament.

Article 12

The European Parliament shall verify the credentials of members of the European Parliament. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.

Article 13

1. A seat shall fall vacant when the mandate of a member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate.
2. Subject to the other provisions of this Act, each Member State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article 5 for the remainder of that period.
3. Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a member of the European Parliament, that mandate shall end pursuant to those legal provisions. The competent national authorities shall inform the European Parliament thereof.
4. Where a seat falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the competent authorities of the Member State concerned thereof.

Article 14

Should it appear necessary to adopt measures to implement this Act, the Council acting unanimously on a proposal from the European Parliament after consulting the Commission, shall adopt such measures after endeavouring to reach agreement with the European Parliament in a conciliation committee consisting of the Council and members of the European Parliament.

Article 15

This Act is drawn up in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all the texts being equally authentic.

Annexes I and II shall form an integral part of this Act. Article 16

The provisions of this Act shall enter into force on the first day of the month following that during which the last of the notifications referred to in the Decision is received.

Annex I

The United Kingdom will apply the provisions of this Act only in respect of the United Kingdom.

Annex II**Declaration on article 14**

As regards the procedure to be followed by the Conciliation Committee, it is agreed to have recourse to the provisions of paragraphs 5, 6 and 7 of the procedure laid down in the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975 (1)

6.2.1.3 Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals

Chapter I. General Provisions**Article 1**

1. This Directive lays down the detailed arrangements whereby citizens of the Union residing in a Member State of which they are not nationals may exercise the right to vote and to stand as a candidate there in elections to the European Parliament.
2. Nothing in this Directive shall affect each Member State's provisions concerning the right to vote or to stand as a candidate of its nationals who reside outside its electoral territory.

Article 2

For the purposes of this Directive:

1. 'elections to the European Parliament' means elections by direct universal suffrage to the European Parliament of representatives in accordance with the Act of 20 September 1976 (1);
2. 'electoral territory' means the territory of a Member State in which, in accordance

with the above Act and, within that framework, in accordance with the electoral law of that Member State, members of the European Parliament are elected by the people of that Member State;

3. 'Member State of residence' means a Member State in which a citizen of the Union resides but of which he is not a national;
4. 'home Member State' means the Member State of which a citizen of the Union is a national;
5. 'Community voter' means any citizen of the Union who is entitled to vote in elections to the European Parliament in his Member State of residence in accordance with this Directive;
6. 'Community national entitled to stand as a candidate' means any citizen of the Union who has the right to stand as a candidate in elections to the European Parliament in his Member State of residence in accordance with this Directive;
7. 'electoral roll' means the official register of all voters entitled to vote in a given constituency or locality, drawn up and kept up to date by the competent authority under the electoral law of the Member State of residence, or the population register if it indicates eligibility to vote;
8. 'reference date' means the day or the days on which citizens of the Union must satisfy, under the law of the Member State of residence, the requirements for voting or for standing as a candidate in that State;
9. 'formal declaration' means a declaration by the person concerned, inaccuracy in which makes that person liable to penalties, in accordance with the national law applicable.

Article 3

Any person who, on the reference date:

- a) is a citizen of the Union within the meaning of the second subparagraph of Article 8 (1) of the Treaty;
- b) is not a national of the Member State of residence, but satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals, shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence unless deprived of those rights pursuant to Articles 6 and 7.

Where, in order to stand as a candidate, nationals of the Member State of residence must have been nationals for a certain minimum period, citizens of the Union shall be deemed to have met this condition when they have been nationals of a Member State for the same period.

Article 4

1. Community voters shall exercise their right to vote either in the Member State of residence or in their home Member State. No person may vote more than once at the same election.
2. No person may stand as a candidate in more than one Member State at the same election.

Article 5

If, in order to vote or to stand as candidates, nationals of the Member State or residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality.

Article 6

1. Any citizen of the Union who resides in a Member State of which he is not a national and who, through an individual criminal law or civil law decision, has been deprived of his right to stand as a candidate under either the law of the Member State of residence or the law of his home Member State, shall be precluded from exercising that right in the Member State of residence in elections to the European Parliament.
2. An application from any citizen of the Union to stand as a candidate in elections to the European Parliament in the Member State of residence shall be declared inadmissible where that citizen is unable to provide the attestation referred to in Article 10 (2).

Article 7

1. The Member State of residence may check whether the citizens of the Union who have expressed a desire to exercise their right to vote there have not been deprived of that right in the home Member State through an individual civil law or criminal law decision.
2. For the purposes of paragraph 1 of this Article, the Member State of residence may notify the home Member State of the declaration referred to in Article 9 (2). To that end, the relevant and normally available information from the home Member State shall be provided in good time and in an appropriate manner; such information may only include details which are strictly necessary for the implementation of this Article and may only be used for that purpose. If the information provided invalidates the content of the declaration, the Member State of residence shall take the appropriate steps to prevent the person concerned from voting.
3. The home Member State may, in good time and in an appropriate manner, submit to the Member State of residence any information necessary for the implementation of this Article.

Article 8

1. A Community voter exercises his right to vote in the Member State of residence if he has expressed the wish to do so.
2. If voting is compulsory in the Member State of residence, Community voters who have expressed the wish to do so shall be obliged to vote.

Chapter II. Exercise of the Right to Vote and the Right to Stand as a Candidate**Article 9**

Member States shall take the necessary measures to enable a Community voter who has expressed the wish for such to be entered on the electoral roll sufficiently in advance of polling day.

2. In order to have his name entered on the electoral roll, a Community voter shall produce the same documents as a voter who is a national. He shall also produce a formal declaration stating:
 - (a) his nationality and his address in the electoral territory of the Member State of residence;
 - (b) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered, and
 - (c) that he will exercise his right to vote in the Member State of residence only.
3. The Member State of residence may also require a Community voter to:
 - (a) state in his declaration under paragraph 2 that he has not been deprived of the right to vote in his home Member State;
 - (b) produce a valid identity document, and
 - (c) indicate the date from which he has been resident in that State or in another Member State.
4. Community voters who have been entered on the electoral roll shall remain thereon, under the same conditions as voters who are nationals, until such time as they request to be removed or until such time as they are removed automatically because they no longer satisfy the requirements for exercising the right to vote.

Article 10

1. When he submits his application to stand as a candidate, a Community national shall produce the same supporting documents as a candidate who is a national. He shall also produce a formal declaration stating:
 - (a) his nationality and his address in the electoral territory of the Member State of residence;
 - (b) that he is not standing as a candidate for election to the European Parliament in any other Member State, and (c) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered.
2. When he submits his application to stand as a candidate a Community national must also produce an attestation from the competent administrative authorities of his home Member State certifying that he has not been deprived of the right to stand as a candidate in that Member State or that no such disqualification is known to those authorities.
3. The Member State of residence may also require a Community national entitled to stand as a candidate to produce a valid identity document. It may also require him to indicate the date from which he has been a national of a Member State.

Article 11

1. The Member State of residence shall inform the person concerned of the action taken on his application for entry on the electoral roll or of the decision concerning the admissibility of his application to stand as a candidate.

2. Should a person be refused entry on the electoral roll or his application to stand as a candidate be rejected, the person concerned shall be entitled to legal remedies on the same terms as the legislation of the Member State of residence prescribes for voters and persons entitled to stand as candidates who are its nationals.

Article 12

The Member State of residence shall inform Community voters and Community nationals entitled to stand as candidates in good time and in an appropriate manner of the conditions and detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections in that State.

Article 13

Member States shall exchange the information required for the implementation of Article 4. To that end, the Member State of residence shall, on the basis of the formal declaration referred to in Articles 9 and 10, supply the home Member State, sufficiently in advance of polling day, with information on the latter State's nationals entered on electoral rolls or standing as candidates. The home Member State shall, in accordance with its national legislation, take appropriate measures to ensure that its nationals do not vote more than once or stand as candidates in more than one Member State.

Chapter III. Derogations and Transitional Provisions

Article 14

1. If on 1 January 1993, in a given Member State, the proportion of citizens of the Union of voting age who reside in it but are not nationals of it exceeds 20% of the total number of citizens of the Union residing there who are of voting age, that Member State may, by way of derogation from Articles 3, 9 and 10:
 - (a) restrict the right to vote to Community voters who have resided in that Member State for a minimum period, which may not exceed five years;
 - (b) restrict the right to stand as a candidate to Community nationals entitled to stand as candidates who have resided in that Member State for a minimum period, which may not exceed 10 years.

These provisions are without prejudice to appropriate measures which this Member State may take with regard to the composition of lists of candidates and which are intended in particular to encourage the integration of non-national citizens of the Union.

However, Community voters and Community nationals entitled to stand as candidates who, owing to the fact that they have taken up residence outside their home Member State or by reason of the duration of such residence, do not have the right to vote or to stand as candidates in that home State shall not be subject to the conditions as to length of residence set out above.

2. Where, on 1 February 1994, the laws of a Member State prescribe that the nationals of another Member State who reside there have the right to vote for the national parliament of that State and, for that purpose, may be entered on the electoral roll of that State under exactly the same conditions as national voters, the first Member State may, by way of derogation from this Directive, refrain from applying Articles 6 to 13 in respect of such nationals.

3. By 31 December 1997 and thereafter 18 months prior to each election to the European Parliament, the Commission shall submit to the European Parliament and to the Council a report in which it shall check whether the grant to the Member States concerned of a derogation pursuant to Article 8b (2) of the EC Treaty is still warranted and shall propose that any necessary adjustments be made.

Member States which invoke derogations under paragraph 1 shall furnish the Commission with all the necessary background information.

Article 15

For the fourth direct elections to the European Parliament, the following special provisions shall apply:

- (a) citizens of the Union who, on 15 February 1994, already have the right to vote in the Member State of residence and whose names appear on the electoral roll in the Member State of residence shall not be subject to the formalities laid down in Article 9;
- (b) Member States in which the electoral rolls have been finalized before 15 February 1994 shall take the steps necessary to enable Community voters who wish to exercise their right to vote there to enter names on the electoral roll sufficiently in advance of polling day;
- (c) Member States which do not draw up specific electoral rolls but indicate eligibility to vote in the population register and where voting is not compulsory may also apply this system to Community voters who appear on that register and who, having been informed individually of their rights, have not expressed a wish to exercise their right to vote in their home Member State. They shall forward to the home Member State the document showing the intention expressed by those voters to vote in the Member State of residence;
- (d) Member States in which the internal procedure for the nomination of candidates for political parties and groups is governed by law may provide that any such procedures which, in accordance with that law, were opened before 1 February 1994 and the decisions taken within that framework shall remain valid.

6

Chapter IV. Final Provisions

Article 16

The Commission shall submit a report to the European Parliament and the Council by 31 December 1995 on the application of this Directive to the June 1994 elections to the European Parliament. On the basis of the said report the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions amending this Directive.

Article 17

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 February 1994. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 18

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 19

This Directive is addressed to the Member States.

6.2.1.4 Council Directive on the right to vote and to stand as a candidate in municipal elections (1994)⁶⁰

Chapter I. General Provisions**Article 1**

1. This Directive lays down the detailed arrangements whereby citizens of the Union residing in a Member State of which they are not nationals may exercise the right to vote and to stand as a candidate there in municipal elections.
2. Nothing in this Directive shall affect each Member State's provisions concerning the right to vote or to stand as a candidate either of its nationals who reside outside its territory or of third country nationals who reside in that State.

Article 2

1. For the purposes of this Directive:
 - (a) 'basic local government unit' means the administrative entities listed in the Annex which, in accordance with the laws of each Member State, contain bodies elected by direct universal suffrage and are empowered to administer, at the basic level of political and administrative organization, certain local affairs on their own responsibility;
 - (b) 'municipal elections' means elections by direct universal suffrage to appoint the members of the representative council and, where appropriate, under the laws of each Member State, the head and members of the executive of a basic local government unit;
 - (c) 'Member State of residence' means the Member State in which a citizen of the Union resides but of which he is not a national;
 - (d) 'home Member State' means the Member State of which a citizen of the Union is a national;
 - (e) 'electoral roll' means the official register of all voters entitled to vote in a given basic local government unit or in one of its subdivisions, drawn up and kept up-to-date by the competent authority under the electoral law of the Member State of residence, or the population register if it indicates eligibility to vote;
 - (f) 'reference date' means the day or days on which citizens of the Union must satisfy, under the law of the Member State of residence, the requirements for voting or for standing as a candidate in that State;

⁶⁰ Council Directive 94/80/EC, entry into force 20 January 1995. Amended by Council Directive 96/30/EC and 2006/106/EC

- (g) 'formal declaration' means a declaration by the person concerned, inaccuracy in which makes that person liable to penalties, in accordance with the national law applicable.
2. A Member State shall notify the Commission if any local government unit referred to in the Annex is, by virtue of a change in its domestic law, replaced by another unit having the functions referred to in paragraph 1 (a) of this Article or if, by virtue of such a change, any such unit is abolished or further such units are created.

Within three months of receipt of such a notification, together with a Member State's assurance that no person's rights under this Directive will be prejudiced, the Commission shall adapt the Annex by making appropriate substitutions, deletions or additions. The Annex so revised shall be published in the Official Journal.

Article 3

Any person who, on the reference date:

- (a) is a citizen of the Union within the meaning of the second subparagraph of Article 8 (1) of the Treaty; and
- (b) is not a national of the Member State of residence, but in any event satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals, shall have the right to vote and to stand as a candidate in municipal elections in the Member State of residence in accordance with this Directive.

Article 4

1. If, in order to vote or to stand as candidates, nationals of the Member State of residence must have spent a certain minimum period as a resident in the territory of that State, voters and persons entitled to stand as candidates within the scope of Article 3 shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States.
2. If, under the laws of the Member State of residence, its own nationals may vote or stand as candidates only in the basic local government unit in which they have their principal residence, voters and persons entitled to stand as candidates within the scope of Article 3 shall also be subject to this condition. 3. Paragraph 1 shall not affect the provisions of each Member State under which the exercise by any person of the right to vote and to stand as a candidate in a given basic local government unit is subject to his having spent a minimum period as a resident in that unit.

Nor shall paragraph 1 affect any national provision already in force on the date of adoption of this Directive, whereby the exercise by any person of such right to vote and to stand as a candidate is subject to his having spent a minimum period in the constituent part of the Member State of which the basic local government unit forms a part.

Article 5

1. Member States of residence may provide that any citizen of the Union who, through an individual decision under civil law or a criminal law decision, has been deprived of his right to stand as a candidate under the law of his home Member State, shall be precluded from exercising that right in municipal elections.

2. An application from any citizen of the Union to stand as a candidate in municipal elections in the Member State of residence may be declared inadmissible where that citizen is unable to produce the declaration referred to in Article 9 (2) (a) or the attestation referred to in Article 9 (2) (b).
3. Member States may provide that only their own nationals may hold the office of elected head, deputy or member of the governing college of the executive of a basic local government unit if elected to hold office for the duration of his mandate.

The Member States may also lay down that the temporary or interim performance of the functions of a head, deputy or member of the governing college of the executive of a basic local government unit may be restricted to own nationals.

Having regard to the Treaty and to general legal principles, Member States may take appropriate, necessary and proportional measures to ensure that the offices referred to in the first subparagraph can only be held and the interim functions referred to in the second subparagraph can be performed only by their own nationals.

4. Member States may also stipulate that citizens of the Union elected as members of a representative council shall take part in neither the designation of delegates who can vote in a parliamentary assembly nor the election of the members of that assembly.

Article 6

1. Persons entitled to stand as candidates within the scope of Article 3 shall be subject to the same conditions concerning incompatibility as apply, under the laws of the Member State of residence, to nationals of that State.
2. Member States may provide that the holding of elected municipal office in the Member State of residence is also incompatible with the holding of offices in other Member States which are equivalent to those which give rise to incompatibility in the Member State of residence.

Chapter II. Exercise of the Right to Vote and the Right to Stand as a Candidate

Article 7

1. A voter within the scope of Article 3 shall exercise his right to vote in municipal elections in the Member State of residence if he has expressed the wish to do so.
2. If voting is compulsory in the Member State of residence, voters within the scope of Article 3 who have been entered on the electoral roll there shall also be obliged to vote.
3. Member States where voting is not compulsory may provide for the automatic registration of voters within the scope of Article 3 on the electoral roll.

Article 8

1. Member States shall take the necessary measures to enable a voter within the scope of Article 3 to be entered on the electoral roll sufficiently in advance of polling day.

2. In order to have his name entered on the electoral roll, a voter within the scope of Article 3 shall produce the same documents as a voter who is a national.

The Member State of residence may also require a voter within the scope of Article 3 to produce a valid identity document, along with a formal declaration stating his nationality, and his address in the Member State of residence.

3. Voters within the scope of Article 3 who have been entered on an electoral roll in the Member State of residence shall remain thereon, under the same conditions as voters who are nationals, until such time as they are removed automatically because they no longer satisfy the requirements for exercising the right to vote.

Voters who have been entered on the electoral roll at their request can also be removed from it if they so request.

If such voters move to another basic local government unit in the same Member State, they shall be entered on the electoral roll of that unit under the same conditions as voters who are nationals.

Article 9

1. When he submits his application to stand as a candidate, a person entitled to stand as a candidate within the scope of Article 3 shall produce the same supporting documents as a candidate who is a national. The Member State of residence may require him to produce a formal declaration stating his nationality and his address in the Member State of residence.
2. The Member State of residence may also require a person entitled to stand as a candidate within the scope of Article 3 to:
 - (a) state in the formal declaration which he produces in accordance with paragraph 1 when submitting his application to stand as a candidate that he has not been deprived of the right to stand as a candidate in his home Member State;
 - (b) in case of doubt regarding the content of the declaration pursuant to (a), or where required under the legal provisions of a Member State, to produce before or after the election an attestation from the competent administrative authorities in his home Member State certifying that he has not been deprived of the right to stand as a candidate in that State or that no such disqualification is known to those authorities;
 - (c) produce a valid identity document;
 - (d) state in the formal declaration he produces in accordance with paragraph 1 that he holds no office which is incompatible within the meaning of Article 6 (2);
 - (e) indicate his last address in his home Member State, in so far as he has had one.

