

# Identifying Obligations for Democratic Elections:

## Narrative of Obligations

Draft of December, 2009

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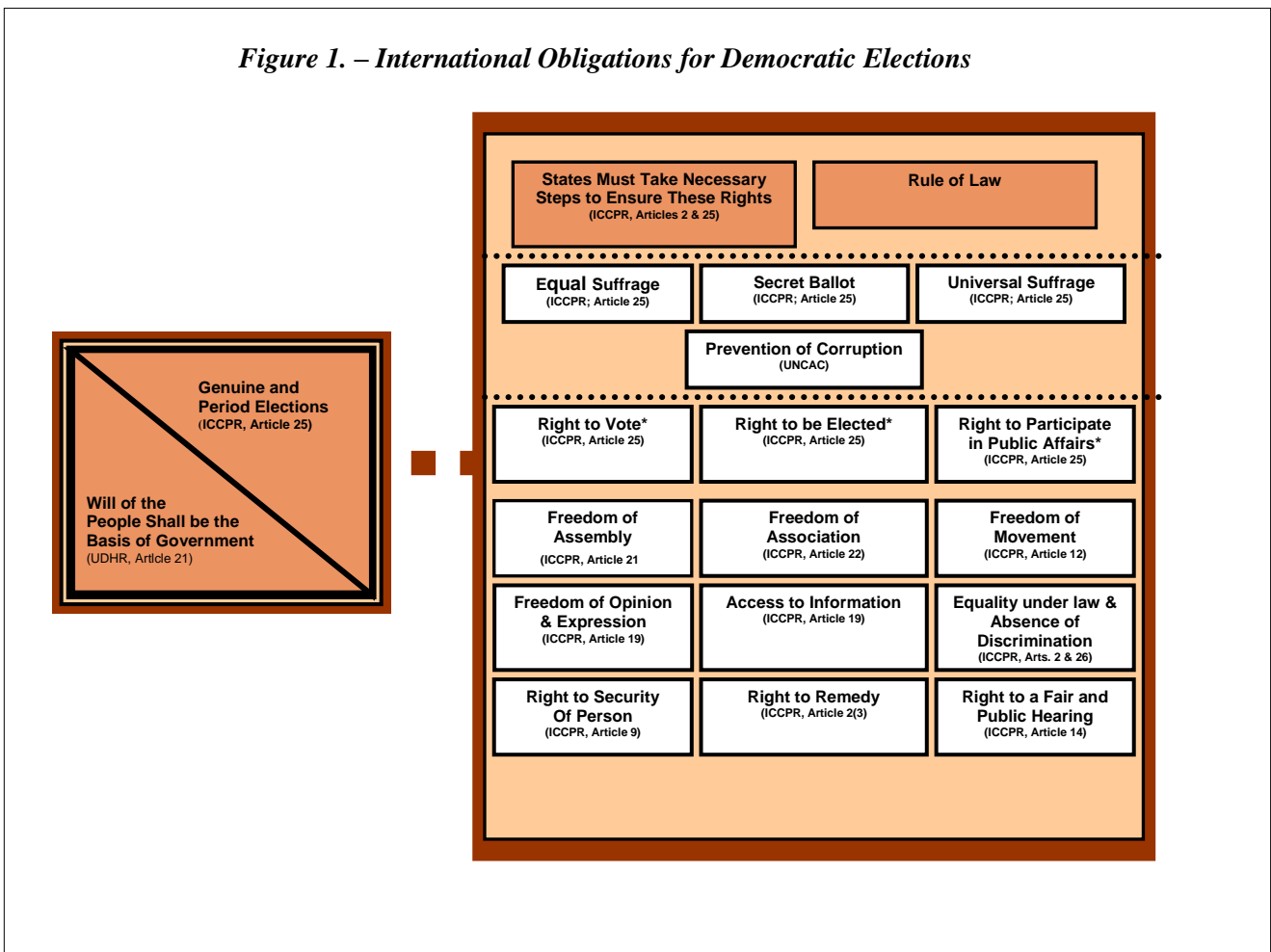
## Introduction

As part of a collaborative initiative to identify obligations for democratic elections that are based in public international law (PIL) and can serve as the basis of assessment criteria for election observers, we have compiled over 175 documentary sources into the Matrix of Obligations. The Matrix shows the relationship between the constituent parts of the electoral process (for example voting voter registration or dispute resolution) and these obligations. The Matrix is now complete.

While the matrix provides a useful reference tool for members of an election observation mission (particularly when writing statements and reports), they are lengthy and cannot be easily read. In order to produce a shorter and more concise document, we have compiled this narrative, which is intended to serve as a companion piece to the Matrix that is more accessible.

## Obligations and Constituent Parts – The Framework

Through a systematic review of the sources, we have identified 21 obligations that are relevant to the electoral process. These include obligations directly related to the electoral process, as well as individual human rights that, while applicable all of the time, are particularly relevant during the electoral process. Figure 1 outlines these obligations diagrammatically. Further description of each obligation can be found later in this document.



Following careful review of the sources and deliberation, we have linked each of these obligations to the constituent parts of the election. In this framework, the election is divided into the following ten parts:

- (1) *Legal Framework* – The legal framework includes the rules that regulate how all aspects of the electoral process will unfold, and should ensure that the electoral process is consistent with the State’s human rights obligations. In order to avoid duplication, some aspects of the legal framework are mainstreamed throughout other parts of the electoral process (for example, issues related to the legal framework for boundary delimitation are found solely under boundary delimitation in the matrices, rather than in both boundary delimitation and legal framework).
- (2) *The Electoral System and Boundary Delimitation* – The electoral system and boundary delimitation focus on how votes are converted into mandates and how constituencies are drawn. Like the legal framework, they must be in line with a State’s human rights obligations.
- (3) *Election Management* – This includes issues largely related to the professional and impartial conduct of election activities by the election management body, as well as the structure and mandate of that body.
- (4) *The Media* – This constituent part includes not only issues related to the rights of journalists, but also to the overall media environment, media coverage, and the ability of political contestants to equitably access the media. Both public and private media should be considered, with the understanding that the rights and responsibilities of each will differ.
- (5) *Parties, Candidates and Campaigns* – This wide-ranging constituent part includes campaign finance, the registration of candidates and political parties, and other aspects of the electoral process associated with campaigns and/or candidates and political parties.
- (6) *Voter Education* – This includes voter education and voter information efforts provided by the State, political parties or civil society.
- (7) *Voter Registration* – This constituent part includes all aspects of the electoral process related to the registration of voters.
- (8) *Voting Operations* – This relates to election day operations and events, including aspects that facilitate voting operations such as the procurement of ballots or technology, establishing alternative means of voting, etc.
- (9) *Vote Counting* – This includes the vote counting process and all aggregation and tabulation processes through to the final announcement of results.
- (10) *Electoral Dispute Resolution* – The resolution of disputes is relevant throughout the electoral cycle, and includes any mechanism established to hear and adjudicate election related disputes.

The degree to which each obligation is relevant to each part of the electoral process was determined through a thorough review of the accumulated PIL sources, assessing the degree to which each obligation would have a direct impact on our understanding of that particular part of the electoral process. On the basis of both the broad range of electoral obligations in PIL and the parts of the electoral process, we created a two-dimensional framework to show which international obligations are relevant to the various constituent parts. The table below provides a snapshot of the obligations which we have found particularly relevant to each constituent part of the election.

	LEGAL FRAMEWORK	BOUNDARY DELIMITATION - ELECTORAL SYSTEM	ELECTION MANAGEMENT	VOTER EDUCATION	CANDIDACY AND CAMPAIGNING	VOTER REGISTRATION	VOTING OPERATIONS	VOTE COUNTING	THE MEDIA	DISPUTE RESOLUTION
WILL OF THE PEOPLE SHALL BE THE BASIS OF GOVERNMENT	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
GENUINE ELECTIONS	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
PERIODIC ELECTIONS	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
UNIVERSAL SUFFRAGE				◆		◆	◆	◆		
EQUAL SUFFRAGE		◆		◆		◆	◆	◆		
SECRET BALLOT				◆			◆	◆		
EVERY CITIZEN HAS THE RIGHT TO VOTE				◆		◆	◆			
EVERY CITIZEN HAS THE RIGHT TO BE ELECTED				◆	◆		◆	◆		
EVERY CITIZEN HAS THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS		◆		◆	◆	◆	◆	◆		
EQUALITY AND ABSENCE OF DISCRIMINATION	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
FREEDOM OF OPINION AND EXPRESSION					◆				◆	
ACCESS TO INFORMATION			◆		◆	◆	◆	◆	◆	◆
FREEDOM OF ASSEMBLY					◆					
FREEDOM OF ASSOCIATION				◆	◆	◆	◆	◆		
FREEDOM OF MOVEMENT			◆		◆	◆	◆	◆	◆	
PREVENTION OF CORRUPTION			◆		◆	◆	◆	◆		
EVERY CITIZEN HAS THE RIGHT TO AN EFFECTIVE REMEDY	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
EVERY CITIZEN HAS THE RIGHT TO A FAIR AND PUBLIC HEARING			◆							◆
SECURITY OF THE PERSON			◆		◆	◆	◆	◆	◆	◆
STATES MUST TAKE NECESSARY STEPS TO ENSURE RIGHTS	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
RULE OF LAW	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆

## Organization of this document

Unlike the Matrix of Obligations which is organized by constituent part of the process, this document is organized according to obligation. There are 21 sections, each of which provides a narrative on an obligation, including what it means in the context of the overall electoral process, as well as any specific guidance that is provided in the reviewed sources on the relationship between that obligation and a particular part of the process.

Whereas the Matrix of Obligations includes direct quotes from the various source documents, this document does not. Instead, we have created a general narrative from the summary statements of the

quotes in the Matrix. Please see the instructions for the Matrix and the Matrix itself for more information about the sources upon which each statement is based.

As in the Matrix, the summary statements are categorized according to the hierarchy of sources in table 1 below. This hierarchy of sources reflects our understanding of the reinforcing relationships between the different potential sources of public international law which are the foundation for our assessment criteria for elections.

<b>Table 1 – Hierarchy of Sources</b>	
<b>Source Level</b>	<b>Definition of Source Level</b>
<b>Obligation (OB)</b>	<b>Obligations clearly codified in treaties.</b>
<b>Interpretation (IN)</b>	<b>Interpretation of treaty obligations by treaty monitoring mechanisms (such as the Human Rights Committee) or international courts (such as the European Court of Human Rights).</b>
<b>Political Commitments (PC)</b>	<b>Non-binding instruments such as declarations or other political commitments which serve as evidence of State practice and customary law.</b>
<b>Other sources (OS)</b>	<b>Handbooks, manuals, and other sources that can provide additional evidence of State practice (customary law) with regard to electoral processes.</b>

Further details about the source documents outlined above follow:

***Treaty Obligations (OB)*** – These are obligations codified in international and regional treaties. Treaties are generally concluded between two or more States, or between States and international organizations in writing, and governed by international law. Treaties in force are binding upon the ratifying parties. While treaties do not directly bind third parties, their provisions may form the basis of customary international law obligations which should be respected by third parties. In general, in order to become part of customary international law, treaty provisions must be of a ‘fundamentally norm-creating character,’ be widely (but not necessarily universally) accepted, and be recognized as binding (*opinio juris*).

***Interpretative Documents (IN)*** - The decisions of judicial bodies, such as the European Court of Human Rights, can provide general interpretations of the meaning of treaty obligations, even though such interpretations are closely linked to the facts of the case in question. In some circumstances, treaty supervisory bodies such as the United Nations Human Rights Committee hear individual cases. The Committee’s decisions (or ‘views’) inform the overall interpretation of the International Covenant on Civil and Political Rights (ICCPR). The Committee has also adopted a number of ‘General Comments,’ which provide its interpretation of particular ICCPR provisions. In the context of elections, the most important of these is General Comment 25.



***Political Commitments (PC) and Other Sources (OS)*** - Non-binding instruments such as declarations and resolutions can serve as evidence of customary law. While treaties establish rules expressly recognized by States, custom as a source of law takes into account the practice of States in their relations with each other and in matters subject to international legal regulation. State practice can thus become the basis of binding customary international law when it is followed consistently over time (the period of time can be relatively short) where it is widely followed (but not necessarily universally), and where there is evidence (which may be a matter of inference), that the practice is considered obligatory as a matter of law.

Once accepted as customary international law, all States are bound unless they have expressed a valid objection to the norm, irrespective of any formal consent. The Universal Declaration of Human Rights (UDHR), for example, was drafted and adopted as a non-binding instrument, but many of its provisions are now considered binding as a matter of customary international law.

In considering whether a practice has become binding as a matter of general international law (and also whether a treaty-based norm has emerged to become generally binding, even on non-parties), evidence of States' actions is particularly important. In this context, both non-binding international instruments, as well as national legislation, national practices and administrative arrangements are relevant. The matrix, therefore, also includes a number of handbooks and manuals from observation organizations (both non-governmental and intergovernmental), which may reflect treaty and non-treaty obligations, and/or provide examples of State practice in the application of international legal obligations.

Throughout the document, summary statements are following by a parenthetical reference that indicates the highest level source that supports that statement. For example:

“Voter education campaigns are necessary to ensure an informed community is able to effectively exercise their article 25 rights (IN: UNHRC, General Comment 25, para. 11), including the right to be elected.”

In this case, General Comment 25 of the United Nations Human Rights Committee is the highest level source that supports that summary statement. Although there may be several sources that support the same general principles we have only included one example in each parenthetical reference in order to reduce duplication throughout the document. For this reason, the summary statement (which summarizes ALL of the sources) may not be a direct paraphrase of the parenthetical source reference. To review all of the sources that are the basis of each summary statement the Matrix maybe consulted.

It is important to note that, in this document, we are making the implicit argument that there is a growing body of customary law, as well as binding international law. The hierarchy of sources outlined above is intended to provide some guidance on what is a binding obligation versus what may be an emerging norm in customary law.

While we are making this implicit argument in this narrative document, we fully recognize that in the context of election assistance, it may be preferable for election observation missions to refer only to those obligations to which a State has expressly committed through the ratification of treaties and other agreement. The matrix will provide greater guidance than this document in that regard.

## Meta-Obligations for Democratic Elections

The expression of the will of the people through genuine, periodic elections is a unique set of obligations in the ICCPR. Together, these obligations outline a political principle regarding the overarching macro-level obligation for democratic elections. These obligations are, therefore, not necessarily used as assessment criteria, but instead are considered by assessing the degree of fulfillment of the other obligations and individual human rights.

### *Will of the people*

Elections should guarantee the free expression of the will of the voters

(OB: UN, ICCPR, art. 25; OAS, ACHR, art. 23; CIS, Convention on Democratic Elections, art. 9; AU, Declaration on the Principles Governing Democratic Elections in Africa, art. 1).

That elections should guarantee the free the expression of the will of the voter is a widely recognized obligation at the international and regional level.

*State practice (other sources):* As established in other sources, the extent to which the will of the people has been fully expressed is dependent on a whether the other obligations associated with the electoral process have been fulfilled (OS: UN, Human Rights and Elections, para. 76). Any measures to undermine the will of the people will render an election unfair (OS: UN, Human Rights and Elections, para. 63).

### *Genuine elections*

Genuine elections are required to express the will of the voters

(OB: UN, ICCPR, art. 25; OAS, ACHR, art. 23).

Genuine elections are necessary for the will of the voters to be expressed.

*Obligation:* Although the term genuine elections was first used in the Universal Declaration of Human Rights, treaties provide little guidance regarding what constitutes a ‘genuine election,’ it is widely understood to mean competitive elections which offer voters a real choice (OB: CIS, Convention on Democratic Elections, art. 9), and where other essential fundamental rights are fulfilled.

*Interpretation:* In addition, interpretative sources indicate that measures derogating from provisions of the Covenant must be of a temporary and exceptional nature and strictly required by the exigencies of the situation (IN: UNHRC, General Comment 29, para. 2). This can also be applied to derogations of electoral rights in that derogations which fall outside of the general parameters outlined above, would likely undermine the ‘genuine’ nature of the election.

### *Periodic elections*

Elections are to be held at periodic intervals

(OB: UN, ICCPR, art. 25; CIS, Convention on Democratic Elections, art. 6; OAS, ACHR, art. 23).

The will of the people can only be expressed through genuine and periodic elections.

*Interpretation:* The obligation to hold periodic elections has been interpreted to mean that the interval between elections should not be unduly long, such that the authority of the government is no longer representative of the will of the electors (IN: UNHRC, General Comment 25, para. 9).

*State practice (other sources):* Other sources indicate that in most cases, elections should be held between two and five years apart (OS: OSCE/ODIHR, Guidelines to Assist National Minority Participation, p. 17). It is also important that, when scheduling elections, adequate time is allowed to successfully implement other necessary parts of the election (OS: UN, Human Rights and Elections, para. 75).

*Obligation:* While temporary postponement of an election due to public emergency is permitted, the postponement must be required by the circumstances and should not be contrary to the State's obligation under international law (OB: UN, ICCPR, art. 4).

***Periodic Elections in the context of specific parts of the electoral process:*** The guidance provided above should be considered throughout the electoral process, however other sources provide additional guidance regarding periodic elections in the context of the legal framework.

### **Legal Framework**

*State practice (other sources):* It is important to assess the degree to which the legal framework provides for regular elections (OS: EISA, PEMMO, p. 7-8). In addition, the legal framework should ensure that elections are held within a reasonable period after they are called (OS: EISA, PEMMO, p. 7-8).

## Obligations for Democratic Elections

In addition to the three obligations outlined above, we have identified a further 18 obligations and individual rights which are related to the electoral process. It is the fulfillment of these obligations which will serve as the basis for assessment criteria. These obligations are outlined below.

### *Universal Suffrage*

#### Elections must be held by universal suffrage

(OB: UN, ICCPR, art. 25; OAS, ACHR, art. 23; CIS, Convention on Human Rights, art. 29; UN, UDHR, art. 21; AU, ACDEG, art. 4)

Universal Suffrage is widely recognized as a critical aspect of a genuine election at both the international and regional level, requiring that broad participation of eligible voters in the electoral process be promoted. It is a collective right and is intrinsically linked to the right to vote.

*Obligation/Interpretation:* It is important to remember that Universal Suffrage, like the right to vote (below), is not an absolute right, and may be subject to reasonable restrictions. Interpretative texts indicate that any limitations placed on universal suffrage should be based on objective and reasonable criteria (IN: UNHRC, General Comment 25, para. 10). Such limitations may include:

- reaching a minimum age (OB: OAS, ACHR, art. 23);
- residency (OB: OAS, ACHR, art. 23);
- citizenship (OB: UN, ICCPR, art. 25);
- mental incapacity as determined by a court (OB: OAS, ACHR, art. 23); and
- criminal conviction (OB: OAS, ACHR, art. 23).