Article 10

1. The Member State of residence shall inform the person concerned in good time of the action taken on his application for entry on the electoral roll or of the decision concerning the admissibility of his application to stand as a candidate.
2. Should a person not be entered on the electoral roll or have his application form entry refused or have his application to stand as a candidate rejected, the person concerned shall be entitled to legal remedies on similar terms as the laws of the Member State of residence prescribe for voters and persons entitled to stand as candidates who are its nationals.

Article 11

The Member State of residence shall inform voters and persons entitled to stand as candidates within the scope of Article 3 in good time and in an appropriate manner of the conditions and detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections in that State.

Chapter III. Derogations and Transitional Provisions**Article 12**

1. Where, on 1 January 1996, in a given Member State, the proportion of citizens of the Union of voting age who reside in it but are not nationals of it exceeds 20 % of the total number of citizens of the Union residing there who are of voting age, that Member State may, by way of derogation from this Directive:
 - (a) restrict the right to vote to voters within the scope of Article 3 who have resided in that Member State for a minimum period, which may not be longer than the term for which the representative council of the municipality is elected;
 - (b) restrict the right to stand as a candidate to persons entitled to stand as candidates within the scope of Article 3 who have resided in that Member State for a minimum period, which may not be longer than twice the term for which the representative council of the municipality is elected; and
 - (c) take appropriate measures with regard to the composition of lists of candidates to encourage in particular the integration of citizens of the Union, who are nationals of another Member State.
2. The Kingdom of Belgium may, by way of derogation from the provisions of this Directive, apply the provisions of paragraph 1 (a) to a limited number of local government units, the list of which it shall communicate at least one year before the local government unit elections for which it intends to invoke the derogation.
3. Where, on 1 January 1996, the laws of a Member State prescribe that the nationals of another Member State who reside there have the right to vote for the national parliament of that State and, for that purpose, may be entered on the electoral roll of that State under exactly the same conditions as national voters, the first Member State may, by way of derogation from this Directive, refrain from applying Articles 6 to 11 in respect of such persons.
4. By 31 December 1998 and every six years thereafter, the Commission shall submit to the European Parliament and to the Council a report in which it shall check whether the grant to the Member States concerned of a derogation pursuant to Article 8b (1) of the Treaty is still warranted and shall propose that any necessary adjustments be made. Member States which invoke derogations under paragraphs 1 and 2 shall furnish the Commission with all the necessary background information.

Chapter IV. Final Provisions**Article 13**

The Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including any changes in the electorate which have tak-

en place since its entry into force, within a year of the holding in all the Member States of the municipal elections organized on the basis of the above provisions, and shall, where appropriate, propose appropriate adjustments.

Article 14

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1996. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 15

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Communities.

Article 16

This Directive is addressed to the Member States.

6.2.1.5 Regulation governing political parties at European level and the rules regarding their funding (2003)⁶¹

Article 6 Obligations linked to funding

1. A political party at European level as well as a political foundation at European level shall:
 - (a) publish its revenue and expenditure and a statement of its assets and liabilities annually;
 - (b) declare its sources of funding by providing a list specifying the donors and the donations received from each donor, with the exception of donations not exceeding EUR 500 per year and per donor.
2. A political party at European level as well as a political foundation at European level shall not accept:
 - (a) anonymous donations;
 - (b) donations from the budgets of political groups in the European Parliament;
 - (c) donations from any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;
 - (d) donations exceeding EUR 12000 per year and per donor from any natural or legal person other than the undertakings referred to in point (c) and without prejudice to paragraphs 3 and 4;
 - (e) donations from any public authority from a third country, including from any undertaking over which the public authorities may exercise directly or indirectly a

⁶¹ Regulation (EC) No204/2003 as amended by Regulation (EC) no 1524/2007. The amending regulation entered into force on 27 December 2007

dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

3. Contributions to a political party at European level from national political parties which are members of a political party at European level or from a natural person who is a member of a political party at European level shall be admissible. Contributions to a political party at European level from national political parties or from a natural person shall not exceed 40 % of the annual budget of that political party at European level.
4. Contributions to a political foundation at European level from national political foundations, which are members of a political foundation at European level, as well as from political parties at European level, shall be admissible. Those contributions shall not exceed 40 % of the annual budget of that political foundation at European level and may not derive from funds received by a political party at European level pursuant to this Regulation from the general budget of the European Union.

The burden of proof shall rest with the political party at European level concerned.

Article 7 Prohibition of funding

1. The funding of political parties at European level from the general budget of the European Union or from any other source may not be used for the direct or indirect funding of other political parties, and in particular national parties or candidates. These national political parties and candidates shall continue to be governed by national rules.
2. The funding of political foundations at European level from the general budget of the European Union or from any other source shall not be used for the direct or indirect funding of political parties or candidates either at European or national level or foundations at national level.

Article 8 Nature of expenditure

Without prejudice to the funding of political foundations, appropriations received from the general budget of the European Union in accordance with this Regulation may only be used to meet expenditure directly linked to the objectives set out in the political programme referred to in Article 4(2)(b).

Such expenditure shall include administrative expenditure and expenditure linked to technical assistance, meetings, research, cross-border events, studies, information and publications.

The expenditure of political parties at European level may also include financing campaigns conducted by the political parties at European level in the context of the elections to the European Parliament, in which they participate as required in Article 3(1)(d). In accordance with Article 7, these appropriations shall not be used for the direct or indirect funding of national political parties or candidates.

Such expenditure shall not be used to finance referenda campaigns.

However, in accordance with Article 8 of the Act concerning the election of the members of the European Parliament by direct universal suffrage, the funding of and limitation of election expenses for all parties and candidates at European Parliament elections is governed in each Member State by national provision.

6.2.2 Non-Treaty Standards

6.2.2.1 Communication of the Commission on EU Election Assistance and Observation (2000)

Elections do not equate to democracy but they are an essential step in the democratisation process and an important element in the full enjoyment of a wide range of human rights. Elections are human rights events for two reasons. First because they give voice to the political will of the people.

Secondly because to be truly free and fair they must be conducted in an atmosphere which is respectful of human rights. [...]

The development co-operation policy of the European Community is centred on human beings and is closely linked to the enjoyment of their fundamental rights and freedoms as well as on the recognition and application of democratic principles, the consolidation of the rule of law and good governance. In the case of elections, good governance refers to an appropriate legislative and regulatory framework, as well as to a transparent and accountable election administration -including independent supervision and monitoring - that ensures the respect for the rule of law. An informed people, owning the electoral process, is the key factor in this context.

6.2.2.2 Communication from the Commission to the Council and the European Parliament - The European Union's Role in Promoting Human Rights and Democratisation in Third Countries (2001)

The Commission's action in the field of external relations will be guided by compliance with the rights and principles contained in the EU Charter of Fundamental Rights [...].

6.2.2.3 Cotonou Agreement (Between EU and ACP Partner Countries) (2000)^{62 63}

Article 9: Essential Elements and Fundamental Element

1. Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights.

Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development.

2. The Parties refer to their international obligations and commitments concerning respect for human rights. They reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples. Human rights are universal, indivisible and inter-related. The Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil

⁶² It should be underlined that the Cotonou Agreement is a binding treaty under international law not only for the EU but also for the ACP Partner Countries, sustaining their commitment to international human rights, including the right to participation and the different election elements.

⁶³ Revised in June 2005, with the revision entering into force on 1 July 2008

and political, or economic, social and cultural. In this context, the Parties reaffirm the equality of men and women.

The Parties reaffirm that democratisation, development and the protection of fundamental freedoms and human rights are interrelated and mutually reinforcing. Democratic principles are universally recognised principles underpinning the organisation of the State to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms. On the basis of universally recognised principles, each country develops its democratic culture.

The structure of government and the prerogatives of the different powers shall be founded on rule of law, which shall entail in particular effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law and an executive that is fully subject to the law.

Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.

3. In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption.

Good governance, which underpins the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute a fundamental element of this Agreement. The Parties agree that only serious cases of corruption, including acts of bribery leading to such corruption, as defined in Article 97 constitute a violation of that element.

4. The Partnership shall actively support the promotion of human rights, processes of democratisation, consolidation of the rule of law, and good governance.

These areas will be an important subject for the political dialogue. In the context of this dialogue, the Parties shall attach particular importance to the changes underway and to the continuity of the progress achieved. This regular assessment shall take into account each country's economic, social, cultural and historical context.

These areas will also be a focus of support for development strategies. The Community shall provide support for political, institutional and legal reforms and for building the capacity of public and private actors and civil society in the framework of strategies agreed jointly between the State concerned and the Community.



REGIONAL INSTRUMENTS- OTHER ORGANISATIONS

7.1 The League of Arab States (LAS)

The League of Arab States was founded in Cairo in 1945 and is a voluntary association of countries whose peoples are mainly Arabic speaking. Its stated purposes are to strengthen ties among the member states, coordinate their policies in the fields of politics, economics, culture and social programmes, and promote their common interests. From only seven founding members, the League has grown to a membership of 22, including Palestine, which is considered an independent state.

7.1 Treaty Standards

7.1.1.1 Arab Charter on Human Rights (2004)¹

Article 24

Every citizen has the right to:

1. Freedom of political activity.
2. Take part in the conduct of public affairs, directly or through freely chosen representatives.
3. Stand for election and to choose his representative in free and fair elections under conditions guaranteeing equality between all citizens and ensuring the free expression of the will of the electorate.

¹ Entry into force 15 March 2008

4. The opportunity to gain access, on general terms of equality, to public service in his country under equal conditions of opportunity.
5. Form associations with others and to join associations.
6. Freedom of peaceful assembly and association.
7. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a society that respects freedom and human rights, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 32

The present Charter shall ensure the right to information, freedom of opinion and freedom of expression, freedom to seek, receive and impart information by all means, regardless of frontiers.

Such rights and freedoms are exercised in the framework of society's fundamental principles and shall only be subjected to restrictions necessary for the respect of the rights or reputation of others and for the protection of national security or of public order, health or morals.

7.1.2 Matrix on the Status of Ratification of Instruments within the League of Arab States (LAS)

Country	Arab Charter of Human Rights (2004)
Algeria	*
Bahrain	*
Comoros	
Djibouti	
Egypt	S ²
Iraq	*
Jordan	*
Kuwait	*
Lebanon	*
Libyan Arab Jamahiriya	*
Mauritania	
Morocco	S ³
Oman	
Palestine	*

2 Entry into force 15 March 2008

3 Signed 2004



Qatar	*
Saudi Arabia	*
Somalia	
Sudan	S ⁴
Syria	*
Tunisia	S ⁵
United Arab Emirates	*
Yemen	*

7.2 The Commonwealth of Independent States (CIS)

The Commonwealth of Independent States (CIS) was formed in December 1991 by the leaders of the Republic of Belarus, the Russian Federation and the Ukraine. Later that month they - along with eleven other former Soviet Union states - unanimously adopted the Alma-Ata Declaration, which confirmed the commitment of the former USSR republics to cooperation in various fields of external and internal policies. CIS decisions are reached through regular summits of heads of state and through the formation of ministerial committees, with all CIS members being equals. The CIS Convention on Human Rights foresees a control mechanism in the form of the Human Rights Commission of the Commonwealth of Independent States. The CIS commission monitors the execution of the convention by issuing recommendations. The members of the commission are appointed representatives of the States Parties.

7.2.1 Treaty Standards

7.2.1.1 Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms (1995)⁶

Article 11

1. Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas by any legal means without interference by a public authority and regardless of frontiers.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions and restrictions as are prescribed by law and are necessary in a democratic society, in the interests of national security, public safety or public order or for the protection of the rights and freedoms of others.

4 Signed 2005

5 Signed 2004

6 Entry into force 11 August 1998

Article 12

1. Everyone shall have the right to freedom of peaceful assembly and to freedom of association with others,
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, public health or morals
or for the protection of the rights and freedoms of others. This Article shall not preclude the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or by members of the law-enforcement or administrative organs of the State.

Article 29

In accordance with national legislation, everyone shall have the right and opportunity and in the State of which he is a citizen:

- a) to take part in the management and conduct of public affairs, either directly or through freely chosen representatives;
- b) to vote and to be elected at elections held on the basis of universal and equal suffrage by secret ballot, that guarantees the free expression of the will of the voters;
- c) to have access, on general conditions of equality, to the public service of his country.

Article 30

Nothing in Articles 11, 12 and 20 shall be regarded as preventing the Contracting Parties from imposing restrictions on the political activity of alien citizens and stateless persons.

7.2.1.2 Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States (2002)⁷

The member states of this Convention (hereinafter referred to as “the Parties”), considering the aims and principles of the Charter of the Commonwealth of Independent States, reaffirming the importance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which establish that the will of the people as expressed in periodic and genuine elections shall be the basis of the authority of government, as well as the documents of the Organization for Security and Cooperation in Europe, the Council of Europe and other international organizations on the conduct of free and fair elections,

Convinced that the recognition, observance and protection of human and civil rights and freedoms, the development and perfection of the democratic institutions of expression of the will of the people and the procedures for their realization in accordance with the universally accepted principles and norms of international law on the basis of the national constitution and legal acts are the purpose and obligation of a law-based state, one of the inalienable conditions for social stability and further strengthening of cooperation

⁷ Entry into force 11 November 2003

between the states in the name of the realization and protection of the ideals and principles which constitute their common democratic asset,

Wishing to facilitate the consolidation and improvement of the democratic systems of representative government, democratic traditions of expression of the will of the people in elections, realization of other forms of the power of the people based on the supremacy of law and maximum consideration for the national and historical traditions,

Convinced that elections are one of the political and legal instruments of a stable civil society and sustainable development of a state,

Recognizing the value of the national experience in the legal regulation of elections accumulated by the member states of the Commonwealth of Independent States, guarantees of the electoral rights and freedoms of a human being and citizen,

Determined to assure the combination of the universally accepted election standards and national norms for the regulation of elections, electoral rights and freedoms of a human being and citizen, as well as the guarantees for their realization and protection; implement the provisions of this Convention on the basis of the constitution and national laws and the appropriate state policy,

Wishing to lay down the guarantees for organization of public and international observation of elections in the member states of this Convention,

Have agreed as follows:

Article 1 Standards of Democratic Elections

1. Democratic elections are one of the supreme direct expressions of the power and will of the people, the basis of elective bodies of state power and bodies of local self-government, other bodies of popular (national) representation, elective officials.
2. The Parties recognize that the election standards are the following: the right of a citizen to elect and be elected to bodies of state power and bodies of local self-government, other bodies of popular (national) representation; periodic and mandatory, fair, genuine, free elections based on universal, equal suffrage and held by secret ballot, which ensure free expression of the will of voters; open and public elections; judicial and other protection of electoral rights and freedoms of a human being and citizen; public and international observation of elections; guarantees for realization of electoral rights and freedoms of participants in the electoral process.
3. The right of a citizen to elect and be elected shall be laid down by the constitution and/or laws and the procedure for its exercise shall be established by laws and other legal acts. Legislative regulation of the right to elect and be elected, election procedures (election systems), as well as restriction of electoral rights and freedoms shall not limit or abolish the universally accepted civil and human rights and the constitutional and/or legislative guarantees for their exercise, and shall not be discriminatory.
4. Elections shall be called and conducted on the basis of the constitution and laws.
5. Elected persons, who polled the required number of votes established by the constitution, law, shall assume office in the procedure and at the time established by laws, thereby admitting their responsibility to voters, and shall remain in office



until the period of their powers expires or these powers are terminated otherwise, as provided by the constitutions, laws in accordance with the democratic parliamentary and constitutional procedures.

6. The legitimate and public nature of elections, protection and realization of the electoral rights and freedoms of citizens, candidates, political parties (coalitions), participating in elections, implementation of the constitutional principles of organization of the electoral process in law enforcement practices shall be assured by the judicial, administrative and other means of protection.
7. Foreign nationals, stateless persons, foreign legal entities, international public movements, international organizations shall not be allowed to participate, directly or indirectly, in any activity conducive or obstructive to the preparation and conduct of elections to the bodies of state power and bodies of local self-government, other bodies of popular (national) representation, election to elective offices.

Article 2 Universal Suffrage

1. Observance of the principle of universal suffrage means the following:
 - (a) each citizen, who has attained to the age established by the constitution, laws, has the right to elect and be elected to the bodies of state power and bodies of local self-government, other bodies of popular (national) representation, elective offices, subject to the conditions and in the procedure provided by the constitution and laws;
 - (b) the right of a citizen to elect and be elected to the bodies of state power and bodies of local self-government, other bodies of popular (national) representation, elective offices is realizable irrespective of any discriminatory restrictions on account of sex, language, religion or faith, political or other convictions, ethnic or social origin, national minority or ethnic group to which the citizen belongs; property status; or other similar circumstances;
 - (c) each citizen, residing or staying during the period of the national elections outside the territory of his state, has the same electoral rights as the other citizens of his state. Diplomatic and consular missions, their officials shall assist citizens in the realization of their electoral rights and freedoms;
 - (d) each citizen has a guaranteed right to receive information about his inclusion on a voters list, correct this information so as to ensure the completeness and accuracy of this list, and appeal, in the procedure established by law, the refusal to include him on a voter's list.

Article 3 Equal Suffrage

1. Observance of the principle of equal suffrage means the following:
 - (a) each voter has one vote or the same number of votes as other voters; he may exercise his right to vote equally with other voters and his vote (votes) is (are) accorded equivalent weight to that of other voter's and the weight of a voter's vote (votes) must not be affected by the electoral system used in the state;
 - (b) when voting is conducted in single-seat and/or multi-seat electoral districts these districts are formed on an equal basis, so that voting results should reflect the will of the voters most accurately and fully. The criterion of an equal basis may be the

approximate equality of single-seat electoral districts with regard to the number of voters or the approximate equality of the number of voters per deputy mandate in multi-seat electoral districts. Deviations from the average representation quota may be allowed for hard-to-reach and remote localities, areas of compact settlement of small indigenous peoples and other national minorities and ethnic groups.