PIL is also quite clear on what constitutes an unreasonable restriction. These include limitations of Universal Suffrage based on:

- race (OB: UN, ICCPR, arts. 2 and 25);
- sex (OB: UN, ICCPR, arts. 2 and 25);
- religion (OB: UN, ICCPR, arts. 2 and 25);
- physical disability (OB: UN, Convention on the Rights of Persons with Disabilities, art. 29);
- political or other opinion (OB: UN, ICCPR, arts. 2 and 25);
- national or social origin (OB: UN, ICCPR, arts. 2 and 25);
- language (OB: ICCPR, art. 2);
- birth or other status (OB: UN, ICCPR, arts. 2 and 25);
- literacy (IN: UNHRC, General Comment 25, para. 10);
- education (IN: UNHRC, General Comment 25, para. 10);
- property ownership (IN: UNHRC, General Comment 25, para. 10);
- party membership (IN: UNHRC, General Comment 25, para. 10);
- naturalized citizenship (IN: UNHRC, General Comment 25, para. 3);
- status as an internally displaced person (IDP) (OS: EU, (2nd Ed.), p. 7); and
- economic circumstances (OS: UN, Human Rights and Elections, para. 65).

Interpretative sources specify that limitations on the voting rights of convicted criminals should be proportionate to the offence and the sentence (IN: UNHRC, General Comment 25, para. 14).

*Universal Suffrage in the context of specific parts of the electoral process:* In addition to the guidance provided above, public international law sources provide specific guidance regarding Universal Suffrage in the context of voter registration and voting operations.

## **Voter Registration**

*Interpretation:* Although voter registration is not a requisite component of a successful electoral process (IN: UNHRC, General Comment 25, para. 11), in cases where voter registration is conducted in order to determine eligibility to vote, Universal Suffrage requires that broad participation be promoted (IN: UNHRC, General Comment 25, para. 11). In order to facilitate such broad participation, it is important that the participation of eligible voters in the registration process should not be inhibited (IN: UNHRC, General Comment 25, para. 11) and that unnecessary technical barriers to participation by otherwise qualified eligible voters be removed (IN: UNHRC, General Comment 25, para. 11).

*State practice (other sources):* Other sources indicate that because the fulfillment of Universal Suffrage is partially dependent on the success of the voter registration process (OS: NDI, Domestic Monitoring: A to Z, p. 53), potential voters should be offered continuous and accessible voter registration facilities and ensured sufficient time to register (OS: EISA, PEMMO, pp. 15,16). To ensure broad participation, other sources also indicate that States should facilitate absentee registration (OS: Venice Commission, Code of Good Practice, sec. I.1.1.c).

*Interpretation:* Interpretative sources indicate that any limits placed on Universal Suffrage in the context of voter registration must be based on objective and reasonable criteria (IN: UNHRC, General Comment 25, para. 4).

*State practice (other sources):* Other sources (indicative of State practice) state that any limitations placed on Universal Suffrage should be established in advance of the registration period (OS: Goodwin Gill, Free and Fair, p.127).

## **Voting Operations**

*Obligation:* In order to ensure broad participation, States are obligated to ensure that accommodation be made for persons with disabilities so that they can vote. Polling sites must be accessible to persons with disabilities (OB: UN Convention on the Rights of Persons with Disabilities, art. 29).

In addition to the reasonable limitations on universal suffrage outlined above, in the context of voting operations, the following limitations are also considered reasonable according to other sources (indicative of State practice):

- a requirement for identification (OS: EU, Handbook, p.96); and
- military service (OS: Goodwin-Gill, Free and Fair (2006), p. 128);

As a means of fulfilling the obligation of Universal Suffrage, other sources outline a number of categories of special voters that should be considered when assessing the degree to which Universal Suffrage has been fulfilled. These include:

- those unable to reach a polling station (OS: International IDEA, Legal Framework, p.73);
- the elderly (OS: EISA, PEMMO, p. 24);
- the illiterate (OS: EISA, PEMMO, p.24);
- students (OS: UN, Human Rights and Elections, para. 110);
- poll workers (OS: UN, Human Rights and Elections, para. 110);
- conscripts (OS: UN, Human Rights and Elections, para. 110);
- foreign-service personnel (OS: UN, Human Rights and Elections, para. 110);
- eligible voters in hospitals (OS: International IDEA, Legal Framework, p. 73);
- eligible voters currently out of the country (OS: Goodwin-Gill, Free and Fair (2006), p. 126); and
- prisoners who have voting rights (OS: International IDEA, Legal Framework, p. 73).

It is important that cases of accommodation of voters with special needs be well defined (OS: International IDEA, Legal Framework, p. 74).

In addition, other sources (as evidence of State practice) indicate that the State may facilitate voting by the categories of voters outlined above through a variety of methods. These include:

- early voting (OS: OSCE/ODIHR, Handbook (5<sup>th</sup> Ed.), p. 57);
- postal voting (OS: CoE, Handbook, para. 2.5.5);
- electronic voting (OS: International IDEA, Legal Framework, p.72);
- mobile voting (EU, Handbook, p. 97);
- voting abroad (OS: EISA, PEMMO, p. 23);
- establishing polling sites in hospitals (OS: Norwegian Helsinki Committee, Human Rights Monitoring, p. 13);
- establishing polling sites in prisons (OS: EISA, PEMMO, p. 23); and
- making special provision for members of the military to vote (OS: EU, Handbook, p. 97).

While proxy voting is allowed, the need to ensure security requires that it be strictly regulated to respect electoral security (OS: CoE, Handbook, para. 2.5.5).

*State practice (other sources):* More generally, other sources (as evidence of State practice) indicate that steps should be taken to ensure there are enough polling places to accommodate the number of voters (OS: EISA, PEMMO, 24), and that polling stations are located in public places to ensure ease of access (OS: SADC PF, Norms and Standards, p. 9).

## ***Equal suffrage***

### **Elections must be held by equal suffrage**

(OB: UN, ICCPR, art. 25; OAS, ACHR, art. 23; CIS, Convention on Human Rights, art. 29; CIS, Convention on Democratic Elections, art. 3; UN, UDHR, art. 21; OSCE, Copenhagen, para. 7.3).

Equal suffrage is an essential element of a genuine election, and is recognized as such at the international and regional level.

*Interpretation:* Equal suffrage requires that the rule of ‘one person, one vote’ be respected, and that every vote is of equal weight (IN: UNHRC, General Comment 25, para 21).

***Equal Suffrage in the context of specific parts of the electoral process:*** While this obligation is relevant throughout the electoral process, it is particularly pertinent in the context of the electoral system and boundary delimitation, voter registration, voting operations, and vote counting.

### **Electoral system and boundary delimitation**

*State practice (other sources):* The process of boundary delimitation should respect equal suffrage (OS: UN, Annex II to UN Human Rights and Elections, para. V.b).

*Interpretation:* Although equal suffrage is best achieved by assigning the same number of voters to each representative (IN: UNHRC, General Comment 25, para. 21), it may be achieved through boundary assignment based on specific apportionment criteria.

*State practice (other sources):* Other sources (indicative of State practice) state that that these criteria can include the number of residents, number of resident nationals (including minors), number of registered voters, number of actual voters, or a combination thereof (OS: Venice Commission, Code of Good Practice, sec. I.2.2.13).

Boundary assignment may also account for geographical criteria or administrative or historical boundary lines (OS: EISA, PEMMO, p. 13). While true equality in delimitation may not always be possible, other sources state that variances should rarely exceed 10 percent (OS: Venice Commission, Code of Good Practice, sec. I.2.2.15).

It is important that re-districting be conducted according to a method established by law that regulates the frequency of and criteria for such a process; the degree of public participation in it, as well as the role of stakeholders in it and the authority structure for conducting the exercise (OS: International IDEA, Legal Framework, p. 27).

Other sources also indicate that boundary delimitation should not be manipulated to favor particular groups (OS: EISA, PEMMO, p. 13) and delimitation techniques designed to discount the votes of particular groups or geographic areas should be prohibited (OS: UN, Human Rights and Elections, para. 68). It is important that the delimitation of boundaries be reviewed frequently to ensure equal voting rights (OS: Venice Commission, Code of Good Practice, sec. I.2.2.v).

### **Voter registration**

*State practice (other sources):* According to other sources (as evidence of State practice), in the context of voter registration, equal suffrage requires that safeguards be in place to ensure that voters are unable to register more than once (OS: International IDEA, Legal Framework, p. 45).

### **Voting operations**

*State practice (other sources):* In the context of voting operations, other sources (as evidence of State practice) indicate that equal suffrage means that polling procedures designed to diminish the value of the votes of particular individuals, groups or geographic areas are unacceptable (OS: UN, Human Rights and Elections, para. 68). Ballot box "stuffing" is prohibited as an infringement of equal suffrage (OS: CoE, Handbook for Observers of Elections, para. 2.5.3).

In order to protect equal suffrage, specific measures can be taken by States to deter voter fraud. These include:

- marking voters' fingers to prevent duplicate voting (OS: EU, Handbook, p. 97);
- showing ballot boxes to be empty at the commencement of voting (OS: SADC, Principles and Guidelines, para. 10); and
- sealing ballot boxes properly at the beginning of the vote (OS: EISA and Electoral Commissions Forum of SADC, PEMMO, p. 25).

Additionally, all ballots, including unused ballots, should be accounted for during election day (OS: OSCE/ODIHR, Handbook (5<sup>th</sup> Ed), p. 53).

### **Vote counting**

*State practice (other sources):* Other sources (as evidence of State practice) indicate that safeguards should be in place to ensure the accuracy of the vote, no matter the form of balloting or counting used (manual, mechanical or electronic) (OS: International IDEA, Legal Framework, p. 78). Equal suffrage, and the 'one person, one vote rule,' requires that no opportunity should exist to falsify or to substitute ballot papers (OS: Commonwealth Secretariat, Good Practice, para. 35).

### ***Secret ballot***

Elections shall be held by secret ballot

(OB: UN, ICCPR, art. 25; OAS, ACHR, art. 23; CIS, Convention on Democratic Elections, art. 5; CoE, Protocol No. 1 - ECHR, art. 3; UN, UDHR, art. 23).

The Secret Ballot requirement is widely recognized as an essential means of ensuring that the will of the people is truly expressed freely.

*Interpretation:* This obligation has been interpreted to mean that the secrecy of the ballot shall be maintained through the entire voting process (IN: UNHRC, General Comment 25, para. 20).

***Secret Ballot in the context of specific parts of the electoral process:*** Secrecy of the ballot is particularly relevant when considering voter education, voting operations and vote counting.

### **Voter education**

*State practice (other sources):* Other sources (as evidence of State practice) suggest that the fulfillment of the obligation to provide a secret ballot is partially dependent on the extent to which voters understand this right (OS: Council of Europe, Handbook, para. 2.5.4).

### **Voting operations**

*State practice (other sources):* In the context of voting operations, other sources State that the system for balloting (paper, electronic, or otherwise) should ensure the secrecy of a voter's choice (OS: CoE, Committee of Ministers Recommendation (2004)11 on e-voting, art. 35). In addition, electoral legislation and its regulations should offer clear guidance with respect to the secrecy of the ballot (OS: UN, Human Rights and Elections, para. 109).

In cases of accommodation for voters with special needs, other sources explain that care should be taken to protect the right to vote secretly (OS: EISA, PEMMO, p. 24). Except in cases where a voter is being lawfully assisted, a voter cannot waive their right to secrecy of the ballot (OS: EU, Handbook (2nd Ed.), p. 79).

Other sources are clear that proxy voting should be strictly regulated to not compromise secrecy of the ballot (OS: CoE, Handbook, para. 2.5.5). In addition, family and group voting should be prohibited (OS: CoE, Handbook for Observers of Elections, para. 3.3.5).

Practically speaking, other sources (as evidence of State practice) indicate that care should be taken to ensure that the setup and location of the polling station does not undermine the secrecy of the ballot (OS: SADC PF, Norms and Standards, para. 9). Further, safeguards should be in place to prevent removal of evidence of how a voter has voted from the polling station (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, art. 51-52). Sensitive election materials should be stored securely throughout the voting process (OS: EISA, PEMMO, p. 25).

### **Vote counting**

It is important in the context of vote counting that the system for balloting (paper, electronic, or otherwise) should ensure the secrecy of a voters choice (OS: CoE, Committee of Ministers Recommendation (2004)11 on e-voting, art. 35). Electoral legislation and its regulations should offer clear guidance with respect to the secrecy of the ballot (OS: UN, Human Rights and Elections, para. 109).

## ***Every Citizen has the Right to Vote***

Every citizen has the right to vote

(OB: ICCPR, art. 25; EU, Charter of Fundamental Rights of the European Union, art. 40; AU, AfCHPR, art. 13(1))



International and regional instruments recognize the right to be vote. The degree to which this right is fulfilled should be a foundational consideration in the assessment of the electoral process.

*Obligation/Interpretation:* It is important to note that, like Universal Suffrage, the Right to Vote is not absolute and may be subject to reasonable and objective limitations (IN: UNHRC, General Comment 25, para. 10). Such limitations include:

- reaching a minimum age (OB: OAS, ACHR, art. 23);
- residency (OB: OAS, ACHR, art. 23);
- citizenship (OB: UN, ICCPR, art. 25);
- mental incapacity as determined by a court (OB: OAS, ACHR, art. 23);
- and criminal conviction (OB: OAS, ACHR, art. 23).

*Obligation/Interpretation:* However, it is unreasonable to restrict the right to vote on the basis of:

- race (OB: UN, ICCPR, arts. 2 and 25);
- sex (OB: UN, ICCPR, arts. 2 and 25);
- religion (OB: UN, ICCPR, arts. 2 and 25);
- physical disability (OB: UN, Convention on the Rights of Persons with Disabilities, art. 29);
- political or other opinion (OB: UN, ICCPR, arts. 2 and 25);
- national or social origin (OB: UN, ICCPR, arts. 2 and 25);
- language (OB: UN, ICCPR, art. 2);
- birth or other status (OB: UN, ICCPR, arts. 2 and 25)
- literacy (IN: UNHRC, General Comment 25, para. 10);
- education (IN: UNHRC, General Comment 25, para. 10);
- property ownership (IN: UNHRC, General Comment 25, para. 10);
- party membership (IN: UNHRC, General Comment 25, para. 10);
- naturalized citizenship (IN: UNHRC, General Comment 25, para. 3);
- status as an internally displaced person (IDP) (OS: EU, (2nd Ed.), p. 7); and
- economic circumstances (OS: UN, Human Rights and Elections, para. 65).

Interpretative sources also specify that limitations on the voting rights of convicted criminals should be proportionate to the offence and the sentence (IN: UNHRC, General Comment 25, para. 14).

*State practice (other sources):* Other sources (as evidence of State practice) indicate that it is important that any restrictions on the right to vote are to be established in advance of election day (OS: Goodwin Gill, Free and Fair (2006), p.127), and that the loss of this right may only be imposed after adjudication by a court (OS: OSCE/ODIHR, Existing Commitments, p. 59).

***Right to Vote in the context of specific parts of the electoral process:*** Although the Right to Vote is relevant throughout the electoral process, it is particularly pertinent in the context of voter education, voter registration and voting operations.

### **Voter education**

*Interpretation:* Voter education campaigns are necessary to ensure an informed community is able to effectively exercise their right to vote according to interpretative sources (IN: UNHRC, General Comment 25, para. 11).

*State practice (other sources):* Other sources (indicative of State practice) point out the importance of voter education campaigns that are responsive to the needs of the electorate (OS: International IDEA, Code, p. 14), and are designed with the aim of reaching all eligible voters (OS: EU, Handbook (1<sup>st</sup> Ed), p. 65).

### **Voter registration**

*State practice (political commitments):* Political commitments indicate that a voters register must be accurate and current in order to ensure the Right to Vote is extended to all eligible citizens (PC: UNGA, Guidelines concerning personal data files, art. 2).

*State practice (other sources):* In practice, other sources suggest that fulfillment of this obligation requires regular updating or reestablishment of the voters register (OS: IPU, Declaration on Free and Fair Elections, para. 4). The actual process for establishing such a list may take one of several acceptable forms, including periodic list, continuous list, or civil registry (OS: EISA, PEMMO, p. 15).

### **Voting operations**

*Obligation:* In the context of voting operations, the Right to Vote requires that any assistance that is provided to those who are unable to vote independently be impartial (OB: UN, Convention on the Rights of Persons with Disabilities, art. 29).

*Interpretation:* To ensure this obligation is respected in practice, interpretative sources indicate that electors who are unable to vote independently should be made aware of the guarantee of impartial assistance (IN: UNHRC, General Comment 25, para. 20).

*State practice (other sources):* Further, other sources (indicative of State practice) indicate that the need to facilitate voting by persons with disabilities extends to e-voting systems (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, para. A.I.3).

The Right to Vote has practical implications which are reflected in other sources. It is important that polling personnel receive clear guidance with respect to identifying and admitting eligible voters (OS: UN, Human Rights and Elections, para. 111), and that sufficient voting materials are available at each polling site (OS: EISA, PEMMO, p. 25).

Other sources, as evidence of State practice also suggest that voting systems should offer an authentic ballot to voters to ensure that their votes are accurately represented (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, art. 90), and voters should be able to alter their choice before casting their ballot (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, art. 11). Additionally, voters should be able to cast a blank ballot, including when voting on electronic technologies (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, art. 13).

The voting system, including electronic systems, should be sufficiently secure against fraud (OS: CoE Committee of Ministers, Declaration on Human Rights and Rule of Law in the Information Society, para. 7), and all voting technologies should work correctly (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, art. 30). The requirement that technologies work correctly includes a necessity for voters to be able to tell when their vote has been cast (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, art. 14).

In respect to ballots, including electronic ballots, State practice indicates that ballots should:

- be understandable (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, para.A.I.1);
- account for levels of literacy (OS: OSCE/ODIHR, Handbook (5<sup>th</sup> Ed), p. 43);

- be available in the principal languages in multilingual societies (OS: OSCE/ODIHR, Handbook (5<sup>th</sup> Ed), p. 43); and
- be identical in all languages (OS: UN, Human Rights and Elections, para. 110).

### ***Every citizen has the right to be elected***

Every citizen has the right to be elected  
(OB: UN, ICCPR, art. 25; AU, AfCHPR, art. 13; OAS, ACHR, 23; LAS, Arab Charter on Human Rights, art. 24; CIS, Convention on Democratic Elections, art. 3; OSCE, Copenhagen, para. 7.5).

That every citizen has the Right to be Elected is a widely recognized principle in both regional and international treaties. In this way, the Right to be Elected is intrinsic to a genuine electoral process.