2. Each voter shall have the right to equal and free access to the electoral precinct and to the polling station for exercising his right to participate in free voting.
3. A citizen may be given a possibility to exercise his right to participate in voting through organization of early voting, voting outside the polling station or by means of other voting procedures ensuring the maximum convenience for voters.
4. Each citizen shall have equal legal opportunities for self-nomination in elections.
5. Restrictions connected with special requirements to participation in an election campaign of candidates running for election to an elective office for a new term shall be regulated by the constitution and laws. Compliance with the established restrictions must not prevent deputies, elective officials from exercising their powers and performing their obligations to voters.
6. Candidates shall not take advantage of their position or official status to gain election. The list of violations of the principle of equal suffrage and the responsibility for such violations shall be established by law.

Article 4 Direct Suffrage

1. Observance of the principle of direct suffrage means that in elections citizens directly vote for the candidate and/or list of candidates or against the candidate, candidates, list of candidates or against all candidates and/or lists of candidates.
2. All deputy mandates of one of the chambers of the national legislative body shall be an object of free competition between candidates and/or lists of candidates in the course of general elections.
3. If a national legislative body consists of two chambers and some of or all mandates of the other chamber of this body are not an object of free competition between candidates and/or lists of candidates in the course of general elections, this does not contradict the provisions of this Convention.

Article 5 Secret Voting

1. Observance of the principle of secret voting means exclusion of any control whatsoever over the expression of the will of voters, assurance of equal conditions for making a free choice.
2. The rights of citizens to secret voting shall not be restricted in any way and by anything.
3. Elections shall be held with the use of a secret voting procedure.
4. Election bodies shall ensure observance of conditions, established by the constitution, law, other legal acts, which make it impossible for anyone to control or watch ballots being marked by voters at the place of secret voting, or do any acts violating the secrecy of voting.



Article 6 Periodic and Mandatory Elections

1. Election of elective bodies of state power, bodies of local self-government, other bodies of popular (national) representation, elective officials shall be mandatory and shall be held within the periods established by the constitution and laws.
2. Elections shall be held at the intervals established by the constitution, laws so that the basis for the elective bodies of state power, bodies of local self-government, other bodies of popular (national) representation, elective officials be always formed by the free will of the people.
3. The period of powers of elective bodies and officials shall be established by the constitution and laws and may be changed only in accordance with the procedure established thereby.
4. No actions shall be taken or calls made which incite, or aim to incite, disruption, cancellation or postponement of elections, electoral actions and procedures announced in accordance with the constitution, laws.
5. In the conditions of a state of emergency or martial law imposed for safeguarding the security of citizens and protecting the constitutional system in accordance with the constitution, restrictions may be imposed by laws on the rights and freedoms, with the indication of their scope and period and elections may be postponed.

Article 7 Open and Public Elections

1. Elections shall be prepared and conducted openly and publicly.
2. Decisions of bodies of state power, bodies of local self-government election bodies, which are adopted within the scope of their competence and relate to the calling, preparation and conduct of elections, assurance and protection of the electoral rights and freedoms of a citizen, shall be officially published or made known to the general public by other methods, in the procedure and within the period established by laws.
3. Legal acts and decisions affecting the electoral rights, freedoms and obligations of a citizen shall not be applicable unless they have been officially published for general information.
4. Within the period established by the election laws the election body shall officially publish the information about the voting returns and elected persons, in its organ or other media outlets.
5. Observance of the principle of open and public elections must ensure creation of legal conditions for public and international monitoring of elections.

Article 8 Free Elections

1. The supremacy of the constitution shall be the basis for holding free elections and for making it possible for citizens and other participants in the electoral process to choose, without any influence, coercion, threat of coercion or any other unlawful inducement, whether to participate or not to participate in elections in the forms allowed by law and by lawful methods, without fear of any punishment or mistreatment regardless of voting returns and election results, as well as the basis for the legal and other guarantees of strict observance of the principle of free elections in the course of the entire electoral process.

2. Participation of a citizen in elections shall be free and voluntary. No one shall compel him to vote for or against any definite candidate (candidates), any definite list of candidates and no one shall compel him to participate or not to participate in elections or prevent him from freely expressing his will. No voters shall be compelled by anyone to declare how he intends to vote or has voted for a candidate (candidates), lists of candidates.
3. Candidates, political parties (coalitions) and other participants in the electoral process shall bear responsibility to the public and the state in accordance with the constitution and law. No candidate, no political party (coalition), no other public association or public organization shall use the methods of psychic, physical, religious compulsion or calls for violence or threats of violence or any other forms of coercion.

Article 9 Genuine Elections

1. Genuine elections shall ensure determination of a freely expressed will of the people and its direct realization.
2. Genuine elections shall make it possible for voters to elect candidates on the basis of the constitution and laws. In genuine elections there is real political pluralism, ideological diversity and a multi-party system realized through the functioning of political parties whose lawful activity is under the legal protection of the state.
3. In genuine elections voters shall have free access to the information about candidates, lists of candidates, political parties (coalitions) electoral process, and candidates, political parties (coalitions) to the mass information and telecommunications media.
4. Elections shall be prepared and conducted with the use of the official language or official languages of the state and, in cases and in the procedure provided by laws, also with the use of official languages of parts of the territory of the state, languages of peoples and nationalities, national minorities and ethnic groups on the territories of their compact settlement.
5. Elections shall be called and electoral actions and procedures carried out in the procedure and within the periods which allow candidates, political parties (coalitions) and other participants in the electoral process to organize a full-fledged election propaganda campaign.
6. In genuine elections equal and fair legal conditions shall be ensured for registration of candidates, lists of candidates and political parties (coalitions). Requirements to registration shall be clear and free from any conditions which may serve as a basis for discriminatory privileges or restrictions. Arbitrary or discriminatory use of the rules for registration of candidates, lists of candidates and political parties (coalitions) shall not be allowed.
7. Each candidate and each political party (coalition) participating in elections shall accept the voting returns and results of democratic elections and shall have a possibility to appeal, in courts and/or other bodies, voting returns and election results which violate the electoral rights and freedoms of a citizen, in the procedure and within the period established by laws, international obligations of the state.

8. Persons and bodies falsifying vote count, voting returns and election results, interfering with free realization by a citizen of his electoral rights and freedoms, including in the form of a boycott or calls for a boycott of elections, refusal to perform electoral procedures or electoral actions, shall be prosecutable under law.

Article 10 Fair Elections

1. Observance of the principle of fair elections must ensure equal legal conditions to all participants in the electoral process
2. Fair elections shall guarantee:
 - (a) universal and equal suffrage;
 - (b) equal possibilities for participation of each candidate or each political party (coalition) in an election campaign, including access to the mass information and telecommunications media;
 - (c) fair and public funding of elections, election campaigns of candidates, political parties (coalitions);
 - (d) honest voting and vote counting; rapid provision of full information about voting results and official publication of all election results;
 - (e) organization of the electoral process by impartial election bodies, working openly and publicly under effective public and international observation;
 - (f) prompt and effective adjudication of complaints about violation of electoral rights and freedoms of citizens, candidates, political parties (coalitions) to be performed by courts and other duly authorized bodies within the time frame of the appropriate stages of the electoral process, assurance of a citizen's right to apply to international judicial bodies for protection and restoration of his electoral rights and freedoms, in a procedure established by the norms of international law.
3. Candidates may be nominated by voters of the appropriate electoral district or may nominate themselves. Candidates and/or lists of candidates may be also nominated by political parties (coalitions), other public associations and other entities which have the right to nominate candidates and/or lists of candidates under the constitution, laws.

Article 11 Conduct of Elections by Election Bodies (Election Commissions)

1. Preparation and conduct of elections, assurance and protection of electoral rights and freedoms of citizens and control over their observance shall be entrusted to election bodies (election commissions), with their status, competence and powers being established by the constitution, legislative acts.
2. No other structures (bodies, organizations) shall be formed or allowed to operate which supersede election bodies or perform, fully or partially, their functions, or obstruct or unlawfully interfere with their lawful activity, or appropriate their status and powers.
3. The procedure for the formation of election bodies, their powers, organization of their activity as well as the procedure, grounds, and time for dissolution of an election body or early termination of the powers of its member shall be established by law. The procedure and time of early termination of powers of members

of an election body established by law and appointment by a duly authorized body of a new member of an election body to fill the vacancy shall not prevent the election body from exercising its powers, shall not affect the integrity of the electoral process, delay the performance of electoral actions, violate the electoral rights and freedoms of citizens.

4. The Parties admit that a candidate, a political party (coalition), which nominated a list of candidates, may be granted the right to appoint, in a procedure established by law, one non-voting member to the election body which registered the candidate (list of candidates) and to the lower election bodies for representing this candidate, political party (coalition).
5. A non-voting member of an election body may speak at meetings of the election bodies, make proposals on the questions within the scope of competence of the election body, ask that these questions be put to the vote, submit complaints against actions (omissions) of the election body to the higher election body or to a court, exercise other powers provided by law.
6. Decisions taken by election bodies within the scope of their competence shall be binding on the bodies of executive power, state institutions, bodies of local self-government, political parties and other public associations, their authorized representatives, organizations, officials, voters, lower election bodies, other persons and organizations indicated in laws.
7. The Parties shall, by their laws, impose an obligation on state bodies, bodies of local self-government, institutions, organizations and on their officials to assist election bodies in the exercise of their powers and shall oblige TV and radio companies and print media indicated in the election laws to provide, respectively, free air time and free space for information of voters about the election, progress of the election campaign.

Article 12 Funding of Elections and Election Campaigns of Candidates, Political Parties (Coalitions)

1. The activities connected with elections shall be funded from the budget.
2. In cases and in the procedure provided by the constitutions and laws the state shall, on a fair basis, allocate budget funds to candidates, political parties (coalitions), participating in elections and shall allow formation of an extra-budgetary fund at an election body or formation of their own funds to finance their election campaigns, using for these purposes their own money and voluntary donations from natural persons and/or national legal entities, in the amount and in the procedure established by laws. The use by candidates, political parties (coalitions) of any sums of money other than those contributed to the said funds shall be prohibited by and punishable under laws.
3. All foreign donations, including those from foreign natural persons and legal entities, to candidates, political parties (coalitions), participating in elections, to any other public associations, public organizations, which are directly, indirectly or otherwise associated with a candidate, political party (coalition) or are under their direct influence or control and facilitate, or assist in, the implementation of the aims of a political party (coalition), shall not be allowed.
4. The Parties shall ensure openness and transparency of all monetary donations to candidates, political parties (coalitions), participating in elections, so as to exclude



- donations prohibited by law being made to candidates or to political parties (coalitions), which nominated candidates (lists of candidates) in elections.
5. Candidates, political parties (coalitions), participating in elections, shall, at the intervals established by law, submit to election bodies and other bodies, designated by law, the information and reports concerning receipt of all donations to their election funds, the donors, all expenditures made from these funds to finance their election campaign. Election bodies shall arrange for publication of such information and reports in the mass information and telecommunications media indicated in laws.
 6. A special body (bodies) may be organized to control or oversee compliance with the rules and procedures for campaign funding of candidates, political parties (coalitions), or appropriate powers shall be vested in officials or election bodies.
 7. A list of violations of the conditions and procedure for making donations, funding the activity of candidates, political parties (coalitions) as well as a list of measures to avert, prevent or stop infractions in election funding and funding of election campaigns of candidates, political parties (coalitions) shall be established by laws, other legal acts.

Article 13 Informational Support of Elections and Election Campaigning by the State

1. The Parties shall ensure the freedom of the search for, collection, dissemination of information about elections, candidates and impartial information coverage of elections in the mass information and telecommunications media.
2. The mass information and telecommunications media are called upon to keep the population informed about elections, nomination of candidates (list of candidates), their election programs (platforms), the progress of an election campaign, voting returns and election results operating within the framework of the constitution, laws, international obligations of the state.
3. In accordance with law members of the press representing mass information and telecommunications media may:
 - (a) attend meetings of election bodies to ensure publicity and openness of their activity;
 - (b) examine documents and materials of election bodies relating to voting returns or election results, make copies of such documents and materials or receive such copies from the election body, pass them on to the mass information and telecommunications media for publication; (c) attend public campaigning events and cover them in the mass media;
 - (d) be present at voting, vote counting, establishment of voting returns and election results.
4. Citizens, candidates, political parties (coalitions), which nominated a candidate and/or a list of candidates, other public associations, public organizations shall be guaranteed freedom of campaigning carried out in all forms allowed by law and by lawful methods, in the procedure and within periods established by laws, in the conditions of pluralism of opinions and absence of censorship.
5. In accordance with the constitution, laws all candidates, political parties (coalitions) participating in elections, shall have an equal opportunity of access to the

- mass information and telecommunications media, including such access for presenting their election program (platform).
6. In the course of election campaigning no abuse of the freedom of speech and freedom of mass information shall be allowed, including calls for a violent seizure of power, violent change of the constitutional system and violation of the territorial integrity of a state, warmongering, calls for terrorist or other violent acts inciting social, racial, national, ethnic, religious hatred and enmity.
 7. The mass information and telecommunication media of any one member state of this Convention shall not be used for participation in the campaigning when elections are held in the territory of another state.
 8. The list of violations of the conditions and procedure for campaigning carried out by candidates, political parties (coalitions) and infractions in the coverage of an election campaign by the mass media, which constitute grounds for bringing the violators to responsibility, shall be established by laws.

Article 14 Status and Powers of National Observers

1. Each candidate, each political party (coalition), other public associations (public organizations), each group of voters, other subjects of elections indicated in the constitution, laws may, in the procedure established by laws or by regulations of election bodies organizing the elections, appoint national observers who have the right to carry out observation on voting day, including the day of early voting, at polling stations.
2. The rights and obligations of national observers shall be defined by law.
3. National observers shall be granted the following rights:
 - (a) to examine election documents indicated in election laws; receive information about the number of voters on voter lists and the number of voters who took part in the voting, including early voting and voting outside the polling station;
 - (b) to be present at the polling station;
 - (c) to watch ballots being issued to voters;
 - (d) to be present at early voting, voting outside the polling station;
 - (e) to watch vote counting under conditions in which the ballot counting procedure is observable;
 - (f) to watch an election body drawing up protocols of voting returns and election results and other documents; examine the protocol of voting returns drawn up by an election body, including the redrafted protocol; receive certified copies of the said protocols from the election body in cases and in the procedure provided by the national laws;
 - (g) to make proposals and comments to an election body concerning organization of voting;
 - (h) to appeal decisions and actions (omissions) of an election body and its members to the next higher election body or to a court.
4. In cases and in the procedure provided by laws the rights of a national observer may also be granted to agents of candidates, political parties (coalitions).

5. Election bodies and/or other bodies and organizations may be authorized to organize education of national observers and other election participants in the fundamentals of democratic election technologies, national election laws, international election standards, assurance and protection of electoral rights and freedoms of a human being and citizen.

Article 15 Status and Powers of International Observers

1. The Parties reaffirm that the presence of international observers is conducive to openness and publicity of elections observance of international obligations of states. They shall strive to promote access of international observers to electoral processes at levels lower than the national level, down to municipal (local) elections.
2. The activity of international observers shall be regulated by the laws of the country where they work, this Convention, other international documents.
3. International observers shall be granted visas to enter a state in the procedure established by law and, if they have an appropriate invitation, shall be accredited by the relevant election body. Invitations may be extended by bodies duly authorized to do so by law, after official publication of the decision to call the elections. Proposals to extend invitations may be made by the bodies of the Commonwealth of Independent States established under its Charter.
4. The central election body shall issue international observers with an accreditation card of an established form. Such card shall entitle an international observer to carry out observation during the period of preparation and conduct of elections.
5. In the territory of the state where they stay international observers shall be under the patronage of this state. Election bodies, bodies of state power, bodies of local self-government shall, within the scope of their competence, render them necessary assistance.
6. International observers shall carry on their activity by themselves and independently. The activity of international observers shall be technically and financially supported by the organization which sent them and/or at their own expense.
7. International observers shall not use their status to engage in any activity unrelated to monitoring of the election campaign. The Parties reserve the right to withdraw accreditation of international observers who violate laws, universally accepted principles and norms of international law.
8. International observers may:
 - (a) have access to all documents (except for documents which affect the interests of national security) regulating the electoral process; receive from election bodies necessary information and copies of the election documents indicated in national laws;
 - (b) establish contacts with political parties, coalitions, candidates, private persons, officials of election bodies;
 - (c) freely visit all election precincts and polling stations, including on voting day;
 - (d) observe the progress of voting, vote counting and determination of voting returns under conditions in which the ballot counting procedure is observable;

- (e) acquaint themselves with the results of adjudication of complaints (applications) and grievances relating to violation of election laws;
 - (f) inform officials of election bodies about their observations and recommendations without interfering in the work of election bodies;
 - (g) publicize their opinion about the preparation and conduct of elections after the end of voting;
 - (h) present to election officials, bodies of state power and relevant officials their conclusions concerning the results of monitoring of the elections.
9. International observers shall:
- (a) observe the constitution and laws of the country where they work, the provisions of this Convention and other international documents;
 - (b) carry the accreditation card of an international observer, issued in accordance with the procedure established by the country where they work, and produce it whenever requested by election officials;
 - (c) when performing their functions abide by such principles as political neutrality, impartiality, non-expression of any preferences or opinions with regard to election bodies, bodies of state power and other bodies, officials, participants in the electoral process;
 - (d) never interfere in the electoral process;
 - (e) base their conclusions and observations on factual material

Article 16 Complaints About, and Responsibility for, Violation of Electoral Rights and Freedoms of Citizens

1. In the event of violation of the standards of democratic elections, electoral rights and freedoms of citizens, proclaimed in this Convention, and violation of election laws the injured person or persons shall have the right and possibility to complain about the violation to, and have the violated rights restored by, courts and, in cases and in the procedure provided by laws, election bodies.
2. Persons guilty of unlawful actions (omissions) shall bear responsibility in accordance with laws.

Article 17 Electoral Documentation

1. Ballots, other electoral documents, including documents of bodies of state power, bodies of local self-government, election bodies, relating to the conduct of elections shall be drawn up (published) in the official language of the state and official languages of the parts of the territory of the state where elections are held and, in the procedure established by law, in the languages of peoples and nationalities, national minorities and ethnic groups in the territories of their compact settlement.
2. Electoral documents used to determine voting returns and election results shall be treated as documents of strict accountability and their degree of protection shall be established by laws.

Article 18 Measures Not to Be Considered Discriminatory

1. The electoral rights and freedoms of a citizen set out above may be restricted by the constitution, laws without being considered discriminatory if they provide for:

- (a) special measures taken to ensure an adequate representation of some part of a country's population, in particular national minorities and ethnic groups, which, owing to political, economic, religious, social, historical and cultural conditions, are unable to enjoy the political and electoral rights and freedoms on an equitable basis with the rest of the population.
 - (b) restriction of the right to elect and be elected in respect of citizens pronounced to be incapable by a court, persons kept in places of confinement under a court sentence;
2. Restrictions on nomination of candidates and lists of candidates, creation and activity of political parties (coalitions), electoral rights and freedoms of citizens may be imposed in the interests of protection of the constitutional system, national security, maintenance of public order, protection of public well-being and morals, civil rights and freedoms. Such restrictions shall conform to the international obligations of a state
 3. In their wish to democratize the electoral process the Parties proceed from the fact that the existing restrictions on, or advantages with regard to, the realization of electoral rights and freedoms, which are provided by the constitution, laws and do not run counter to the international obligations of a state, shall be abolished as proper national conditions appear, so as to ensure that participants in the electoral process have equal legal conditions for participation in elections.

Article 19 Obligations of Member States of the Convention

1. The Parties shall take legislative and other measures to strengthen the guarantees of electoral rights and freedoms for the preparation and conduct of democratic elections and realization of the provisions of this Convention. The standards of democratic elections, electoral rights and freedoms, proclaimed in this Convention may be guaranteed through their inclusion in the constitution, legislative acts.
2. The Parties undertake:
 - (a) to guarantee protection of the democratic principles and norms of the election laws, the democratic nature of elections, free expression by citizens of their will in elections, reasonable requirements to declaring elections to have taken place and be valid and legitimate;
 - (b) to take the necessary measures to ensure that the entire election legislation should be adopted by the national legislative body and that the legal standards for the conduct of elections should not be established by the acts of the bodies of executive power;
 - (c) to strive to ensure that deputy mandates of the other chamber of the national legislative body should be, fully or partially, an object of free competition of candidates and/or lists of candidates in the course of the direct general elections, in the procedure established by laws;
 - (d) to work for the creation of a system of legal, organizational, informational, guarantees of the electoral rights and freedoms of citizens in the preparation and conduct of elections of all levels; take necessary legislative measures to guarantee women fair and real possibilities, equal to those of men, for exercising the right to elect and be elected to elective bodies and elective offices, both person-

- ally and as members of political parties (coalitions) in accordance with the conditions and procedures established by the constitution, laws; create additional guarantees and conditions for participation in elections of persons with physical infirmities (disabled persons, etc);
- (e) to carry out registration of voters on the basis of a legislatively established non-discriminatory and effective procedure providing for such registration criteria as age, citizenship, residence, availability of the main document certifying the identity of a citizen;
 - (f) to establish legislatively the responsibility of persons, furnishing information about voters, for the accuracy, fullness and timely presentation of such information, for ensuring confidentiality of the personal data as prescribed by law;
 - (g) to facilitate formation of political parties and their free legitimate activity; legislatively regulate funding of political parties and the electoral process; ensure that the law and the national policy should provide for separation of party and state and that election campaigns should be conducted in the atmosphere of freedom and honesty allowing parties and candidates freely to present their political views and opinions, their election programs (platforms) and allowing voters to get acquainted with and discuss them and vote "for" or "against" freely, without any fear of punishment or any kind of persecution;
 - (h) to adopt measures guaranteeing impartial coverage of the election campaign by the mass media, including in the Internet, and making it impossible to erect legal and administrative barriers preventing political parties and candidates from gaining access to the mass media on a non-discriminatory basis; form a unified data bank of public polls connected with elections from which information must be available for examination or copying to participants in the electoral process and to international observers upon their request; introduce new information technologies, ensuring openness of elections and raising the trust of voters in voting returns and election results;
 - (i) to adopt national programs of civic education and participate in drafting and adoption of similar international programs; make arrangements for acquainting citizens and other election participants with, and educating them in, electoral procedures and rules, for raising their legal culture and for improving professional qualifications of election officials;
 - (j) to ensure creation of independent impartial election bodies, which organize the conduct of democratic, free, fair, genuine and periodic elections in accordance with laws and international obligations of the state;
 - (k) to ensure that candidates, who polled the required number of votes established by law, could properly assume office and remain in office until the period of their powers expires or their powers are terminated in some other manner regulated by law;
 - (l) to take legislative measures to regulate the list of violations of the electoral rights and freedoms of citizens, as well as the grounds and procedure for bringing to criminal, administrative and other responsibility the persons who use coercion, fraud, threats, forgery or other methods to prevent free exercise by a citizen of the right to elect and be elected, realization of other electoral rights and freedoms laid down by the constitutions and laws;

- (m) to facilitate, for the exchange of information and joint use, the creation of a unified data bank containing information about national election laws, participants in the electoral process (with due regard the confidential nature of personal data), law enforcement and judicial practices, legislative proposals for the improvement of the election system, as well as other information relating to the organization of the electoral process;
- (n) to promote cooperation between the election bodies of the member states of this Convention, including the creation and/or expansion of the powers of the existing inter-state associations of election bodies.

Article 20 Rights Granted Irrespective of this Convention

1. Nothing in this Convention shall prevent the states from the fulfillment of their international obligations relating to the electoral rights and freedoms of citizens assumed under international treaties and agreements to which they are a party.
2. The exercise of the rights set out in this Convention shall not be detrimental to the realization of universally accepted human rights and fundamental freedoms by all persons.
3. Nothing in this Convention may be construed as allowing any activity which runs counter to universally accepted human rights and fundamental freedoms by all persons the purposes and principles of the Charter of the Commonwealth of Independent States.

Article 21 Status of the International Electoral Council

The Parties recognize the need to establish an Inter-State Electoral Council on the basis of the election bodies of the member states of this Convention, which will be called upon to facilitate observation of elections in the member states of this Convention.

7.2.1.3 Convention on Ensuring the Rights of Persons Belonging to National Minorities (Moscow, 21 October 1994)⁸

Article 3

1. Each Contracting Party guarantees for persons belonging to national minorities civil, political, social, economic, and cultural rights and freedoms in accordance with the universally recognized standards in human rights protection and according to the legislation of a Contracting Party.

Article 4

1. Each Contracting Party recognizes the right of persons belonging to national minorities individually or in community with other members of his or her group to freely express, preserve and develop own ethnic, language, cultural, or religious identity.
2. Contracting Parties undertake to consider legitimate interests of national minorities in their policy and to take necessary measures aiming at creation of favourable conditions for preservation and development of their ethnic, language, cultural, or religious identity. Such measures shall serve the interests of all society and should not result in infringements of the rights of other citizens of the Contracting Parties.

⁸ Entry into force 10 January 1997. Unofficial translation, official text in Russian

Article 5

1. Each Contracting Party undertakes to ensure for persons belonging to national minorities the right to take part in social and state life, especially in deciding upon the issues affecting the protection of their interests at regional level.
2. Each Contracting Party recognizes the right of persons belonging to national minorities to establish in accordance with domestic legislation various organizations (associations, community associations, etc.) of educational, cultural, and religious nature aiming at preservation and development of their ethnic, language, cultural, or religious identity.

The mentioned organizations shall have the same rights as granted to other similar organizations, particularly in respect of the enjoyment of public premises, radio broadcasting, telecasting, press, and other mass media.

7.2.1.4 Agreement on the Cooperation in Solving Problems of Disability and Persons with Disabilities (Moscow, 12 April 1996)⁹

Article 1

Being independent in the issues of formulation and realization of national policy on the problems of disability and persons with disabilities, State Parties consider it expedient to pursue a coordinated policy in the area of disability prevention, medico-social expertise, rehabilitation of persons with disabilities, and providing of conditions for adequate participation on equal footing with other citizens in the life of society.



⁹ Entry into force 24 February 1997. Unofficial translation, official text in Russian

7.2.2 Matrix on the Status of Ratification of Instruments within the Commonwealth of Independent States

	Human Rights Convention	Electoral Convention	Convention on Ensuring the Rights of Persons Belonging to National Minorities	Agreement on the Cooperation in Solving Problems of Disability and Persons with Disabilities
Armenia	§ ¹⁰	*	*	*
Azerbaijan			*	*
Belarus	*	*	*	*
Georgia	§ ¹¹	§ ¹²	§ ¹³	§ ¹⁴
Kazakhstan		*	§ ¹⁵	§ ¹⁶
Kyrgyzstan	*	*	*	*
Republic of Moldova	§ ¹⁷	*	§ ¹⁸	*
Russian Federation	*	*	§ ¹⁹	*
Tajikistan	*	*	*	*
Turkmenistan				
Ukraine		§ ²⁰	§ ²¹ § ²²	§ ²³
Uzbekistan				

10 Signed 26 May 1995

11 Signed 26 May 1995

12 Signed 7 October 2002

13 Signed 21 October 1994

14 Signed 12 April 1996

15 Signed 21 October 1994

16 Signed 12 April 1996

17 Signed 26 May 1995

18 Signed 21 October 1994

19 Signed 21 October 1994

20 Signed 7 October 2002

21 Signed 21 October 1994

22 Withdrew 26 July 2005

23 Signed 12 April 1996



POLITICAL COMMITMENTS

Political commitments may contain standards, but can be considered more of a political dialogue between the states concerned, the intention of which is not to make the standards binding at the level of international law. Political commitments are pledges that governments make to each other to comply with certain standards of conduct, but without the threat of formal sanctions normally attached to the violation of treaty standards. Examples of political commitments contained in the Compendium are the OSCE Copenhagen Meeting Declaration (1990), the OSCE Istanbul Summit Declaration (1999) and the Harare Commonwealth Declaration.

8.1 The International Organisation of La Francophonie (IOF)

The International Organisation of La Francophonie (IOF), more commonly called 'La Francophonie', was founded in 1997 to function as an international link between countries which are French-speaking or in which the French language or the interest in the French language or culture is strong. It has 80 member states and governments (57 members and 23 observers) worldwide. After private activities in the general area of francophonie that started at the end of the 19th century and in the first part of the 20th century, the official contacts between the states that were francophone deepened after the 1960s, and the first summit was organised in 1986.

The Charter of La Francophonie was adopted in 1997 and revised in 2005. The objectives of the IOF are to assist in the establishment and development of democracy and in the prevention, management and resolution of conflicts, and in support for the rule of law and human rights. The IOF also wishes to intensify the dialogue between cultures and civilizations in order to bring people together through mutual knowledge, and to strengthen their solidarity through multilateral cooperation in order to promote the growth of their economies, the promotion of education and training. In the year 2000, La Francophonie adopted the Bamako Declaration concerning the principles of democracy.

8.1.1 Bamako declaration¹

Adopted at Bamako, on 3 November 2000.

(Adopted by Ministers and Heads of Delegations of States and Governments of countries using French as a common language, meeting in Bamako for the International Symposium on the Assessment of the Practices of Democracy, Rights and Freedoms in the Francophone Community)

II. We confirm our adhesion to the following fundamental principles:

[...]

3. Democracy demands, in particular, conducting, at regular intervals, free, reliable and transparent elections, based upon the respect and the unhindered and non-discriminatory exercise of the right to freedom and physical integrity of all voters and candidates, the right to freedom of opinion and expression, notably through the press and other means of communication, freedom of assembly and demonstration, and freedom of association;
4. Democracy is incompatible with any substantial modification to the electoral system which is introduced arbitrarily or surreptitiously, as a reasonable interval should always exist between the adoption of a modification and its implementation;
5. Democracy presupposes the existence of political parties with equal rights, free to organise and express themselves, insofar as their programme and actions do not challenge the fundamental values of democracy and human rights. Thus, democracy goes hand in hand with the multi-party system. It must provide the opposition parties with a clearly defined status, with no ostracism²;

[...]

¹ The English version of the Bamako Declaration is not an official translation from French, but is retrieved from the web-page of the Human Rights Centre of the University of Pretoria, South Africa, at www.chr.up.ac.za (accessed on 4 May 2010). The original French version of the Bamako Declaration can be found at <http://www.francophonie.org/> (accessed on 14 August 2014)

² Réserve du Vietnam et du Laos sur l'article 2(5). Motif: la démocratie et le multipartisme sont deux notions différentes et ne peuvent s'identifier. La démocratie est une finalité alors que le multipartisme n'est qu'un chemin. Le chemin pour y parvenir, décidé par chaque pays, doit être défini par son peuple en fonction de ses spécificités culturelles, historiques, économiques et sociales.

III. We proclaim [...]

2. That, for the Francophonie, there is no single way of organising democracy, and that, within the respect for universal principles, the forms through which democracy manifests itself must be in line with the specific historical, cultural, and social realities and characteristics of each nation;

[...]

5. That, in order to preserve democracy, the Francophonie condemns any coup d'état and any other conquest of power by violence, weapons or any other illegal means;

IV. We undertake the following commitments: [...]

4. To implement the principle of transparency as the operational rule of institutions;

[...]

7. To endeavour to increase the national capabilities of all role players and structures involved in the electoral process, by emphasising the need to establish a national registry office and reliable electoral lists;

8. To ensure that the organisation of elections, from the preparatory operations and the electoral campaign up to the counting of votes and the proclamation of the results, including if need be any litigation, takes place in complete transparency under the remit of credible organs whose independence is recognised by all;

9. To guarantee the full participation of citizens in the voting process, as well as the equal treatment of candidates during all electoral operations;

10. To involve all legally constituted political parties, both from the majority and the opposition, in all stages of the electoral process, in respect for the democratic principles established by the basic texts and institutions, and to allow them to benefit from financing from the state's budget;

11. To take the necessary steps to move towards the national financing of elections, out of public funds;

12. To accept the results of free, reliable and transparent elections;

[...]

14. To make all political parties, both from the opposition and the majority, participate in national, regional and local political affairs, in accordance with the law, in order to settle peacefully conflicts of interests;

[...]

17. To acknowledge the role and facilitate the constant involvement of civil society, including NGOs, the media and traditional moral authorities, to allow them to fulfil their roles in a well-balanced political life, in the interest of all;

18. To see to the effective respect for the freedom of the press and to ensure impartial access of different political forces to the public and private media, both written and audiovisual, according to a control mechanism in accordance with democratic principles;

[...]



24. To take appropriate measures in order to accord members of minority groups, whether these be ethnic, philosophical, religious or linguistic, the freedom to practise a religion or not, the right to speak their own language and to practise their own culture;

25. To ensure that the dignity of immigrants is respected and that the relevant provisions contained in international instruments concerning them are applied.

[...]The Standing Committee may take some of the following measures:

- propose the suspension of the country concerned from the Francophonie. In the event of a military coup d'état against a regime resulting from democratic elections, suspension shall be a certainty.³

[...]

8.2 The Association of Southeast Asian Nations

The ten members of the Association of the Southeast Asian Nations (ASEAN) adopted a Human Rights Declaration in its November 2012 meeting in Phnom Penh. The declaration is not legally binding and is not explicitly connected to the mandate of the ASEAN Human Rights Commission. In its Article 25, the ASEAN Declaration contains a provision on the right to participation and on the right to vote.

The Declaration has been criticised by human rights organisations, *inter alia*, for its failure to address several fundamental human rights, and for provisions marred by cultural relativism, such as “the realization of human rights must be considered in the regional and national context” (Art. 7).

8.2.1 The ASEAN Human Rights Declaration (2012)

Article 25

- (1) Every person who is a citizen of his or her country has the right to participate in the government of his or her country, either directly or through democratically elected representatives, in accordance with national law.
- (2) Every citizen has the right to vote in periodic and genuine elections, which should be held by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law.

³ Reserve du Vietnam et du Laos sur l'article 5(3)

8.3 The Inter-Parliamentary Union (IPU)

The Inter-Parliamentary Union was established in 1889 and is the international organization of parliaments of sovereign states. Over 170 national parliaments are currently members of the IPU, with 11 associate members. Its aims include contributing to the defence and promotion of human rights and fostering contacts among parliaments and parliamentarians.

8.3.1 Declaration on Criteria for Free and Fair Elections (1994)

1. Free and Fair Elections

In any State the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.

2. Voting and Elections Rights

- (1) Every adult citizen has the right to vote in elections, on a non-discriminatory basis.
- (2) Every adult citizen has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters.
- (3) No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law.
- (4) Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.
- (5) Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.
- (6) Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.
- (7) The right to vote in secret is absolute and shall not be restricted in any manner whatsoever.

3. Candidature, Party and Campaign Rights and Responsibilities

- (1) Everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election. The criteria for participation in government shall be determined in accordance with national constitutions and laws and shall not be inconsistent with the State's international obligations.
- (2) Everyone has the right to join, or together with others to establish, a political party or organization for the purpose of competing in an election.
- (3) Everyone individually and together with others has the right:

- To express political opinions without interference;
 - To seek, receive and impart information and to make an informed choice;
 - To move freely within the country in order to campaign for election;
 - To campaign on an equal basis with other political parties, including the party forming the existing government.
- (4) Every candidate for election and every political party shall have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views.
 - (5) The right of candidates to security with respect to their lives and property shall be recognized and protected.
 - (6) Every individual and every political party has the right to the protection of the law and to a remedy for violation of political and electoral rights.
 - (7) The above rights may only be subject to such restrictions of an exceptional nature which are in accordance with law and reasonably necessary in a democratic society in the interests of national security or public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others and provided they are consistent with States' obligations under international law. Permissible restrictions on candidature, the creation and activity of political parties and campaign rights shall not be applied so as to violate the principle of non-discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - (8) Every individual or political party whose candidature, party or campaign rights are denied or restricted shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.
 - (9) Candidature, party and campaign rights carry responsibilities to the community. In particular, no candidate or political party shall engage in violence.
 - (10) Every candidate and political party competing in an election shall respect the rights and freedoms of others.
 - (11) Every candidate and political party competing in an election shall accept the outcome of a free and fair election.