***Obligation/Interpretation:*** As with the right to vote, the Right to be Elected is not absolute and may be limited solely on the basis of objective and reasonable criteria that are established by law (IN: UNHRC, General Comment 25, para 4). Such limitations include:

- minimum age (OB: OAS, ACHR, art. 23);
- residency (OB: OAS, ACHR, art. 23);
- citizenship (OB: UN, ICCPR, art. 25(b));
- mental incapacity established by a court (OB: OAS, ACHR, art. 23);
- criminal conviction (OB: OAS, ACHR, art. 23(2));
- holding a position that could constitute a conflict of interest if also holding elective office (IN: UNHRC, General Comment 25, para. 16);
- support from a minimum number of citizens (IN: UNHRC, General Comment 25, para. 17); **OR**
- a reasonable monetary fee or deposit (IN: UNHRC, General Comment 25, para. 16).

Residency requirements should not be excessive, or they may be considered discriminatory (OB: CoE, European Convention on the Participation of Foreigners, art. 6.1).

With respect to candidature, unreasonable restrictions include those based on:

- race (OB: UN, ICCPR, art. 2);
- sex (OB: UN, ICCPR, art. 2);
- religion (OB: UN, ICCPR, art. 2);
- ethnic origin (OB: UN, Convention on the Rights of Migrant Workers, art. 1);
- political affiliation (past and present) (OB: UN, ICCPR, art. 2);
- language (OB: UN, ICCPR, art. 2);
- physical disability (OB: UN, Convention on the Rights of Persons with Disabilities, art. 4);
- sexual orientation (IN: UNHRC, Toonen v. Australia);
- education (IN: UNHRC, General Comment 25, para. 15);
- political opinion (IN: UNHRC, General Comment 25, para. 17);
- party affiliation (IN: UNHRC, General Comment 25, para. 17); **OR**
- economic status (OS: Norwegian Helsinki Committee, Human Rights Monitoring, p. 4).

Other sources indicate that the loss of this right may only be imposed after adjudication by a court (OS: OSCE/ODIHR, Existing Commitments, p. 59).

***Right to be Elected in the context of specific parts of the electoral process:*** The Right to be Elected is particularly relevant to voter education, candidacy and campaigning, and voting operations.

## **Voter Education**

*Interpretation:* Interpretative sources indicate that voter education campaigns are necessary to ensure an informed community is able to effectively exercise their article 25 rights (IN: UNHRC, General Comment 25, para. 11), including the right to be elected.

## **Candidacy and Campaigning**

*Obligation:* This obligation requires that regardless of their ideological position, political parties be treated equally in being recognized and registering as a party (OB: CIS Convention on Democratic Elections, art. 9).

*Interpretation:* Interpretative sources indicate that regulations regarding candidacy be the same for independent and partisan actors (IN: UNHRC, General Comment 25, para. 15).

*State practice (other sources):* Other sources (indicative of State practice) state that political parties may be required to register with election authorities when contesting the election, however, any demands placed on them regarding registration should not be so stringent as to jeopardize their freedom of association (OS: EU, Handbook (2nd Ed), p. 69).

In addition, other sources suggest that the grounds for rejecting a registration application should be based on objective criteria (OS: EU, Handbook (2nd Ed.) p. 68-69). Electoral legislation and regulations should also offer clear guidance with respect to the process by which parties and candidates were placed on the ballot (OS: International IDEA, Legal Framework, p. 50-51).

*State practice (political commitments and other sources):* Political commitments and other sources (as evidence of State practice) indicate that political parties should be assured that they will be able to compete with each other on an equal basis before the law (PC: OSCE, Copenhagen, para. 7.6). This includes ensuring that all political contestants have an equal period of time in which to campaign (OS: OSCE/ODIHR, Handbook (5th Ed.), p. 47). In addition, the State should enable new parties to compete under fair conditions with more well-established parties (OS: PACE, Recommendation 1516 (2001), para. 8).

Other sources add that both the State and its citizens are entitled to provide support to candidates and political parties (OS: CoE Committee of Ministers, Recommendation Rec(2003)4, art. 1), however State and citizen support should not interfere with the independence of the political party (OS: CoE Committee of Ministers, Recommendation Rec(2003)4, art. 1). State support may be financial (OS: CoE, Committee of Ministers, Recommendation Rec(2003)4 on corruption in the funding of political parties, art. 1) and the State may contribute, directly or indirectly, to the operational costs of party activities, election campaigns and the functioning of parliamentary party groups (OS: PACE, Recommendation 1516 (2001), para. 8). However, State support should be limited to reasonable contributions (OS: CoE Committee of Ministers, Recommendation Rec(2003), art. 1).

Other sources also suggest that the formula for the distribution of State support be objective, fair and reasonable (OS: CoE, Committee of Ministers, Recommendation Rec(2003)4, art. 1). If public funds are distributed to political parties and candidates, those funds should be available on an equitable basis (OS: ACE Project, Direct and Indirect Public Funding). If election campaign expenses are reimbursed by the State, the State should ensure that the system of such reimbursement is sufficiently well-developed to permit elections to take place in a pluralistic climate (OS: CLARE, Resolution 105 (2000), para. 13).

Where legislation allows for public funding, private funding, or a mix of the two, legislation should ensure that all political parties and candidates are treated equitably with respect to campaign finance and expenditures (OS: EU, Handbook (2<sup>nd</sup> Ed.), p. 74-75).

*Interpretation:* Interpretative sources add to this, indicating that States should consider imposing reasonable limits on campaign expenditure (IN: UNHRC, General Comment 25, para. 19).

### **Voting Operations**

*State practice (political commitments):* In the context of voting operations, political commitments indicate that the Right to be Elected requires that political party and candidate representatives be allowed in the polling station to observe polling (PC: AU, Declaration on the Principles Governing Democratic Elections in Africa, art. 7).

### ***Right to participate in public affairs***

Everyone has the right to participate in the public affairs of their country

(OB: UN, ICCPR, art. 25; AU, AfCHPR, art. 13; OAS, ACHR, art. 23;

CoE, Framework Convention on the Rights of National Minorities, art. 15).

The Right to Participate in Public Affairs is a widely recognized obligation in public international law.

*Obligation:* Not only does it include the rights to vote and to be elected outlined above, it also includes the right of citizens to participate in non-governmental organizations (OB: UN, CEDAW, art. 7), and the ability of citizens to participate in domestic observation organizations. Women, as well as men, have the right to participate in the public affairs of their country (OB: UN, CEDAW, art. 7).

***Right to Participate in the context of specific parts of the electoral process:*** While the Right to Participate in Public Affairs is pertinent throughout the electoral process, sources indicate that it is particularly relevant in the context of voter education, candidacy and campaigning, voting operations and vote counting.

### **Voter education**

*State practice (other sources):* While election management bodies bear principal responsibility for voter education (OS: EISA, PEMMO, p. 22), other sources indicate that political parties, civil society and international organizations may contribute to voter education efforts (OS: EISA, PEMMO, p. 19).

### **Candidacy and Campaigning**

*State practice (other sources):* In the context of candidacy and campaigning, other sources (as evidence of State practice) state that political parties and candidates should be partly financed through private means (OS: van Biezen, Guidelines, p. 17).

### **Voting operations and vote counting**

*State practice (political commitments):* In the context of voting operations and vote counting, political commitments relating to the right to participate in public affairs indicate that candidates and party agents should have access to polling stations (PC: AU, Declaration on the Principles Governing Democratic Elections in Africa, art. 7).

### ***Equality before the law and absence of discrimination***

Everyone should be able to enjoy their rights, free from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status at any time

(OB: UN, ICCPR, art. 25; AU, AfCHPR, art. 2; OAS, ACHR, art. 1; LAS, Arab Charter on Human Rights, art. 3; CIS, Convention on Human Rights, art. 20; CoE, ECHR, art. 14; OSCE, Copenhagen, para. 5.9).

The right to enjoy human rights, free from discrimination is a widely recognized at the international and regional level. The right to Equality and Absence of Discrimination is applicable wherever other fundamental human rights are considered, throughout the electoral process.

*Obligation/Interpretation:* PIL States that everyone should be able to enjoy their rights, free from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status at any time (OB: UN, ICCPR, art. 25). In addition, subsequent interpretative sources indicate that distinctions made on the basis of sexual orientation are also to be considered discrimination (IN: UNHRC, *Toonen v Australia*).

The obligation applies to all human rights, but is particularly pertinent to rights enshrined in article 25 of the ICCPR (OB: UN, ICCPR, art. 25).

The obligation not to discriminate has been interpreted to mean any distinction, exclusion, restriction or preference on the basis of race, colour, sex language, religion, political or other opinion, national or social origin (IN: UNHRC, General Comment 18, para. 7).

The State is obligated to perform both its ‘negative duty’ to refrain from discrimination and its ‘positive duty’ to prevent discrimination (IN: UNHRC, General Comment 28, para. 21).

In addition to the obligation not to discriminate in the protection and promotion of other rights, public international law also states that all are equal before the law and shall enjoy the equal protection of the law (OB: UN, ICCPR, art. 26). Everyone has the right of equal access to any place or service intended for use by the public (OB: UN, ICERD, art. 5).