4. The Rights and Responsibilities of States

- (1) States should take the necessary legislative steps and other measures, in accordance with their constitutional processes, to guarantee the rights and institutional framework for periodic and genuine, free and fair elections, in accordance with their obligations under international law. In particular, States should:
 - Establish an effective, impartial and non-discriminatory procedure for the registration of voters;
 - Establish clear criteria for the registration of voters, such as age, citizenship and residence, and ensure that such provisions are applied without distinction of any kind;

- Provide for the formation and free functioning of political parties, possibly regulate the funding of political parties and electoral campaigns, ensure the separation of party and State, and establish the conditions for competition in legislative elections on an equitable basis;
 - Initiate or facilitate national programmes of civic education, to ensure that the population are familiar with election procedures and issues.
- (2) In addition, States should take the necessary policy and institutional steps to ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial or balanced mechanism for the management of elections. In so doing, they should, among other matters:
- Ensure that those responsible for the various aspects of the election are trained and act impartially, and that coherent voting procedures are established and made known to the voting public;
 - Ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers as appropriate;
 - Encourage parties, candidates and the media to accept and adopt a Code of Conduct to govern the election campaign and the polling period;
 - Ensure the integrity of the ballot through appropriate measures to prevent multiple voting or voting by those not entitled thereto;
 - Ensure the integrity of the process for counting votes.
- (3) States shall respect and ensure the human rights of all individuals within their territory and subject to their jurisdiction. In time of elections, the State and its organs should therefore ensure
- That freedom of movement, assembly, association and expression are respected, particularly in the context of political rallies and meetings;
 - That parties and candidates are free to communicate their views to the electorate, and that they enjoy equality of access to State and public-service media;
 - That the necessary steps are taken to guarantee non-partisan coverage in State and public-service media.
- (4) In order that elections shall be fair, States should take the necessary measures to ensure that parties and candidates enjoy reasonable opportunities to present their electoral platform.
- (5) States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation.
- (6) Furthermore, State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification.
- (7) States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers.



- (8) States should take the necessary measures to ensure that parties, candidates and supporters enjoy equal security, and that State authorities take the necessary steps to prevent electoral violence.
- (9) States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.

8.4 The Commonwealth

The Commonwealth is an intergovernmental organisation of 53 States, many of which are former British colonies, dependencies and territories. The British monarch is the Head of the Commonwealth. The Commonwealth has adopted a Charter in December 2012 committing members to the values of democracy, human rights and the rule of law.

8.4.1 Charter of the Commonwealth

We the people of the Commonwealth:

[...]

Reaffirming the core values and principles of the Commonwealth as declared by this Charter:

Democracy

We recognise the inalienable right of individuals to participate in democratic processes, in particular through free and fair elections in shaping the society in which they live. Governments, political parties and civil society are responsible for upholding and promoting democratic culture and practices and are accountable to the public in this regard. Parliaments and representative local governments and other forms of local governance are essential elements in the exercise of democratic governance.

We support the role of the Commonwealth Ministerial Action Group to address promptly and effectively all instances of serious or persistent violations of Commonwealth values without any fear or favour.

Human rights

We are committed to the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. We are committed to equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just and stable societies. We note that these rights are universal, indivisible, interdependent and interrelated and cannot be implemented selectively.

We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds.

[...]

Tolerance, respect and Understanding

We emphasise the need to promote tolerance, respect, understanding, moderation and religious freedom which are essential to the development of free and democratic societies, and recall that respect for the dignity of all human beings is critical to promoting peace and prosperity.

We accept that diversity and understanding the richness of our multiple identities are fundamental to the Commonwealth's principles and approach.

Freedom of expression

We are committed to peaceful, open dialogue and the free flow of information, including through a free and responsible media, and to enhancing democratic traditions and strengthening democratic processes.

Separation of powers

We recognise the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary. These are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance.

Rule of law

We believe in the rule of law as an essential protection for the people of the Commonwealth and as an assurance of limited and accountable government. In particular we support an independent, impartial, honest and competent judiciary and recognise that an independent, effective and competent legal system is integral to upholding the rule of law, engendering public confidence and dispensing justice.

[...]

Gender equality

We recognise that gender equality and women's empowerment are essential components of human development and basic human rights. The advancement of women's rights and the education of girls are critical preconditions for effective and sustainable development.

[...]

The role of Civil Society

We recognise the important role that civil society plays in our communities and countries as partners in promoting and supporting Commonwealth values and principles, including the freedom of association and peaceful assembly, and in achieving development goals.

8.4.2 The Harare Commonwealth Declaration (1991)

4. We believe in [...] equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives; [...]



9. [...] we pledge the Commonwealth and our countries to work with renewed vigour, concentrating especially in the following areas:

- the protection and promotion of the fundamental political values of the Commonwealth;
- democracy, democratic processes and institutions which reflect national circumstances;
- fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief;
- equality for women, so that they may exercise their full and equal rights.

8.4.3 The Lusaka Declaration of the Commonwealth on Racism and Racial Prejudice (1979)

[...]

We affirm that there should be no discrimination based on race, colour, sex, descent or national or ethnic origin in the acquisition or exercise of the right to vote; [...]

8.5 The Organization for Security and Co-operation in Europe (OSCE)

The Organization for Security and Co-operation in Europe (OSCE) was founded in 1972 under the name of the Conference for Security and Co-operation in Europe, as a multilateral forum for dialogue and negotiation between East and West. Its name was changed in 1994. All 57 participating states have equal status and are represented on the basis of common interest and common OSCE commitments. Decisions are reached by consensus, except in the case of “clear, gross and uncorrected violations” of OSCE commitments by a participating State. The OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) is located in Warsaw and is responsible for the promotion of human rights and democracy in the OSCE area. It serves as the OSCE’s focal point for all election-related matters, including election observation, technical assistance, and the review of electoral legislation. OSCE commitments require participating states to invite other participating states to observe their elections, and the ODIHR provides the methodology and co-ordination framework for such observation.

8.5.1 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (1990)

- (3) They [participating states] reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

- (5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:
- (5.1) free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;
- (5.2) a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;
- [...]
- (5.4) a clear separation between the State and political parties; in particular, political parties will not be merged with the State;
- [...]
- (6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes. They recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State. (7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will
- (7.1) hold free elections at reasonable intervals, as established by law;
- (7.2) permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
- (7.3) guarantee universal and equal suffrage to adult citizens;
- (7.4) ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
- (7.5) respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
- (7.6) respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;
- (7.7) ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;



- (7.8) provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;
- (7.9) ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures. (10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to (10.1) respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;
- [...]
- (10.3) ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in nongovernmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;

8.5.2 Charter of Paris for a New Europe (1990)

[...]

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person. [...]

Everyone also has the right: [^] to participate in free and fair elections, [...].

8.5.3 Document of the Moscow Meeting of the Conference on the Human Dimension of the OSCE (1991)

- (26) The participating States reaffirm the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinions. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards. They further recognize that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.
- (26.1) They consider that the print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards.



- (26.2) The participating States will not discriminate against independent media with respect to affording access to information, material and facilities.
- (40) The participating States recognize that full and true equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law. In this context they will [...] [...]
- (40.8) encourage and promote equal opportunity for full participation by women in all aspects of political and public life, in decision-making processes and in international co-operation in general;

8.5.4 Istanbul Summit Declaration (1999)

- 26. With a large number of elections ahead of us, we are committed to these being free and fair, and in accordance with OSCE principles and commitments. This is the only way in which there can be a stable basis for democratic development. We appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR’s election assessments and recommendations. We are committed to secure the full right of persons belonging to minorities to vote and to facilitate the right of refugees to participate in elections held in their countries of origin. We pledge to ensure fair competition among candidates as well as parties, including through their access to the media and respect for the right of assembly.
- 27. We commit ourselves to ensuring the freedom of the media as a basic condition for pluralistic and democratic societies. We are deeply concerned about the exploitation of media in areas of conflict to foment hatred and ethnic tension and the use of legal restrictions and harassment to deprive citizens of free media. We underline the need to secure freedom of expression, which is an essential element of political discourse in any democracy.

8.5.5 Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (2003)

VI. Enhancing participation in public and political life

- 87. Participating States must be proactive in ensuring that Roma and Sinti people, like any other inhabitants, have all the necessary documents, including birth certificates, identity documents and health insurance certificates. In resolving problems related to the lack of basic documents, participating States are strongly advised to work in partnership with Roma and Sinti civil organizations. [^]
- 89. Elected officials should establish close working relations with Roma and Sinti communities.
- 90. Establish mechanisms to ensure equal, direct and open communication between Roma and Sinti representatives and government authorities, including advisory and consultative bodies.
- 91. Facilitate interaction between political leaders at the local and national levels and diverse Roma groups.



92. Organize election-awareness campaigns so as to increase participation of the Roma electorate in elections.
93. Ensure that Roma voters can make free and informed choices in elections.
94. Take measures to guarantee the equal voting rights of women, including by enforcing prohibitions on so-called “family voting”.
95. Encourage Roma and Sinti people to engage more actively in public service, including, where necessary, through the introduction of special measures to promote their participation in the civil service.
96. Encourage the representation of Roma and Sinti people in elected and appointed office at all levels of government.
97. Empower and integrate Roma and Sinti individuals into decision-making processes of States and localities as elected representatives of their communities and as citizens of their respective countries.
98. Promote Roma women’s participation in public and political life; Roma women should be able to participate on an equal basis with men in consultative and other mechanisms designed to increase access to all areas of public and political life.



OTHER INITIATIVES/ GOOD PRACTICES

Other initiatives referred to in this Guide are policy papers that certain appointed commissions are working on, or draft conventions and declarations that have not yet been adopted and can therefore neither be considered as legally nor politically binding documents. In this Guide, reference is made for example to the Guidelines on Elections (2002) by the Venice Commission.

9.1 The European Commission on Democracy through Law (Venice Commission)

The Venice Commission is composed of independent experts who have achieved international fame through their experience in democratic institutions or by their contribution to the enhancement of law and political science. The members are mainly senior academics, particularly in the fields of constitutional or international law, supreme or constitutional court judges, national members of parliament and senior public officials. The Commission's primary task is to assist and advise individual countries in constitutional matters.

9.1.1 Code of Good Practice in Electoral Matters (2002) ¹

I. Principles of Europe's electoral heritage

The five principles underlying Europe's electoral heritage are universal, equal, free, secret and direct suffrage. Furthermore, elections must be held at regular intervals.

1. Universal suffrage

1.1 Rule and exceptions

Universal suffrage means in principle that all human beings have the right to vote and to stand for election. This right may, however, and indeed should, be subject to certain conditions:

- a) Age
 - i. The right to vote and to be elected must be subject to a minimum age.
 - ii. The right to vote must be acquired, at the latest, at the age of majority.
 - iii. The right to stand for election should preferably be acquired at the same age as the right to vote and in any case not later than the age of 25, except where there are specific qualifying ages for certain offices (e.g. member of the upper house of parliament, Head of State).
- b) Nationality
 - i. A nationality requirement may apply.
 - ii. However, it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence.
- c) Residence
 - i. A residence requirement may be imposed.
 - ii. Residence in this case means habitual residence.
 - iii. A length of residence requirement may be imposed on nationals solely for local or regional elections.
 - iv. The requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities.
 - v. The right to vote and to be elected may be accorded to citizens residing abroad.
- d) Deprivation of the right to vote and to be elected
 - i. Provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions:
 - ii. It must be provided for by law.
 - iii. The proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them.
 - iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence.

¹ See also "Code of Good Practice on Referendums", Committee of Ministers decision 27 November 2008

- v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.

1.2 Electoral registers

Fulfilment of the following criteria is essential if electoral registers are to be reliable:

- i. Electoral registers must be permanent.
- ii. There must be regular up-dates, at least once a year. Where voters are not registered automatically, registration must be possible over a relatively long period.
- iii. Electoral registers must be published.
- iv. There should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of the voter who was not registered; the registration should not take place at the polling station on election day.
- v. A similar procedure should allow the voter to have incorrect inscriptions amended.
- vi. A supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register.

1.3 Submission of candidatures

- i. The presentation of individual candidates or lists of candidates may be made conditional on the collection of a minimum number of signatures.
- ii. The law should not require collection of the signatures of more than 1% of voters in the constituency concerned.
- iii. Checking of signatures must be governed by clear rules, particularly concerning deadlines.
- iv. The checking process must in principle cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked.
- v. Validation of signatures must be completed by the start of the election campaign.
- vi. If a deposit is required, it must be refundable should the candidate or party exceed a certain score; the sum and the score requested should not be excessive.

2. Equal suffrage

This entails:

- 2.1. Equal voting rights: each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes.
- 2.2. Equal voting power: seats must be evenly distributed between the constituencies.
 - i. This must at least apply to elections to lower houses of parliament and regional and local elections.
 - ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident



nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.

- iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.
- iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).
- v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.
- vi. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.
- vii. When constituency boundaries are redefined - which they must be in a single-member system - it must be done:
 - impartially;
 - without detriment to national minorities;
 - taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities.

2.3. Equality of opportunity

- a. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:
 - i. the election campaign;
 - ii. coverage by the media, in particular by the publicly owned media;
 - iii. public funding of parties and campaigns.
- b. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.
- c. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.
- d. Political party, candidates and election campaign funding must be transparent.
- e. The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.

2.4. Representation of national minorities

- a. Parties representing national minorities must be permitted.
- b. Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.
- c. Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority.

2.5. Equal representation of the sexes

Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis.

3. Free suffrage

3.1. Freedom of voters to form an opinion

- a. State authorities must observe their duty of neutrality. In particular, this concerns:
 - i. media;
 - ii. billposting;
 - iii. the right to demonstrate;
 - iv. funding of parties and candidates.
- b. The public authorities have a number of positive obligations; inter alia, they must:
 - i. submit the candidatures received to the electorate;
 - ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting.
 - iii. The above information must also be available in the languages of the national minorities.
- c. Sanctions must be imposed in the case of breaches of duty of neutrality and voters' freedom to form an opinion.

3.2. Freedom of voters to express their wishes and action to combat electoral fraud

- i. Voting procedures must be simple.
- ii. Voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions:
- iii. Postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible.
- iv. Electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage; the system must be transparent.
- v. Very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited.

- vi. Mobile ballot boxes should only be allowed under strict conditions, avoiding all risks of fraud.
- vii. Two criteria should be at least used to assess the accuracy of the outcome of the ballot: the number of votes cast and the number of voting slips placed in the ballot box.
- viii. Voting slips must not be tampered with or marked in any way by polling station officials.
- ix. Unused voting slips must never leave the polling station.
- x. Polling stations must include representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting.
- xi. Military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station.
- xii. Counting should preferably take place in polling stations.
- xiii. Counting must be transparent. Observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records.
- xiv. Results must be transmitted to the higher level in an open manner.
- xv. The state must punish any kind of electoral fraud.

4. Secret suffrage

- a. For the voter, secrecy of voting is not only a right but also a duty, noncompliance with which must be punishable by disqualification of any ballot paper whose content is disclosed.
- b. Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited.
- c. The list of persons actually voting should not be published.
- d. The violation of secret suffrage should be sanctioned.

5. Direct suffrage

The following must be elected by direct suffrage:

- i. at least one chamber of the national parliament;
- ii. sub-national legislative bodies;
- iii. local councils.

6. Frequency of elections

Elections must be held at regular intervals; a legislative assembly's term of office must not exceed five years.

7. Electoral system

Within the respect of the above-mentioned principles, any electoral system may be chosen.

II. Conditions for implementing these principles

1. Respect for fundamental rights

- a. Democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties.
- b. Restrictions of these freedoms must have a basis in law, be in the public interest and comply with the principle of proportionality.

2. Regulatory levels and stability of electoral law

- a. Apart from technical and detail rules - which may be included in regulations of the executive, rules of electoral law must have at least the rank of a statute.
- b. The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.

3. Procedural guarantees

3.1. Electoral commissions

- a. An impartial body must be in charge of applying electoral law.
- b. Where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.
- c. The central electoral commission must be permanent in nature.
- d. It should include:
 - i. at least one member of the judiciary;
 - ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters.

It may include:

- iii. a representative of the Ministry of the Interior;
- iv. representatives of national minorities.
- e. Political parties must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality may be construed strictly or on a proportional basis (see point I.2.c.bb).
- f. The bodies appointing members of electoral commissions must not be free to dismiss them at will.
- g. Members of electoral commissions must receive standard training.
- h. It is desirable that electoral commissions take decisions by a qualified majority or by consensus.

3.2. Observation of elections

- a. Both national and international observers should be given the widest possible opportunity to participate in an election observation exercise.
- b. Observation must not be confined to election day itself, but must include the registration period of candidates and, if necessary, of electors, as well as the electoral campaign. It must make it possible to determine whether irregularities occurred before, during or after the elections. It must always be possible during vote counting.
- c. The places where observers are not entitled to be present should be clearly specified by law.
- d. Observation should cover the respect by the authorities of their duty of neutrality.

3.3. An effective system of appeal

- a. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.
- b. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.
- c. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.
- d. The appeal body must have authority in particular over such matters as the right to vote - including electoral registers - and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.
- e. The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station.

In the event of annulment, a new election must be called in the area concerned.

- f. All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.
- g. Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).
- h. The applicant's right to a hearing involving both parties must be protected.
- i. Where the appeal body is a higher electoral commission, it must be able ex officio to rectify or set aside decisions taken by lower electoral commissions.

[...]

9.1.2 Guidelines on the Financing of Political Parties (2001)

The Venice Commission [...]

Has adopted the following guidelines:

1. For the purpose of these guidelines, a political party is an association of persons one of the aims of which is to participate in the management of public affairs by the presentation of candidates to free and democratic elections.
2. Such political parties may seek out and receive funds by means of public or private financing.