Treaty level sources also make clear that women shall enjoy equal rights to men (OB: UN, ICCPR, art. 3), and that in some cases, States shall take special, temporary measures to achieve *de facto* equality for women (OB: UN, CEDAW, art. 3). Special, temporary measures for advancing ethnic minorities or groups that have suffered past discrimination may also be taken, when the circumstances warrant (OB: UN, ICERD, art. 1). These measures should not be maintained after the objectives for which they were taken are met, and shall not result in the maintenance of unequal rights for different groups (OB: UN, ICERD, art. 1). Specific measures aimed at ensuring *de facto* equality for persons with disabilities shall not be considered discriminatory (OB: UN, Convention on the Rights of Persons with Disabilities, art. 5).

Treaty level sources also state that although States may regulate the law concerning nationality, citizenship, or naturalization, they may not discriminate against any particular nationality in doing so (OB: UN, ICERD, art. 1). Where linguistic minorities exist, those that belong to such minorities shall not be denied the right to use their own language (OB: UN, ICCPR, art. 27).

***Equality and Absence of Discrimination in the context of specific parts of the electoral process:*** Although equality and absence of discrimination is fundamental to the entire electoral process, and should be a key area of assessment throughout, sources indicate that it is particularly pertinent to a number of constituent parts of the election. These include the electoral system and boundary delimitation, voter education, election management, candidacy and campaigning, voter registration, the media, and dispute resolution.

## **Electoral system and boundary delimitation**

*Interpretation:* Interpretative sources indicate that special temporary measures to achieve de facto equality for women can include the use of quotas to ensure female participation in public affairs (IN: CEDAW Committee, General Recommendation 23, para. 15).

*State practice (other sources):* In addition, other sources, as evidence of State practice, point out that special measures, such as the use of quotas, may be used to ensure minority participation or representation (OS: OSCE/ODIHR, Handbook (5<sup>th</sup> ed), p. 40).

## **Voter education**

*Obligation/Interpretation:* States should take measures to address discrimination by providing women (IN: CEDAW Committee, General Recommendation 23, para. 45) and persons with disabilities (OB: UN, Convention on the Rights of Persons with Disabilities, art. 24) with access to voter education which ensures that they understand their right to vote and how to exercise it.

*State practice (other sources):* Other sources (indicative of State practice) suggest that voter education should be accessible to all voters, including those with special needs (OS: Dundas, Dimensions, p. 20).

*Interpretation:* Interpretative sources add that information and materials about voting should be available in minority languages and that education campaigns should facilitate the participation of illiterate voters (IN: UNHRC, General Comment 25, para 12). To this end, specific methods, such as the use of photographs and symbols, should be adopted (IN: UNHRC, General Comment 25, para 12).

## **Election management**

*Interpretation:* Interpretative sources indicate that an election management body should be impartial in the performance of their public function (IN: UNHRC, General Comment 25, para. 20).

*State practice (other sources):* Other sources, as evidence of State practice suggest that Election Management Bodies (EMBs) should ensure that women and marginalized groups participate in the electoral process (OS: International IDEA, Code, p. 7). They also state that the EMB itself should include women among its staff (OS: EISA, PEMMO, p. 12).

## **Candidacy and Campaigning**

*Interpretation:* Interpretative sources indicate that no one should suffer from discrimination or disadvantage of any kind because of a person's candidacy (IN: UNHRC, General Comment 25, para. 15).

*State practice (other sources):* Other sources add that political associations should have equal opportunity to access public facilities (OS: EU, Handbook (2<sup>nd</sup> Ed), p. 52).

## **Voter Registration**

*State practice (political commitments):* To ensure information provided in a voters register cannot be misused as a means of enacting discrimination, political commitments make clear that a voters list should not include information beyond that required to identify a voter and establish a voter's eligibility (PC: UNGA, Guidelines concerning computerized data files, art. 3).

*State practice (other sources):* Further, other sources suggest that the voter registration system should be carefully tailored to ensure that cultural factors affecting women (name changes with marriage) do not result in disenfranchisement (OS: OSCE/ODIHR, Women's Participation, p. 25).

## **The Media**

*State practice (political commitments):* In order to promote equality, political commitments indicate that political parties and candidates must have access to the public media on a non-discriminatory basis, (and that airtime should be fairly distributed) (PC: AU, Declaration on the Principles Governing Democratic Elections in Africa, art III.a). In addition, public service media should ensure that the public receive adequate and politically balanced information during election periods (PC: AU, Principles on Freedom of Expression in Africa, art. 6).

*State practice (other sources):* Other sources (as evidence of State practice) add that news coverage of incumbents in public media, while permitted during the campaign period, should not be abused so that it constitutes additional free airtime or print coverage (OS: UN, Report of the Special Rapporteur on Freedom of Expression 1999, art. 17).

*State practice (political commitments and other sources):* Other sources indicate that women candidates receive equal coverage to their male counterparts (OS: OSCE/ODIHR, Women's Participation, p. 34), and media outlets should take steps to provide access to marginalized groups. Such steps may include the consideration of transmitting in minority languages and assuring broad coverage of rural areas (PC: AU, Principles on Freedom of Expression in Africa, art. 3).

*State practice (other sources):* Other sources (indicative of State practice) state that free airtime, if offered, should be distributed equally (OS: CoE Committee of Ministers, Recommendation (99)15 on Measures concerning Media Coverage, para. 2.4). Equality refers not only to the amount of space provided but to the timing and location of such space (OS: UN, Human Rights and Elections, para. 120).

It is also important that paid advertising in the public media should be identified as such; and the costs and conditions involved should be reasonable and equally applied to all candidates and parties (OS: CoE Committee of Ministers, Recommendation (99)15 on Measures concerning Media Coverage, para. 1.2). If private media accepts paid advertising the costs and conditions for advertising should be equally applied to all candidates (OS: International IDEA, Legal Framework, p. 61).

## **Dispute Resolution**

*Interpretation:* In the context of dispute resolution, equality before the courts is essential. Interpretative sources suggest that this includes equality in arms and equal access to the courts (IN: UNHRC, General Comment 32, para. 8). Fees that *de facto* prevent access to the courts may violate the obligation of equal access to the courts (IN: UNHRC, General Comment 32, para. 11).

*State practice (other sources):* To ensure equal access, other sources indicate that procedures for the filing and adjudication of disputes must be understandable and easily accessible to all parties (OS: CoE Committee of Ministers, Annex to Recommendation (81)7, para. B.5).

## ***Freedom of Opinion and Expression***

Everyone shall have the right to freedom of expression for information and ideas of all kinds, regardless of frontier.

(OB: UN, ICCPR, art. 19; OAS, ACHR, art. 13; EU, Charter of Fundamental Rights of the European Union, art. 11; CIS, Convention on Human Rights, art. 11; CoE, ECHR, art. 10).

Freedom of Expression is a fundamental human right recognized in relevant public international law treaties at the global and regional level.



*Obligation:* Freedom of Expression includes the right for everyone to seek, receive, and impart ideas through any means of their choice, including but not limited to writing, speech, print, or art (OB: UN, ICCPR, art. 19).

*State practice (other sources):* Other sources indicate that, in the context of new media, the obligation that Freedom of Expression be respected extends to expressions communicated via the internet (OS: CoE, Declaration of the Committee of Ministers on Rule of Law in the Information Society, art. 1).

*Obligation:* Freedom of Expression may only be restricted under certain circumstances as are prescribed by law and are necessary in a democratic society (OB: UN, ICCPR, art. 19). Such restrictions include those:

- in the interests of national security (OB: UN, ICCPR, art. 19);
- that protect territorial integrity (OB: CoE, ECHR, art. 10);
- in the interests of public safety (OB: UN, ICCPR, art. 19);
- that maintain the authority and impartiality of the judiciary (OB: CoE, ECHR, art. 10); and
- that prevent disclosure of information received in confidence (OB: CoE, ECHR, art. 10).

In addition, Freedom of Expression may be restricted when an expression seeks to destroy other established rights (OB: UN, ICCPR, art. 25); and for the protection of the rights and freedoms of others (OB: UN, ICCPR, art. 25). Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law (OB: UN, ICCPR, art. 20).

In addition to the establishment of these acceptable limitations, regional treaties offer specific guidance to ensure that free communication and circulation of ideas may not be restricted by indirect means (such as abuse of regulatory controls over the media) (OB: OAS, ACHR, art. 13).

*State practice (political commitments):* Political commitments indicate that freedom of expression includes unhindered communication with international bodies on matter of human rights (PC: UN, Declaration on Right and Responsibility, art. 19).

***Freedom of Expression in the context of specific parts of the electoral process:*** While the guidance offered below can be viewed as generally applicable to any assessment of Freedom of Expression, public international law sources offer further guidance about this right in the context of campaigning and the media.

### **Candidacy and Campaigning**

*Obligation/Interpretation:* Interpretative sources state that Freedom of Expression requires the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives (IN: UNHRC, General Comment 25, para. 25). Treaty level sources are more specific stating that parties and candidates be able to communicate their ideas and opinions to the electorate (OB: CIS, Convention on Democratic Elections, art. 19).

*State practice (other sources):* Other sources (as evidence of State practice) also indicate that voters have a right to express their support for parties and candidates through monetary contributions. In particular, where private funding contributions are allowed, the system should be designed to ensure equality of freedom to raise private funds (OS: International IDEA, Legal Framework, p. 67). However, reasonable limitations may be placed on private funding contributions to level the playing field during campaign activities (OS: CoE Committee of Ministers, Recommendation Rec(2003)4, art. 3). Such limits may consist of a maximum threshold on the amount of money that may be accepted from a single source (OS: van Biezen, Guidelines, p. 22) or a limit on the total sum of acceptable private donations (OS: van Biezen, Guidelines, p. 22).