A. Regular Financing

- a. Public Financing
3. Public financing must be aimed at each party represented in Parliament.
4. In order, however, to ensure the equality of opportunities for the different political forces, public financing could also be extended to political bodies representing a significant section of the electoral body and presenting candidates for election. The level of financing could be fixed by legislator on a periodic basis, according to objective criteria.

Tax exemptions can be granted for operations strictly connected to the parties' political activity.

5. The financing of political parties through public funds should be on condition that the accounts of political parties shall be subject to control by specific public organs (for example by a Court of Audit). States shall promote a policy of financial transparency of political parties that benefit from public financing.

b. Private Financing

6. Political parties may receive private financial donations. Donations from foreign States or enterprises must however be prohibited. This prohibition should not prevent financial donations from nationals living abroad.

Other limitations may also be envisaged. Such may consist notably of:

- a. a maximum level for each contribution;
- b. a prohibition of contributions from enterprises of an industrial, or commercial nature or from religious organisations;
- c. prior control of contributions by members of parties who wish to stand as candidates in elections by public organs specialised in electoral matters.

7. The transparency of private financing of each party should be guaranteed. In achieving this aim, each party should make public each year the annual accounts of the previous year, which should incorporate a list of all donations other than membership fees. All donations exceeding an amount fixed by the legislator must be recorded and made public.

B. Electoral Campaigns

8. In order to ensure equality of opportunities for the different political forces, electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of voters concerned.
9. The State should participate in campaign expenses through funding equal to a certain percentage of the above ceiling or proportional to the number of votes obtained. This contribution may however be refused to parties who do not reach a certain threshold of votes.

10. Private contributions can be made for campaign expenses, but the total amount of such contributions should not exceed the stated ceiling. Contributions from foreign States or enterprises must be prohibited. This prohibition should not prevent financial contributions from nationals living abroad. Other limitations may also be envisaged. Such may consist notably of a prohibition of contributions from enterprises of an industrial or commercial nature or religious organisations.
11. Electoral campaign accounts will be submitted to the organ charged with supervising election procedures, for example, an election committee, within a reasonable time limit after the elections.
12. The transparency of electoral expenses should be achieved through the publication of campaign accounts.

C. Control and sanctions

13. Any irregularity in the financing of a political party shall entail sanctions proportionate to the severity of the offence that may consist of the loss of all or part of public financing for the following year.
14. Any irregularity in the financing of an electoral campaign shall entail, for the party or candidate at fault, sanctions proportionate to the severity of the offence that may consist of the loss or the total or partial reimbursement of the public contribution, the payment of a fine or another financial sanction or the annulment of the election.
15. The above-mentioned rules including the imposition of sanctions shall be enforced by the election judge (constitutional or other) in accordance with the law.

9.1.3 Code of Good Practice in the field of Political Parties (2008)

III. Appointment of leaders and candidates for election

35. Whether directly or indirectly, party leaders must be democratically chosen at any given level (local, regional, national and European). This means that members must be able to vote for their selection. Bottom-up practices for the selection of nominees and candidates are a healthy expression of internal democracy which is very positively perceived by citizens.
36. Equally, whether directly or indirectly, candidates must be democratically chosen for elections at any level (local, regional, national and European).
37. According to international regulation and practice, parties must comply with the principle of non-discrimination on the basis of gender both for party office and election candidatures. Several national legislations and practices of several European parties have gone a step further to introduce quotas to either improve gender balance or, more directly, achieve equal representation of women and men in the elected body. Whilst these practices are country and party specific, the introduction of measures for gender equality is progressively becoming the dominant trend. On the contrary, continued and repeated situations of gender unequal representation cannot, by any means, be considered proof of good practice.

IV. Funding

38. Party funding must comply with the principles of accountability and transparency. The Venice Commission has extensively dealt with the issue of party financing in its Guidelines on financing of political parties.

1. Sources

39. A political party may ask its members to pay dues, the amount of which it is free to fix, although the latter must not be discriminatory in nature. Non-payment of dues may constitute grounds for expulsion from the party.
40. A party may receive donations within the limits of domestic law, which may prohibit donations from certain sources. By no means may parties interpret private donations as granting any possibility to influence and/or alter the party programme and/or party policies. Parties must adhere to laws that require disclosing the origin of private donations to parties.
41. Where legislation foresees public funding, political parties must have access to it subject to possible minimum requirements. The latter must be reasonable and non-discriminatory. Apart from different forms of funding provided for by law, any party must refrain from receiving assistance, financial or in kind, from any public authorities, particularly those directed by its members.

2. Restrictions

42. No party may receive clandestine or fraudulently obtained financial aid.
43. For the purposes of financing electoral campaigns, parties must make sure that their candidates comply with current regulations, particularly where there is a ceiling on electoral expenditure.

3. Supervisory mechanisms

44. Every political party should include in its statutes mechanisms for audits of its accounts at the national level and for supervising accounting on any regional and local levels. It must also be subject to the State authorities' audit, especially in the field of financing.

V. Political functions

1. Programme

45. One of the most important functions of political parties is the elaboration of a programme which in best practice results from the internal debate of party members and its approval according to established procedures. Programmes lead party action when the party is in power.
46. Party programmes are not legally binding contracts, their enforcement cannot be legally demanded and all European states rely on the principle of representative democracy, which excludes the imperative mandate.

Nevertheless, the programme provides guidelines for citizens to understand and identify the party policies on given issues. In this way, programmes do not only serve to enlighten citizens but they also reflect a sort of "soft contract" or moral commitment between parties and voters. Hence, the publication of the programme not only satisfies the principle of transparency but it also serves to further promote accountability. Moreover, its permanent availability, through the electoral mandate serves to check the adherence to the electoral promises.

47. A measure of good governance is if a party alters its programme after coming to power, it should explain why changes in the original programme have been introduced.

2. Training

48. Parties should provide civic and political training for their members. To that end, the party may set up a training institute, which may receive specific aid in addition to that earmarked for the party itself.

3. Elections

49. The Council of Europe Member States have different approaches to the regulation of political parties' activities and their participation in political life, notably in elections. Specific issues related to participation of political parties were treated in the report of the Venice Commission on the participation of political parties in elections. In fact, political parties precisely aim to participate in the political process, mainly presenting candidates to elections. Of course, parties are important throughout the whole electoral process. But once the voters come directly into the scene, the fact of political representation loses part of its relevance. Once the elections have been held, and even during the election day, all the constitutional or legal rules (and, most particularly, those relating to the system of appeals and complaints) must provide for an equal treatment of all candidates and citizens.

50. It is widely acknowledged that the electoral system itself exercises an influence on the party's internal structure. For example, a candidate-based first past the post electoral systems hardly requires any party involvement in other issues than candidate's political backing and contribution to the campaign financing. On the contrary, in proportional systems with closed party lists, a party has very important prerogatives in defining, among other issues, the place of each given candidate on the list.

4. Performance in office and opposition

51. The general principles inspiring this Code apply also to performance in office and to situations where parties are in opposition.
52. Party members should clearly distinguish between their allegiance to the party and their office duties. Implementation of the party programme is inherent to the notion of democratic election, but this must always be framed within the existing legislation concerning the exercise of public offices. Normally, national regulations prohibit public officers from abusing or seeking advantage of their ruling position to create discriminatory conditions for other political forces. But even when these obligations are not explicitly spelt out, their respect is consistent with the principles of this Code and their breach may be considered illegal.
53. Normally, the legal requirements of the function of opposition is lower than that for government or even non-existent. Opposition function implies scrupulous control, scrutiny and checks on authorities and officials behaviour and policies. However, good governance advises that parties in opposition (as well as ruling parties) refrain from practices that may erode the democratic debate and which, could eventually undermine the trust of citizens in politicians and parties.
54. Political corruption is generally considered to be a type of crime by all European legislations. Parties must therefore aim to fight corruption not only because of its criminal dimension, but also because widespread political corruption erodes the trust of citizens in parties in general. This threatens the whole democratic process. Hence, mechanisms for the prevention of political corruption, such as ethical codes for party members in public offices, are welcome. Additionally, if

the membership of a person who has been condemned on corruption charges is maintained, this will lead citizens to believe that the whole party is corrupt (and they may even extend this view to apply to all parties) and contributes to questioning the fairness of politics in general. Therefore, the exclusion from office of candidatures and from party membership of persons convicted for corruption is fully coherent with basic democratic principles.

55. Representative mandate makes a representative independent from his or her party once it has been elected. This allows him or her to change party once in office. In some specific cases, there may be reasons that justify this (for instance, disappearance of political parties). In other cases, however, these practices may respond mainly to personal private interests or are a result of corruption. These erode the party system and undermine the trust of citizens in the electoral and political game. Even when the legal rules protect representatives, parties should be vigilant that these practices are not used in a fraudulent and counter-democratic way. Practices such as inter-party agreements to reject the inclusion of representatives elected on other party's lists have to be welcomed.
56. Parties should inform the civil society and voters about their action and adopt any possible measures and practices that would increase transparency, offer grounds for constructive criticism and provide a yardstick for measuring achievements.

9.1.4 Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes (2016)

II. Guidelines

A. Principles

Respect for the principles outlined below is essential for preventing and responding to the misuse of administrative resources during electoral processes. Formal, substantive and procedural principles are cumulative prerequisites intended to ensure the foundations of a legal framework to regulate the use of administrative resources.

1. Rule of law

1. 1. The legal framework should provide for a general prohibition of the misuse of administrative resources during electoral processes. The prohibition has to be established in a clear and predictable manner. Sanctions for misuse of administrative resources have to be provided for and implemented. Such sanctions need to be enforceable, proportionate and dissuasive.
1. 2. Stability of the law is a crucial element for the credibility of electoral processes. It is therefore important that stability of electoral law be ensured in order to protect it against political manipulation. This applies not least to the rules on the use of administrative resources.
1. 3. It is important that rules – including laws, agreements and commitments that regulate or relate to the use of administrative resources during electoral processes, as well as judicial decisions interpreting them – are clear and accessible to all stakeholders, including public authorities, civil servants, voters, candidates, political parties, and that sanctions and consequences for not abiding with these rules are foreseeable.

1. 4. The possibility to bring complaints about the misuse of administrative resources to an independent and impartial tribunal – or equivalent judicial body – or to apply to an authorised law-enforcement body should be central in ensuring the appropriate use and to prevent the misuse of administrative resources during electoral processes.

2. Political freedoms

Freedoms to form an opinion, together with freedoms of association and expression, form the bedrock of any democratic system, including during electoral processes.

Opinions and information should freely circulate during pre-electoral periods, especially during electoral campaigns. In general, the right to free elections and freedom of expression reinforce each other. Nevertheless, possible tensions between such rights and freedoms have been recognised by the European Court of Human Rights. In this respect, it may be necessary to place certain restrictions on freedom of expression in order to secure the ‘free expression of the opinion of the people in the choice of the legislature’.

3. Impartiality

The legal framework should provide explicit requirements for civil servants to act impartially during the whole electoral process while performing their official duties. Such regulations should establish the impartiality and professionalism of the civil service.

4. Neutrality

4. 1. The legal framework should ensure the neutrality of the civil service by prohibiting civil servants from campaign activities in their official capacity, either by being themselves candidates or when supporting candidates. This applies as well to public and semi-public entities. It is important that a clear separation between the state and political parties is maintained; in particular political parties should not be merged with the State.
4. 2. In order to ensure neutrality of the civil service during electoral processes and consequently to avoid any risk of conflict of interest, the legal framework should provide for a clear separation between the exercise of politically sensitive public positions, in particular senior management positions, and candidacy. In this respect, the legal framework should provide for a range of adequate and proportionate rules. Such rules may include a clear instruction on how and when campaigning in a personal capacity may be conducted, suspension from office or resignation of certain public authorities running for elections.
4. 3. The non-involvement of judges, prosecutors, police, military and auditors of political competitors in their official capacity in electoral campaigning is of essential importance. Concrete measures should ensure such official neutrality throughout the entire electoral processes.
4. 4. The legal framework should ensure the objective, impartial, and balanced coverage of election-related events by publicly-owned media. Law and practice should both ensure that publicly-owned media are not involved in “hidden” campaigning for or against particular political competitors.

5. Transparency

5. 1. The legal framework should provide for transparency and accountability of the use of public money and public goods by political parties and candidates during electoral processes.

5. 2. A clear distinction between the operation of government, activities of the civil service and the conduct of the electoral campaign should be made.
5. 3. The legal framework should provide for the availability of trustworthy, diverse and objective information to voters and political competitors on the use of administrative resources during electoral processes operated by public authorities as well as entities owned or controlled by public authorities.

6. Equality of opportunity

6. 1. The legal framework should provide for an equal right to stand for elections and for equality of opportunity to all candidates, including civil servants, and political parties during electoral processes.
6. 2. The legal framework should provide for equitable access for all political parties and candidates to administrative resources during electoral processes, to public funding of political parties and campaigns, and to publicly-owned media. This also applies to public buildings and facilities used for campaigning.

B. Prevention of the misuse of administrative resources

There is a need for a thorough and effective legal framework to prevent the misuse of administrative resources during electoral processes. This does not exclude recommending additional measures, which are developed hereafter.

1. Legal framework

1. 1. The legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favour or disfavour any political party or candidate. More precisely, reference is made to events which imply the use of specific funds (state or local budget) as well as institutional resources (staff, vehicles, infrastructure, phones, computers, etc.). This does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of administrative resources.
1. 2. If public buildings and facilities are permitted for campaign purposes, the legal framework should provide for equal opportunity and a clear procedure for equitably allocating such resources to parties and candidates.
1. 3. The ordinary work of government must continue during an election period. However, in order to prevent the misuse of administrative resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns. This does not include announcements that are necessary due to unforeseen circumstances, such as economic and/or political developments in the country or in the region, e.g. following a natural disaster or emergencies of any kind that demand immediate and urgent action that cannot be delayed.
1. 4. The legal framework should stipulate that there should be no non-essential appointments to public bodies during the electoral campaign.
1. 5. There should be a regulation put in place by a competent authority – electoral management body, branch of the civil service or special committee – iden-

tifying what activities are considered to be campaign activities and therefore forbidden to civil servants when acting in their official capacity. The competent authority should have an advisory role in relation to queries during the election period as to whether something falls under the prohibition on campaign activities by the civil service.

1. 6. The legal framework should provide for a clear distinction between 'campaign activity' and 'information activity' of public media in order to ensure equity among political competitors in the media as well as a conscious and free choice for voters.
1. 7. In addition to national legislation, charters of ethics or codes of conduct could be appropriate instruments to prevent the misuse of administrative resources during electoral processes.

2. Audit

2. 1. An institution functionally independent from other authorities should be responsible for auditing political parties and candidates in their use of administrative resources during electoral processes. In this respect, such a body, regardless of its institutional form, should act impartially and effectively.
2. 2. That institution should be sufficiently empowered and resourced to supervise all public expenditure and use of administrative resources. Moreover, this authority should be required to report misuse during electoral processes in a timely, clear and comprehensive manner.
2. 3. Political parties and candidates should be required to report on the origin and purpose of all their campaign finance transactions in order to facilitate transparency and the detection of potential misuse of administrative resources. Any permissible use of administrative resources for parties or candidates should be treated as a campaign finance contribution and be reported accordingly.
2. 4. Communication between audit authorities and other bodies should be regulated in a way that facilitates efficient flows of information and effective implementation of transparent decisions.

3. Political will

3. 1. Effective implementation of legislation requires that any restrictions on the use of administrative resources be implemented in good faith.
3. 2. Where necessary, public authorities could make clear statements and issue written instructions that no pressure on civil servants will be tolerated and that no civil servant or citizen should fear for their employment or social services as a result of supporting or not supporting any political party or candidate. Civil servants should accordingly benefit from protection against any intimidation or pressure.
3. 3. Civil servants as well as their relatives should be protected against (hidden) sanctions, pressure or intimidation when they disclose an alleged fraud or misuse of administrative resources. If the law does not protect whistleblowers in general, there should be specific rules in the context of electoral processes.
3. 4. Genuine political will of the highest State, regional, and local authorities is a key factor to effectively preventing and sanctioning the misuse of administrative resources. The development of a pluralistic political culture – characterised by trans-

parency towards the electorate –, a mutual understanding and a sense of responsibility of both the incumbent and opposition political forces, as well as a respect of recognised values of a democratic society are therefore of essential importance.

3. 5. Civil society, including domestic election observers, has a crucial role in reporting on potential misuse of administrative resources and proposing recommendations to strengthen legislation and practice.

4. Information and awareness-raising

4. 1. Authorities, including electoral management bodies, should create wide-reaching information activities, in which citizens and civil servants, candidates and political party leaders, are aware of their rights and responsibilities during electoral processes. Clear criteria should be established to distinguish electoral campaign activities from information activities. Such information should be distributed consistently.
4. 2. Internal instructions and training for civil service need to be developed to promote legally based non-partisan conduct within the executive branch. Guidelines for civil servants, public commitments, codes of conduct and other instruments, should be disseminated.
4. 3. Civil society can raise awareness among citizens and political stakeholders on the importance of a fair use of administrative resources during electoral processes.

C. Remedies and sanctions

1. Complaints and appeals

1. 1. The legal framework should provide for an effective system of appeals before a competent, independent and impartial court, or an equivalent judicial body: an independent judiciary is a sine qua non condition for sanctioning the misuse of administrative resources.
- 1.2. The first instance appeal body in electoral matters should be either an electoral management body or a court or an equivalent judicial body. In any case, final appeal to a court must be possible. This guidance should apply to alleged cases of misuse of administrative resources.
1. 3. The legal framework should ensure the independence of electoral management bodies, other administrative bodies, and courts in their decisions when adjudicating disputes regarding the misuse of administrative resources. This should be both reflected in their training and technical capabilities. For this purpose, electoral management bodies should get appropriate staffing and other work conditions.
1. 4. While tackling cases related to the misuse of administrative resources, including via adjudication of election-related disputes, electoral management bodies, other administrative bodies, and courts must apply laws in a uniform and impartial manner irrespective of the parties to the particular case.
1. 5. Authorised law-enforcement bodies – police, prosecutors – should investigate cases on the misuse of administrative resources effectively and timely.
1. 6. The legal framework should ensure that the electoral management bodies and courts – and other judicial bodies – hold hearings and that their decisions are made public, written and reasoned. The legal framework should also ensure a timely adjudication and appeals process.

2. Sanctions

- 2.1. The legal framework should define the misuse of administrative resources during electoral processes as an electoral offence.
- 2.2. The legal framework should establish clear, predictable and proportionate sanctions for infringements of the prohibition of the misuse of administrative resources, from administrative fines to the ultimate consequence of cancelling election results where irregularities may have affected the outcome. Civil servants who misuse administrative resources during electoral processes should be subject to sanction, including criminal and disciplinary sanctions, up to the dismissal from office.
- 2.3. Political parties and candidates who deliberately benefit from a misuse of administrative resources should be subject to a range of sanctions proportionate to the offence committed. This may include formal warnings, fixed monetary penalties, reduction in public financing, or referral for criminal prosecution.
- 2.4. The legal framework should foresee that in case of violations of the rules on public finances which imply a misuse of administrative resources or when illicit financial advantages are given to political parties or candidates, such financing has to be returned to the state or municipal budget, regardless of other applicable sanctions.
- 2.5. The implementation of sanctions against the misuse of administrative resources is effective only if the investigation, auditing, prosecution and justice systems are independent from the political power.

9.2 Lund Recommendations ²

The Lund Recommendations on the Effective Participation of National Minorities in Public Life attempt to clarify in relatively straight-forward language and build upon the content of minority rights and other standards generally applicable in the situations in which the OSCE High Commissioner on National Minorities (HCNM) is involved. The standards have been interpreted specifically to ensure the coherence of their application in open and democratic States. The Recommendations are divided into four sub-headings, which group the 24 recommendations into general principles, participation in decision-making, self-governance, and ways of guaranteeing such effective participation in public life. The basic conceptual division within the Lund Recommendations follows two prongs: participation in governance of the State as a whole, and self-governance over certain local or internal affairs.

² The Lund Recommendations on the Effective Participation of National Minorities in Public Life were named after the Swedish city in which the experts last met and completed the recommendations. Among the experts were jurists specialising in relevant international law, political scientists specialising in constitutional orders and election systems, and sociologists specialising in minority issues. For further details, see <http://www.osce.org/hcnm>

9.2.1 Recommendations on Effective Participation of National Minorities in Public Life (1999)

B. Elections

- 7) Experience in Europe and elsewhere demonstrates the importance of the electoral process for facilitating the participation of minorities in the political sphere. States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination.
- 8) The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes the freedom to establish political parties based on communal identities as well as those not identified exclusively with the interests of a specific community.
- 9) The electoral system should facilitate minority representation and influence.

Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation.

Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities.

Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote intercommunal cooperation.

Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.
- 10) The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.

9.3 Brookings-Bern Project on Internal Displacement ³

The Brookings Institution is a nonprofit public policy organization based in Washington, DC, USA. The Brookings Project since its inception has organised and supported the process by which the Guiding Principles on Internal Displacement were developed. The Representative of the Secretary General presented the 'Guiding Principles on Internal Displacement' to the UN Commission on Human Rights in 1998. In September 2005, the heads of state and governments assembled at the World Summit in New York recognised the Guiding Principles as "an important international framework for the protection of internally displaced persons." (G.A. Res. 60/L.1). The Guiding Principles are based on international humanitarian and human rights law

³ For further information see <http://www.brookings.edu>

and analogous refugee law. They are intended to serve as an international standard to guide governments, international organisations and all other relevant actors in providing assistance and protection to IDPs.

9.3.1 The Guiding Principles on Internal Displacement (1998)

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

Principle 22

1. 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; and
 - (e) The right to communicate in a language they understand.

9.4 International Election Observation

9.4.1 Declaration of Principles for International Election Observation ⁴ (2005)

Genuine democratic elections are an expression of sovereignty, which belongs to the people of a country, the free expression of whose will provides the basis for the authority and legitimacy of government. The rights of citizens to vote and to be elected at periodic, genuine democratic elections are internationally recognized human rights. Genuine democratic elections serve to resolve peacefully the competition for political power within a country and thus are central to the maintenance of peace and stability. Where governments are legitimized through genuine democratic elections, the scope for non-democratic challenges to power is reduced.

⁴ The 'Declaration of Principles for International Election Observation' and the 'Code of Conduct for International Election Observers' were developed through a multi-year process involving more than 20 intergovernmental and international nongovernmental organizations concerned with election observation around the world. The process began informally in 2001 at the initiative of the National Democratic Institute and the United Nations Electoral Assistance Division (UNEAD) and included an initial meeting at the UN in New York and a meeting in Washington co-hosted by the OAS and NDI. The declaration was commemorated at the UN on Oct. 27, 2005, and is now endorsed by 52 intergovernmental and international organisations, which are engaged in the process of improving international election observation.

Genuine democratic elections are a requisite condition for democratic governance, because they are the vehicle through which the people of a country freely express their will, on a basis established by law, as to who shall have the legitimacy to govern in their name and in their interests. Achieving genuine democratic elections is a part of establishing broader processes and institutions of democratic governance. Therefore, while all election processes should reflect universal principles for genuine democratic elections, no election can be separated from the political, cultural and historical context in which it takes place.

Genuine democratic elections cannot be achieved unless a wide range of other human rights and fundamental freedoms can be exercised on an ongoing basis without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including among others disabilities, and without arbitrary and unreasonable restrictions. They, like other human rights and democracy more broadly, cannot be achieved without the protections of the rule of law. These precepts are recognized by human rights and other international instruments and by the documents of numerous intergovernmental organizations. Achieving genuine democratic elections therefore has become a matter of concern for international organizations, just as it is the concern of national institutions, political competitors, citizens and their civic organizations.

International election observation expresses the interest of the international community in the achievement of democratic elections, as part of democratic development, including respect for human rights and the rule of law. International election observation, which focuses on civil and political rights, is part of international human rights monitoring and must be conducted on the basis of the highest standards for impartiality concerning national political competitors and must be free from any bilateral or multilateral considerations that could conflict with impartiality. It assesses election processes in accordance with international principles for genuine democratic elections and domestic law, while recognizing that it is the people of a country who ultimately determine credibility and legitimacy of an election process.

International election observation has the potential to enhance the integrity of election processes, by deterring and exposing irregularities and fraud and by providing recommendations for improving electoral processes. It can promote public confidence, as warranted, promote electoral participation and mitigate the potential for election-related conflict. It also serves to enhance international understanding through the sharing of experiences and information about democratic development.

International election observation has become widely accepted around the world and plays an important role in providing accurate and impartial assessments about the nature of electoral processes. Accurate and impartial international election observation requires credible methodologies and cooperation with national authorities, the national political competitors (political parties, candidates and supporters of positions on referenda), domestic election monitoring organizations and other credible international election observer organizations, among others.

The intergovernmental and international nongovernmental organizations endorsing this Declaration and the accompanying Code of Conduct for International Election Observers therefore have joined to declare:

1. Genuine democratic elections are an expression of sovereignty, which belongs to the people of a country, the free expression of whose will provides the basis for the authority and legitimacy of government. The rights of citizens to vote and



to be elected at periodic, genuine democratic elections are internationally recognized human rights. Genuine democratic elections are central for maintaining peace and stability, and they provide the mandate for democratic governance.

- 2 In accordance with the Universal Declaration of Human Rights, the International Covenant for Civil and Political Rights and other international instruments, everyone has the right and must be provided with the opportunity to participate in the government and public affairs of his or her country, without any discrimination prohibited by international human rights principles and without any unreasonable restrictions. This right can be exercised directly, by participating in referenda, standing for elected office and by other means, or can be exercised through freely chosen representatives.
- 3 The will of the people of a country is the basis for the authority of government, and that will must be determined through genuine periodic elections, which guarantee the right and opportunity to vote freely and to be elected fairly through universal and equal suffrage by secret balloting or equivalent free voting procedures, the results of which are accurately counted, announced and respected. A significant number of rights and freedoms, processes, laws and institutions are therefore involved in achieving genuine democratic elections.
- 4 International election observation is: 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. International election observation should, when possible, offer recommendations for improving the integrity and effectiveness of electoral and related processes, while not interfering in and thus hindering such processes. International election observation missions are: organized efforts of intergovernmental and international nongovernmental organizations and associations to conduct international election observation.
- 5 International election observation evaluates pre-election, election-day and post-election periods through comprehensive, long-term observation, employing a variety of techniques. As part of these efforts, specialized observation missions may examine limited pre-election or post-election issues and specific processes (such as, delimitation of election districts, voter registration, use of electronic technologies and functioning of electoral complaint mechanisms). Stand-alone, specialized observation missions may also be employed, as long as such missions make clear public statements that their activities and conclusions are limited in scope and that they draw no conclusions about the overall election process based on such limited activities. All observer missions must make concerted efforts to place the election day into its context and not to over-emphasize the importance of election day observations. International election observation examines conditions relating to the right to vote and to be elected, including, among other things, discrimination or other obstacles that hinder participation in electoral processes based on political or other opinion, gender, race, colour, ethnicity, language, religion, national or social origin, property, birth or other status, such as physical disabilities. The findings of international election observation missions provide a factual common point of reference for all persons interested in the elections,

including the political competitors. This can be particularly valuable in the context of disputed elections, where impartial and accurate findings can help to mitigate the potential for conflicts.

- 6 International election observation is conducted for the benefit of the people of the country holding the elections and for the benefit of the international community. It is process oriented, not concerned with any particular electoral result, and is concerned with results only to the degree that they are reported honestly and accurately in a transparent and timely manner. No one should be allowed to be a member of an international election observer mission unless that person is free from any political, economic or other conflicts of interest that would interfere with conducting observations accurately and impartially and/or drawing conclusions about the character of the election process accurately and impartially. These criteria must be met effectively over extended periods by long-term observers, as well as during the more limited periods of election day observation, each of which periods present specific challenges for independent and impartial analysis. International election observation missions should not accept funding or infrastructural support from the government whose elections are being observed, as it may raise a significant conflict of interest and undermine confidence in the integrity of the mission's findings. International election observation delegations should be prepared to disclose the sources of their funding upon appropriate and reasonable requests.
- 7 International election observation missions are expected to issue timely, accurate and impartial statements to the public (including providing copies to electoral authorities and other appropriate national entities), presenting their findings, conclusions and any appropriate recommendations they determine could help improve election related processes. Missions should announce publicly their presence in a country, including the mission's mandate, composition and duration, make periodic reports as warranted and issue a preliminary post-election statement of findings and a final report upon the conclusion of the election process. International election observation missions may also conduct private meetings with those concerned with organizing genuine democratic elections in a country to discuss the mission's findings, conclusions and recommendations. International election observation missions may also report to their respective intergovernmental or international nongovernmental organizations.
- 8 The organizations that endorse this Declaration and the accompanying Code of Conduct for International Election Observers pledge to cooperate with each other in conducting international election observation missions. International election observation can be conducted, for example, by: individual international election observer missions; ad hoc joint international election observation missions; or coordinated international election observation missions. In all circumstances, the endorsing organizations pledge to work together to maximize the contribution of their international election observation missions.
- 9 International election observation must be conducted with respect for the sovereignty of the country holding elections and with respect for the human rights of the people of the country. International election observation missions must respect the laws of the host country, as well as national authorities, including electoral bodies, and act in a manner that is consistent with respecting and promoting human rights and fundamental freedoms.

- 10 International election observation missions must actively seek cooperation with host country electoral authorities and must not obstruct the election process.
- 11 A decision by any organization to organize an international election observation mission or to explore the possibility of organizing an observation mission does not imply that the organization necessarily deems the election process in the country holding the elections to be credible. An organization should not send an international election observation mission to a country under conditions that make it likely that its presence will be interpreted as giving legitimacy to a clearly undemocratic electoral process, and international election observation missions in any such circumstance should make public statements to ensure that their presence does not imply such legitimacy.
- 12 In order for an international election observation mission to effectively and credibly conduct its work basic conditions must be met. An international election observation mission therefore should not be organized unless the country holding the election takes the following actions:
 - a Issues an invitation or otherwise indicates its willingness to accept international election observation missions in accordance with each organization's requirements sufficiently in advance of elections to allow analysis of all of the processes that are important to organizing genuine democratic elections;
 - b Guarantees unimpeded access of the international election observer mission to all stages of the election process and all election technologies, including electronic technologies and the certification processes for electronic voting and other technologies, without requiring election observation missions to enter into confidentiality or other nondisclosure agreements concerning technologies or election processes, and recognizes that international election observation missions may not certify technologies as acceptable;
 - c Guarantees unimpeded access to all persons concerned with election processes, including:
 - i electoral officials at all levels, upon reasonable requests,
 - ii members of legislative bodies and government and security officials whose functions are relevant to organizing genuine democratic elections,
 - iii all of the political parties, organizations and persons that have sought to compete in the elections (including those that qualified, those that were disqualified and those that withdrew from participating) and those that abstained from participating,
 - iv news media personnel, and
 - v all organizations and persons that are interested in achieving genuine democratic elections in the country;
 - d Guarantees freedom of movement around the country for all members of the international election observer mission;
 - e Guarantees the international election observer mission's freedom to issue without interference public statements and reports concerning its findings and recommendations about election related processes and developments;
 - f Guarantees that no governmental, security or electoral authority will interfere in the selection of individual observers or other members of the international election observation mission or attempt to limit its numbers;

- g Guarantees full, country-wide accreditation (that is, the issuing of any identification or document required to conduct election observation) for all persons selected to be observers or other participants by the international election observation mission as long as the mission complies with clearly defined, reasonable and non-discriminatory requirements for accreditation;
- h Guarantees that no governmental, security or electoral authority will interfere in the activities of the international election observation mission; and
- i Guarantees that no governmental authority will pressure, threaten action against or take any reprisal against any national or foreign citizen who works for, assists or provides information to the international election observation mission in accordance with international principles for election observation.

As a prerequisite to organizing an international election observation mission, intergovernmental and international nongovernmental organizations may require that such guarantees are set forth in a memorandum of understanding or similar document agreed upon by governmental and/or electoral authorities. Election observation is a civilian activity, and its utility is questionable in circumstances that present severe security risks, limit safe deployments of observers or otherwise would negate employing credible election observation methodologies.

- 13 International election observation missions should seek and may require acceptance of their presence by all major political competitors.
- 14 Political contestants (parties, candidates and supporters of positions on referenda) have vested interests in the electoral process through their rights to be elected and to participate directly in government. They therefore should be allowed to monitor all processes related to elections and observe procedures, including among other things the functioning of electronic and other electoral technologies inside polling stations, counting centers and other electoral facilities, as well as the transport of ballots and other sensitive materials.
- 15 International election observation missions should:
 - a establish communications with all political competitors in the election process, including representatives of political parties and candidates who may have information concerning the integrity of the election process;
 - b welcome information provided by them concerning the nature of the process;
 - c independently and impartially evaluate such information; and
 - d should evaluate as an important aspect of international election observation whether the political contestants are, on a nondiscriminatory basis, afforded access to verify the integrity of all elements and stages of the election process. International election observation missions should in their recommendations, which may be issued in writing or otherwise be presented at various stages of the election process, advocate for removing any undue restrictions or interference against activities by the political competitors to safeguard the integrity of electoral processes.
- 16 Citizens have an internationally recognized right to associate and a right to participate in governmental and public affairs in their country. These rights may be exercised through nongovernmental organizations monitoring all processes related to elections and observing procedures, including among other things the functioning of electronic and other electoral technologies inside polling stations,



counting centers and other electoral facilities, as well as the transport of ballots and other sensitive materials. International election observation missions should evaluate and report on whether domestic nonpartisan election monitoring and observation organizations are able, on a nondiscriminatory basis, to conduct their activities without undue restrictions or interference. International election observation missions should advocate for the right of citizens to conduct domestic nonpartisan election observation without any undue restrictions or interference and should in their recommendations address removing any such undue restrictions or interference.

- 17 International election observation missions should identify, establish regular communications with and cooperate as appropriate with credible domestic nonpartisan election monitoring organizations. International election observation missions should welcome information provided by such organizations concerning the nature of the election process. Upon independent evaluation of information provided by such organizations, their findings can provide an important complement to the findings of international election observation missions, although international election observation missions must remain independent. International election observation missions therefore should make every reasonable effort to consult with such organizations before issuing any statements.
- 18 The intergovernmental and international nongovernmental organizations endorsing this Declaration recognize that substantial progress has been made in establishing standards, principles and commitments concerning genuine democratic elections and commit themselves to use a statement of such principles in making observations, judgments and conclusions about the character of election processes and pledge to be transparent about the principles and observation methodologies they employ.
- 19 The intergovernmental and nongovernmental organizations endorsing this Declaration recognize that there are a variety of credible methodologies for observing election processes and commit to sharing approaches and harmonizing methodologies as appropriate. They also recognize that international election observation missions must be of sufficient size to determine independently and impartially the character of election processes in a country and must be of sufficient duration to determine the character of all of the critical elements of the election process in the pre-election, election-day and post-election periods – unless an observation activity is focused on and therefore only comments on one or a limited number of elements of the election process. They further recognize that it is necessary not to isolate or over-emphasize election day observations, and that such observations must be placed into the context of the overall electoral process.
- 20 The intergovernmental and international nongovernmental organizations endorsing this Declaration recognize that international election observation missions should include persons of sufficiently diverse political and professional skills, standing and proven integrity to observe and judge processes in light of: expertise in electoral processes and established electoral principles; international human rights; comparative election law and administration practices (including use of computer and other election technology); comparative political processes and country specific considerations. The endorsing organizations also recognize the importance of balanced gender diversity in the composition of participants

- and leadership of international election observation missions, as well as diversity of citizenship in such missions.
- 21 The intergovernmental and international nongovernmental organizations endorsing this Declaration commit to:
- a familiarize all participants in their international election observation missions concerning the principles of accuracy of information and political impartiality in making judgments and conclusions;
 - b provide a terms of reference or similar document, explaining the purposes of the mission;
 - c provide information concerning relevant national laws and regulations, the general political environment and other matters, including those that relate to the security and well being of observers;
 - d instruct all participants in the election observation mission concerning the methodologies to be employed; and
 - e require all participants in the election observation mission to read and pledge to abide by the Code of Conduct for International Election Observers, which accompanies this Declaration and which may be modified without changing its substance slightly to fit requirements of the organization, or pledge to abide by a pre-existing code of conduct of the organization that is substantially the same as the accompanying Code of Conduct.
- 22 The intergovernmental and international nongovernmental organizations endorsing this Declaration commit to use every effort to comply with the terms of the Declaration and the accompanying Code of Conduct for International Election Observers. Any time that an endorsing organization deems it necessary to depart from any of terms of the Declaration or the Accompanying Code of Conduct in order to conduct election observation in keeping with the spirit of the Declaration, the organization will explain in its public statements and will be prepared to answer appropriate questions from other endorsing organizations concerning why it was necessary to do so.
- 23 The endorsing organizations recognize that governments send observer delegations to elections in other countries and that others also observe elections. The endorsing organizations welcome any such observers agreeing on an ad hoc basis to this declaration and abiding by the accompanying Code of Conduct for International Election Observers.
- 24 This Declaration and the accompanying Code of Conduct for International Election Observers are intended to be technical documents that do not require action by the political bodies of endorsing organizations (such as assemblies, councils or boards of directors), though such actions are welcome. This Declaration and the accompanying Code of Conduct for International Election Observers remain open for endorsement by other intergovernmental and international nongovernmental organizations. Endorsements should be recorded with the United Nations Electoral Assistance Division.