*Obligation:* PIL also establishes an obligation to regulate funding by foreign donors (OB: CIS, Convention on Democratic Elections, art. 12).

*State practice (other sources):* Other sources go further to indicate that States should consider introducing additional rules which define acceptable sources of donations to political parties and/or candidates (OS: van Biezen, Guidelines, p. 22). Such rules should aim to:

- avoid conflicts of interest (OS: CoE Committee of Ministers, Recommendation Rec (2003)4, art. 3);
- ensure transparency of donations (OS: CoE Committee of Ministers, Recommendation Rec (2003)4, art. 3);
- avoid prejudice to the activities of the party (OS: CoE Committee of Ministers, Recommendation Rec (2003)4, art. 3); and
- ensure the independence of the party (OS: CoE Committee of Ministers, Recommendation Rec (2003)4, art. 3).

To ensure these ends are met other sources recommend that

- cash donations be prohibited (OS: van Biezen, Guidelines, p. 59);
- contributions by legal entities be subject to regulation (OS: CoE Committee of Ministers, Recommendation Rec (2003)4, art. 5); and
- States consider limiting or prohibiting donations from anonymous sources (OS: CoE Congress of Local and Regional Authorities, Resolution 105(2000), para. 16).

However, other sources also state that low value donations may be excluded from the requirement to refuse anonymous donations (OS: van Biezen, Guidelines, p. 26).

In addition, these sources establish that rules concerning donations to political parties should apply, as appropriate, to other entities associated with political parties (OS: CoE Committee of Ministers, Recommendation Rec(2003)4, art. 6). Candidates should be able to contribute to their own campaigns (OS: Venice Commission, Parties in Elections, para. 31), and laws should prohibit only those forms of fundraising that have no connection to the party's *raison d'être* (OS: van Biezen, Guidelines, p. 70).

## **The Media**

The Media's critical role in disseminating information concerning candidates, campaigns, and the electoral process requires careful consideration in the assessment of an election. The media includes both public and private outlets. This distinction is particularly pertinent in the context of Freedom of Expression, because assessments must consider obligations that require the State to respect the media's own right of free expression, as well as obligations on the State to regulate the Media so that all candidates have an opportunity to express their opinions to the electorate.

*State practice (other sources):* While privately-held or "private" media should not necessarily be held to the same standards as public media (OS: Carver (ACE Project), Different Obligations of Public and Private Media), other sources recognize that private media may be subject to some restrictions. These include ensuring media outlets are fair and balanced in their coverage (OS: CoE Committee of Ministers, Recommendation (99)15 on media coverage of election campaigns, para. 3.1), and providing equal opportunity for access for all candidates (OS: International IDEA, Legal Framework, p. 61).

*Obligation:* In order to ensure that the right of Freedom of Expression is respected in the context of media activities, PIL treaties require that free expression not be limited through the imposition of prior censorship (OB: OAS, ACHR, art. 13).

*State practice (political commitments and other sources):* Political commitments and other sources indicative of state practice also indicate that:

- restrictions on who may practice journalism should be unlawful (PC: OAS, Inter-American Principles on Freedom of Expression, Principles 6);
- government officials should not abuse resources or influence to exert control over media content (OAS, Inter-American Principles on Freedom of Expression, Principle 13);
- editorial independence should be protected from political or economic interference (OS: CoE, Committee of Ministers, Declaration on the guarantee of independence of public service broadcasting, para. li);
- sufficient media space to allow for the open questioning and debate between political leaders and candidates should be guaranteed (OS: OHCHR, Resolution 2005/38 on The Right to Freedom of Opinion and Expression, para. 4p);
- the media should be able to express criticisms of the Government (OS: CoE Committee of Ministers, Declaration on Freedom of Political Debate in the Media, art. 1); and
- the media should not be held liable for the reproduction of untrue statements made by others (OS: Carver (ACE Project), Limits to Liability of Media During Elections).

Particular guidance is offered in regards to the issue of defamation. Political commitments clearly establish that the expression of an opinion or of a true statement may never constitute a valid claim of defamation (PC: AU, Principles on Freedom of Expression in Africa, art. 12). Claims of defamation by political figures and public officials should be subject to greater public scrutiny and criticism than those made by other citizens (PC: AU, Principles on Freedom of Expression in Africa, art. 12).

*State practice (other sources):* State practice (as indicated by other sources), also suggests that:

- defamation laws should only be used to protect individuals, never to prevent criticism of the government or institutions (OS: UN, Report of the Special Rapporteur on Freedom of Expression 1999, art. 28);
- there should be a range of remedies available in the case of defamation; and
- all remedies be proportional (OS: CoE Committee of Ministers, Declaration on Freedom of Political Debate in the Media, art. 8).

While the media's right to free expression must be respected, other sources (as evidence of State practice) indicate that reasonable limitations may be imposed to ensure the fulfillment of other rights. The media may be required to provide voter education and to air debates between candidates (OS: EU, Handbook on EU Election Observation (2nd Ed.), p. 54).

Limits on advertising spending may be instituted to ensure equality of opportunity (OS: Venice Commission, Code of Good Practice, sec. I.2.3.ee). In addition, a silent period may be instituted immediately in advance of polling day, allowing voters to exercise their franchise freely and without undue pressure (OS: CoE Committee of Ministers, Recommendation (99)15 on Measures concerning Media Coverage during Election Campaigns, para. 3.1).

*Interpretation:* Interpretative sources state that the publication of opinion polls may be restricted until polling is complete (IN: UNHRC, Kim Jong-Cheol v. Republic of Korea).

## ***Access to Information***

Everyone shall have the right to receive and impart information and ideas of all kinds, regardless of frontier.

(OB: UN, ICCPR, art. 19; AU, Convention on Corruption, art. 9; OAS, ACHR, art. 13; CIS, Convention on Human Rights, art 11; CoE, ECHR, art. 10).

The right of Access to Information is born from the guarantee that the right to free expression includes the ability for everyone to seek and receive information and ideas.

*State practice (other sources):* Other sources (as evidence of State practice) provide an understanding of this right as inclusive of the need for electoral documents to be publicly accessible and accurate (OS: International IDEA, Code, p. 14).

*Obligation:* PIL defines a limited set of reasonable and objective restrictions that may be placed on Access to Information. Such restrictions include those in the interests of

- national security (OB: UN, ICCPR, art. 19);
- protecting territorial integrity (OB: CoE, ECHR, art. 10);
- public safety (OB: UN, ICCPR, art. 19);
- maintaining the authority and impartiality of the judiciary (OB: CoE, ECHR, art. 10);
- the prevention of disclosure of information received in confidence (OB: CoE, ECHR, art. 10);
- protection of the rights and freedoms of others (OB: UN, ICCPR, art. 25); and
- when an expression seeks to destroy other established rights (OB: UN, ICCPR, art. 25).

States should take steps to ensure access to information for persons with disabilities without additional COST (UN, Convention on the Rights of Persons with Disabilities, art. 9).

***Access to Information in the context of specific parts of the electoral process:*** The degree of Access to Information that citizens enjoy is a critical criterion for assessing the entire electoral process. Sources indicate that it is particularly important in the context of election management, candidacy and campaigning, voter registration, vote counting, the media and dispute resolution.

## **Election Management**

*Obligation:* In order to ensure everyone is able to access information about the election, the election management process, including meetings of election bodies, should be transparent (OB: CIS, Convention on the Standards of Democratic Elections, arts. 7, 13).

## **Candidacy & Campaigning**

*Obligation:* In the context of candidacy and campaigning, the funding received by any political party or candidate should be disclosed (OB: CIS, Convention on Democratic Elections, art. 12). States are required to submit reports at regular intervals (OB: CIS, Convention on Democratic Elections, art. 12).

*State practice (other sources):* Other sources also indicate that States should:

- require records of expenditure (OS: CoE Committee of Ministers, Recommendation (2003)4, para. 10);
- require that parties present and make public their accounts (OS: CoE Committee of Ministers, Recommendation Rec(2003)4, para. 13);
- require that the accounts of political parties specify all donations received by the party including the nature and value of the donation. (OS: CoE Committee of Ministers, Recommendation (2003)4, para. 12); and
- insist that parties and related entities keep proper books and accounts.

The accounts of parties should be consolidated and include the accounts of said related entities (OS: CoE Committee of Ministers, Recommendation (2003)4, para. 11).

Other sources (indicative of State practice) suggest that adequate disclosure in the context of campaign finance require the adoption of separate reporting requirements for operational and electoral activities (OS: van Biezen, Guidelines, p.61), as well as a requirement to keep special records for direct and indirect contributions to campaigns (OS: van Biezen, Guidelines, CoE, p. 61). Parties should also offer access to their foundational documents, procedures, and accounts (OS: Venice Commission, Good Practice in the field of Political Parties, para. 2.20).

Other sources (as evidence of State practice) also indicate that legislation on disclosure reflect the following guidelines:

- disclosure provisions should distinguish between income and expenditure (OS: van Biezen, Guidelines, CoE, p. 55);
- all donations exceeding a certain minimum threshold should be disclosed (OS: van Biezen, Guidelines, CoE, p. 55);
- and donations should be itemized into standardized categories (OS: van Biezen, Guidelines, CoE, p. 55).

In addition, disclosure provisions should distinguish between the financing of political parties and the financing of candidates (OS: van Biezen, Guidelines, CoE, p. 55), as well as between routine party finances and electoral finances (OS: van Biezen, Guidelines, CoE, p. 55). Disclosure rules should also include both national and local party finances (OS: van Biezen, Guidelines, CoE, p. 55).