10 INTERNATIONAL STANDARDS BY AREA OF ASSESSMENT

This chapter details key commitments under universal instruments, primarily the ICCPR and the UDHR, by area of assessment in the electoral process. The following framework is used:

1. Political context
2. Legal Framework
 - 2.1 Election-related legislation
 - 2.2 Electoral system
3. Election Administration
 - 3.1 The work of the Election Management Body (EMB)
 - 3.2 Voter education and information
4. Voter registration
5. Political party and candidate registration
6. Election campaign
7. Media
8. Complaints and appeals
9. Human rights
10. Civil society
11. Voting and counting
12. Tabulation and publication of result and the post-election environment

International Standards by Area of Assessment

Within each assessment area the following key types of text are given:

Treaty standard	Treaty interpretation
Legally binding for a state that has ratified the treaty (e.g. ICCPR)	General comments/recommendations by human rights treaty monitoring bodies (e.g. General Comment 25 gives authoritative interpretation of ICCPR Article 25).
Non-treaty standard UDHR (strong moral commitment on all UN Member States) UN General Assembly resolutions (persuasive on all UN Member States, particularly those that supported the resolution) Political commitments (for States that sign up)	

1. Political context

Key universal treaty references	Treaty interpretation
ICCPR Obligation	ICCPR Interpretation (Human Rights Committee General Comment 25)
Free expression of the will of the electors (Article 25) Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 of the ICCPR that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. (GC 25 paragraph 7)	
Periodic elections (Article 25)	Genuine periodic elections are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. (GC 25 paragraph 9) 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. (GC 25 paragraph 9)
Key universal non-treaty references UDHR The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections. (Article 21.3)	

2. Legal Framework

2.1 Election-related legislation

Key universal treaty references	Treaty interpretation
<p>ICCPR Obligation</p> <p>Each State Party [to the ICCPR] undertakes to adopt such laws or other measures to give effect to the rights recognised in the Covenant. (ICCPR, article 2.2)</p> <p>Every citizen shall have the right [...] (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. (Article 25)</p>	<p>ICCPR Interpretation (General Comment 25)</p> <p>Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria and may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. (GC 25 paragraph 4)</p> <p>Participation through [elected] representatives is exercised through voting processes, which must be established and guaranteed by laws that are in accordance with fundamental freedoms and political rights. (GC 25 paragraph 8)</p>
<p>Freedoms of expression, assembly and association</p> <p>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. (Article 19.2)</p> <p>The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of the right to peaceful assembly 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. (Article 21)</p> <p>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. (Article 22.1)</p>	<p>Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. (GC 25 paragraph 12)</p>
<p>Key universal non-treaty references</p> <p>UDHR</p> <p>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. (Article 21.3)</p>	

2.2 Electoral system

Key universal treaty references	Treaty interpretation
ICCPR Obligation	ICCPR Interpretation (General Comment 25)
<p>Genuine elections:</p> <p>Every citizen shall have the right [...] (b) To vote and to be elected at genuine periodic elections [...]</p>	<p>Although the ICCPR 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. (GC25 paragraph 21)</p>
<p>Equal suffrage:</p> <p>Every citizen shall have the right [...] (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage [...]</p>	<p>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. (GC 25 paragraph 21)</p>
<p>Non Discrimination</p> <p>Temporary special measures aimed at accelerating <i>de facto</i> equality between men and women shall not be considered discriminatory but shall in no way entail the maintenance of unequal or separate standards. (CEDAW Article 4)</p>	
<p>Key universal non-treaty references</p> <p>UDHR</p> <p>[...] 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. (Article 21.3)</p>	

3. Election Administration

3.1 The Work of the Election Management Body (EMB)

Key universal treaty references	Treaty interpretation
<p>ICCPR Obligation</p> <p>Genuine elections:</p> <p>Every citizen shall have the right and opportunity [...] (b) To vote and to be elected at genuine periodic elections which shall be held by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors. (Article 25)</p>	<p>ICCPR Interpretation</p> <p>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. (GC 25 paragraph 20)</p> <p>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. (GC 25 paragraph 20)</p>
<p>Transparency / access to information:</p> <p>1. Everyone shall have the right to hold opinions without interference.</p> <p>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.</p> <p>(Article 19)</p>	<p>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. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.</p> <p>(General Comment 34, paragraph 19)</p>

<p>Transparency / prevention of corruption</p> <p>[Each State party shall] take such measures as may be necessary to enhance transparency in public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:</p> <p>(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;</p>	
<p>Key universal non-treaty references</p> <p>UDHR</p> <p>The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections. (Article 21.3)</p> <p>UN General Assembly Resolutions</p> <p>[...] ensuring through legislation, institutions and mechanisms [...] the transparency and fairness of the electoral process. (UN General Assembly Resolution A/Res/55/96 article 1d,iv)</p> <p>[...] improving the transparency of public institutions and policy-making procedures and enhancing the accountability of public officials. (UN General Assembly Resolution A/Res/55/96 article 1f,i)</p>	

3.2 Voter education

Key universal treaty references	Treaty interpretation
<p>ICCPR Obligation</p> <p>Obligation to give effect:</p> <p>Each State Party [to the ICCPR] undertakes to adopt such laws or other measures to give effect to the rights recognised in the Covenant. (ICCPR, article 2.2)</p> <p>Every citizen shall have the right [...] (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. (Article 25)</p>	<p>ICCPR Interpretation (General Comment 25)</p> <p>Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community. (GC 25 para. 11)</p> <p>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. (GC 25 paragraph 12)</p>

4. Voter registration

Key universal treaty references	Treaty interpretation
<p>ICCPR Obligation</p> <p>Universal suffrage: Every citizen shall have the right and the opportunity... without unreasonable restrictions: to vote [...] at genuine periodic elections which shall be by universal and equal suffrage (Article 25)</p>	<p>ICCPR Interpretation (General Comment 25)</p> <p>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. (GC 25 paragraphs 4 and 10)</p> <p>States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. (GC 25 paragraph 11)</p> <p>In contrast with other rights and freedoms (which apply to all individuals within the territory and subject to the jurisdiction of the State), ICCPR Article 25 protects the rights of “every citizen”. (GC 25 paragraph 3)</p> <p>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. (GC 25 paragraph 10)</p> <p>The grounds for deprivation [of the right to vote] should be objective and reasonable. (GC 25 paragraph 14)</p> <p>If 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. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote. (GC 25 paragraph 14)</p> <p>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 vote. (GC 25 paragraph 11)</p>
<p>Key universal non-treaty references UDHR</p> <p>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. (Article 21.3)</p>	

5. Political party and candidate registration

Key universal treaty references	Treaty interpretation
<p>ICCPR Obligation</p>	<p>ICCPR Interpretation (General Comment 25)</p>
<p>Freedoms of expression, assembly and association</p> <p>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. (Article 19.2)</p> <p>The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of the right to peaceful assembly 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. (Article 21)</p> <p>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. (Article 22.1)</p> <p>No restrictions may be placed on the exercise of the right to freedom of association 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. (Article 22.2)</p>	<p>The full enjoyment of rights protected by article 25 requires freedom to engage in political activity individually or through political parties and other organizations. (GC 25 paragraph 25)</p> <p>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. (GC 25 paragraph 26)</p>

<p>Right to stand:</p> <p>Every citizen shall have the right and the opportunity [...] without unreasonable restrictions: to take part in the conduct of public affairs, directly or through freely chosen representatives. (Article 25)</p>	<p>Any restrictions on the right to stand for election, 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. (GC 25 paragraph 15)</p> <p>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. (GC 25 paragraph 17)</p> <p>Established mental incapacity may be a ground for denying a person the right to hold office. (GC 25 paragraph 4)</p> <p>No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. (GC 25 paragraph 15)</p> <p>Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. (GC 25 paragraph 16)</p> <p>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. (GC 25 paragraph 17)</p> <p>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 Article 25. (GC 25 paragraph 16)</p>
<p>Key universal non-treaty references UDHR</p> <p>Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association. (Article 20)</p> <p>Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (Article 21.1)</p>	

6. Election campaign

Key universal treaty references	Treaty interpretation
<p data-bbox="157 293 327 316">ICCPR Obligation</p> <p data-bbox="157 329 510 380">Freedoms of expression, assembly, association and movement:</p> <p data-bbox="157 396 595 580">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. (Article 19.2)</p> <p data-bbox="157 596 604 888">The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of the right to peaceful assembly 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. (Article 21)</p> <p data-bbox="157 904 601 1010">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. (Article 12.1)</p>	<p data-bbox="624 293 830 316">ICCPR Interpretation</p> <p data-bbox="624 329 1064 513">The full enjoyment of rights protected by article 25 requires 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. (GC 25 paragraph 25)</p> <p data-bbox="624 529 1070 953">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. However, it may be legitimate for a State party to restrict political polling immediately preceding an election in order to maintain the integrity of the electoral process. (GC34, Paragraph 37)</p> <p data-bbox="624 970 1066 1656">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, desecration, 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. (GC34, Paragraph 38)</p>

<p>Free expression of will of the electors. (Article 25)</p>	<p>Persons entitled to vote must be 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. (GC 25 paragraph 19)</p> <p>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. (GC 25 paragraph 19)</p>
<p>Transparency and prevention of corruption: Administrative and legal measures should be taken to improve transparency in campaign and political party financing. (UNCAC Article 7)</p>	
<p>Genuine elections. (Article 25)</p>	<p>Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community. (GC 25 paragraph 11)</p>
<p>Key universal non-treaty references</p> <p>UDHR</p> <p>Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. (Article 19) Everyone has the right to freedom of peaceful assembly and association. (Article 20)</p> <p>Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (Article 21.1)</p> <p>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. (Article 21.3)</p>	

7. Media and online content

Key universal treaty references	Treaty interpretation
<p data-bbox="157 289 327 316">ICCPR Obligation</p> <p data-bbox="157 329 399 356">Freedoms of expression</p> <p data-bbox="157 369 607 529">The right to freedom of expression 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. (Article 19.2)</p> <p data-bbox="157 542 598 784">The exercise of the right [to freedom of expression] 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 or of public health or morals. (Article 19.3)</p>	<p data-bbox="622 289 830 316">ICCPR Interpretation</p> <p data-bbox="622 329 1071 593">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. (GC 25 paragraph 25)</p> <p data-bbox="622 606 867 633">GC34 Paragraphs 39-42:</p> <p data-bbox="622 646 1071 1543">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, and otherwise in compliance with the Covenant. Licensing regimes for broadcasting via media with limited capacity, such as audio-visual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. 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 licenses.</p> <p data-bbox="622 1556 1071 1663">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</p>

	<p>such control of the media as would interfere with the right of everyone to freedom of expression". 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> <p>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. 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.</p> <p>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>
<p>Freedom of expression and the Internet</p>	<p>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. (GC 34, paragraph 43)</p>
<p>Key universal non –treaty references UDHR Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. (Article 19)</p>	

8. Complaints and appeals

Key universal treaty references	Treaty interpretation
ICCPR Obligations	ICCPR Interpretation (General Comment 25)
<p>Right to an effective remedy</p> <p>All persons whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. (Article 2.3.a)</p> <p>Such a remedy shall [be] 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. (Article 2.3.b)</p>	<p>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. (GC 25 paragraph 20)</p> <p>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 paragraph 11)</p>
<p>Such a remedy shall (be) 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. Article 2.3.b)</p>	
<p>The competent authorities shall enforce such remedies when granted.(Article 2.3.c)</p> <p>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. (Article 9.1)</p> <p>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. (Article 9.4)</p>	
<p>Key universal non-treaty references</p> <p>UDHR</p> <p>Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. (Article 8)</p> <p>No one shall be subjected to arbitrary arrest, detention or exile. (Article 9) Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. (Article 10)</p>	

9. Human rights

Key universal treaty references	Treaty interpretation
<p>ICCPR Obligation</p> <p>Non-discrimination</p> <p>to respect and to ensure to all individuals [...]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. (Article 2.1 a)</p> <p>to ensure the equal right of men and women to the enjoyment of all civil and political rights. (Article 3)</p> <p>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. (Article 26)</p> <p>In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right [...] to use their own language. (Article 27)</p>	<p>ICCPR Interpretation (General Comment 25)</p> <p>No distinctions are permitted between citizens in the enjoyment of these [electoral] rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (GC 25 paragraph 3)</p> <p>Information and materials about voting should be available in minority languages. (GC 25 paragraph 12) 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. (GC 25 paragraph 21)</p>
<p>CERD Obligation</p>	<p>CERD Interpretation (CERD Committee General Recommendation 22)</p>
<p>State Parties undertake [...] 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 (c) political rights, in particular the right to participate in elections [...] on the basis of universal and equal suffrage (d) other civil rights [including] (viii) the right to freedom of opinion and expression (ix) the right to freedom of peaceful assembly and association. (Article 5)</p>	<p>All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.</p>
<p>CEDAW Obligation</p>	<p>CEDAW Interpretation (CEDAW Committee General Recommendation 23)</p>

<p>Temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discriminatory but shall in no way entail the maintenance of unequal or separate standards. (Article 4.1)</p> <p>States shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure 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. (Article 7)</p>	<p>Measures that should be identified, implemented and monitored for effectiveness include, under article 7, paragraph (a), those designed to: (c) Ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women’s freedom of movement; (d) assist women experiencing such disadvantages to exercise their right to vote and to be elected.</p>
<p>CRPD Obligations</p>	
<p>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 to:</p> <p>(a) 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:</p> <ul style="list-style-type: none"> (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; 	

<p>(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; (b) 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:</p> <p>(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;</p> <p>(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels. (Article 29)</p>	
<p>Key universal non-treaty references</p> <p>UDHR</p> <p>Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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. Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust non-self-governing or under any other limitation of sovereignty. (Article 2)</p> <p>All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. (Article 7)</p>	

10. Civil society

Key universal treaty references	Treaty interpretation
ICCPR Obligation	ICCPR Interpretation(General Comment25)
<p>Freedoms of expression, assembly and association</p>	<p>Citizens take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives of through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association. (GC25 paragraph 8)</p>
<p>Everyone shall have the right to freedom of expression; this right shall included 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. (Article 19.2)</p> <p>The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of the right to peaceful assembly 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. (Article 21)</p> <p>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. (Article 22.1)</p> <p>No restrictions may be placed on the exercise of the right to freedom of association 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. (Article 22.2)</p>	

<p>Genuine elections</p>	<p>There should be 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. (GC 25 paragraph 20)</p>
<p>Key universal non-treaty references</p> <p>UDHR</p> <p>Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association. (Article 20)</p>	

11.Voting and counting

Key universal treaty references	ICCPR Interpretation (General Comment 25)
<p>ICCPR Obligation</p> <p>Every citizen shall have the right and opportunity [...] (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. (Article 25)</p>	
<p>Right to vote</p>	<p>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. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. (GC 25 paragraph 12)</p> <p>Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees. (GC 25 paragraph 20)</p>

<p>Secret ballot</p>	<p>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. (GC 25 paragraph 20)</p>
<p>Genuine elections</p>	<p>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... Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. (GC 25 paragraph 12)</p> <p>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. (GC 25 paragraph 20)</p>
<p>Free expression of will</p>	<p>Persons entitled to vote must be free to vote for any candidate for election 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. (GC 25 paragraph 19)</p>
<p>Key universal non-treaty references</p> <p>UDHR</p> <p>[...] 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. (Article 21.3)</p> <p>UN General Assembly Resolution</p> <p>[...] ensuring through legislation, institutions and mechanisms [...] the transparency and fairness of the electoral process. (UN General Assembly Resolution A/Res/55/96 article 1d,iv)</p> <p>[...] improving the transparency of public institutions and policy-making procedures and enhancing the accountability of public officials. (UN General Assembly Resolution A/Res/55/96 article 1f,i)</p>	

12. Tabulation and publication of results and the post-election environment

Key universal treaty references	Treaty interpretation
ICCPR Obligation	ICCPRS Interpretation (General Comment 25)
Free expression of will	<p>The results of genuine elections should be respected and implemented. (GC 25 paragraph 19)</p> <p>The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. (GC 25 paragraph 20)</p> <p>The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures. (GC 25 paragraph 16)</p>
<p>Key universal non-treaty references</p> <p>UDHR</p> <p>[...] genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. (Article 21.3)</p> <p>UN General Assembly Resolutions</p> <p>[...] ensuring through legislation, institutions and mechanisms [...] the transparency and fairness of the electoral process. (UN General Assembly Resolution A/Res/55/96 article 1d,iv)</p> <p>[...] improving the transparency of public institutions and policy-making procedures and enhancing the accountability of public officials. (UN General Assembly Resolution A/Res/55/96 article 1f,i)</p>	

ANNEX - Useful References:

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