Other sources also suggest that campaign finance reports be timely; public; detailed and comprehensive; and understandable to the public at large (OS: ACE Project, Reporting and Public Disclosure of Party Finance). To ensure timeliness, States should require that election campaign reporting schedules allow release of the report in advance of election day (OS: van Biezen, Guidelines, CoE, p.61). While detailed reports are clearly necessary, it is also important that the requirements for financial reporting of electoral activity be realistic (OS: Dahl, Bob, in Political Finance in Post-conflict Societies, IFES, p. 129). In all cases, there is recognition that disclosure regulations should strike a balance between transparency and privacy (OS: ACE Project, Reporting and Public Disclosure of Party Finance).

### **Voter Registration**

*Obligation:* PIL requires that every citizen receives information on their inclusion on the voters register (OB: CIS, Convention on the Standards for Democratic Elections, art. 2).

*State practice (other sources):* To ensure that all citizens can access information regarding the voter registration process, other sources (as evidence of State practice), indicate that voter registration forms and guidelines should be available in minority languages of the country (OS: OSCE, National Minorities, sec. 5.1.2 Lund Recommendation 7). In addition, transparency requires that electoral registers be public documents available for review (OS: International IDEA, Legal Framework, p. 46).

*Obligation:* Treaty sources indicate that personal data included in the voters register may only be used for the purposes for which it was collected (OB: CoE, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. art. 5).

*State practice (political commitments):* Political Commitments extend the understanding of this obligation by ensuring that anyone who offers proof of identity has the right to know whether information concerning them is being processed and to obtain it in an intelligible form (PC: UNGA, Guidelines concerning computerized personal data files, art. 4).

### **Vote Counting**

*State practice (other sources):* In order to ensure all individuals have adequate Access to Information in the context of the vote counting process, other sources state that counting procedures should be verifiable and that votes must to be preserved for review (OS: CoE Committee of Ministers, Recommendation (2004)11 on standards for e-voting, art. 98). In addition, results of the count should be published in a timely manner (OS: EISA and Electoral Commissions Forum of SADC, PEMMO, p. 26), be publicly announced and be posted at the counting station (OS: EISA PEMMO, pp. 26, 27).

## The Media

*Obligation:* Given the important role media plays in providing information to the electorate, the media should be given access to information, particularly in cases of corruption and related offences (OB: AU, Convention on Corruption, art. 12). States are also obligated to consider measures aimed at protecting whistleblowers (OB: UN, UNCAC, art. 33).

*State practice (political commitments):* Political commitments further indicate that the right of the media to gather information, including from confidential sources without government interference should be assured (PC: OAS, Inter-American Principles on Freedom of Expression; Principle 6).

*Obligation:* While the media must be provided access to information, PIL also indicates that the State has a responsibility to promote Access to Information by ensuring a pluralistic media which allows its citizens access to a variety of viewpoints and media outlets (OB: CoE, Convention on Transfrontier Television, art. 10bis).

*State practice (other sources):* In an effort to ensure individuals are aware of the potential biases in their information sources, other sources also indicate that the structure of media ownership should be transparent (OS: Special Rapporteurs on FoE, Joint Declaration 2007, p. 2).

## Electoral Dispute Resolution

*Obligation:* International obligations aimed ensuring the transparent dispute resolution processes require that the judgment, findings, evidence of judicial proceedings, as well as the legal reasoning of the judgment be made public in all cases (except in those involving juveniles and/or matrimonial disputes) (OB: UN, ICCPR; art. 14).

*State practice (political commitments and other sources):* Additionally, international political commitments indicate a necessity that all potential complainants be informed of the means by which to file a complaint and the timeframe for its resolution (PC: UN Economic and Social Council; UN document E/CN.4/2000/62; para. VIII.12.a). Effective remedy further requires access to the factual information concerning the alleged violations (OS: AcomHPR, Principles and Guidelines, art. C).

## Freedom of Assembly

Everyone has the right to peaceful assembly

(OB: UN, ICCPR, art. 21; AU, AfCHPR, art. 11; LAS, Arab Charter on Human Rights, art. 24; OAS, ACHR, art. 15; CIS, Convention on Human Rights, art. 12; CoE, ECHR, art. 11).

Freedom of Assembly is widely recognized as of critical importance during the electoral process.

*Obligation:* Freedom of Assembly is not an absolute right, but it may only be restricted under certain circumstances as are prescribed by law and are necessary in a democratic society (OB: UN, ICCPR, art. 21). These include:

- national security (OB: UN, ICCPR, art. 21);
- public safety (OB: UN, ICCPR, art. 21);
- public order (*ordre public*) (OB: UN, ICCPR, art. 21);
- public health and morals (OB: UN, ICCPR, art. 21), or
- the protection of the rights and freedoms of others (OB: UN, ICCPR, art. 21).

**Freedom of Assembly in the context of specific parts of the electoral process:** Freedom of Assembly is particularly relevant to candidacy and campaigning.

## Candidacy and Campaigning

*State practice (political commitments):* With regards to the campaign period, political commitments establish that political parties, candidates and citizens have the right to organize and participate in public rallies and conduct legitimate campaigning without undue influence (PC: OSCE, Copenhagen, para.9.2).

*State practice (other sources):* As Freedom of Assembly is integral to fostering communication between citizens and political leaders (OS: OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, para. 1.1.5), other sources indicate that this right must be respected in regards to political rallies and meetings (OS: IPU, Declaration on Criteria for Free and Fair Elections, art. 4).

## Freedom of Association

Everyone has the right to associate

(OB: UN, ICCPR, art. 22; AU, AfCHPR, art. 10; OAS, ACHR, art. 16; LAS, Arab Charter on Human Rights, art. 24; CIS, Convention on Human Rights, art. 12; CoE, ECHR, art. 11).

Freedom of Association is an important right in the context of the electoral process. It is widely recognized as such at the international and regional level.

*Obligation/Interpretation:* Critical to an understanding of Freedom of Association in regards to the electoral process is the interpretation offered by the UN Human Rights Committee which extends particular individual electoral rights, to associations and political parties (IN: UNHRC, General Comment 31, para. 9).

Like Freedom of Assembly, Freedom of Association may only be restricted under certain circumstances as are prescribed by law and are necessary in a democratic society (OB: UN, ICCPR, art. 22). These include:

- national security (OB: UN, ICCPR, art. 22);
- public safety (OB: UN, ICCPR, art. 22);
- public order (ordre public) (OB: UN, ICCPR, art. 22);
- public health and morals (OB: UN, ICCPR, art. 22); and for the protection of the rights and freedoms of others (OB: UN, ICCPR, art. 22).

Lawful restrictions on this freedom may also be placed on members of the armed forces and police (OB: UN, ICCPR, art. 22).

*State practice (political commitments and other sources):* The right to associate is also important in the context of civil society participation in the electoral process. In regards to the functioning of NGOs political commitments and sources indicative of State practice suggests that States should recognize accredited NGOs, facilitate their ability to conduct their activities (PC: Moscow Document, para. 43), and ensure that national law does not unjustifiably restrict the ability of any person to join an NGO (OS: CoE, Fundamental Principles on the Status of NGOs, art. 21).

While specific documentation may be required to establish an NGO (OS: CoE, Guidelines to Promote the Guideline to Promote the Development and Strengthening of NGOS in Europe, art. 12), NGOs should be consulted at all stages of the legislative and/or administrative process that will determine their status (OS: CoE, Guidelines to Promote the Guideline to Promote the Development and Strengthening of NGOS in Europe, art. 23), and any act or omission by a government organ that affects an NGO should be subject to administrative review and open to challenge (OS: CoE, Fundamental Principles on the Status of NGOs, art. 9). To help ensure that the right to Free Association is respected, State practice also indicates that the administrative process for NGO registration should be applied with a minimum margin of discretion (OS: CoE, Guidelines to Promote the Guideline to Promote the Development and Strengthening of NGOS in Europe, art. 13).

***Freedom of Association in the context of specific parts of the process:*** The guidelines described above outline a general right to Freedom of Association which is most relevant when considering the campaign period (with regards to parties) as well as the process of voter education, voter registration, voting, and counting, which are all periods of the electoral cycle in which domestic monitors and other domestic non-government organizations play critical roles. Additional guidelines regarding the Freedom of Association specifically in the context of candidacy and campaigning is described below.

### **Candidacy and Campaigning**

***Obligation:*** Everyone have the right to establish a political party (OB: AU, ACDEG, art. 3(11)).

***State practice (political commitments):*** State practice, evidenced in political commitments, expands upon this obligation, suggesting that all individuals and groups should have the right to establish their own political parties or political organizations on equal terms (PC: OSCE, Copenhagen, para. 7.6). However, association must be voluntary (PC: UN, UDHR, art. 20).

***State practice (other sources):*** As discussed in regards to the Right to be Elected, other sources (indicative of State practice) state that while political parties may be required to register with election authorities when contesting the election, any demands placed on them regarding registration should not be so stringent as to jeopardize their freedom of association (OS: EU, Handbook (2nd Ed), p. 69).

It is important to note, however, that States may prohibit political parties which advocate the use of violence (OS: Venice Commission 'Guidelines on Prohibition' 3).

### ***Freedom of Movement***

Everyone has the right to freedom of movement within the borders of each State  
(OB: UN, ICCPR, art. 12; AU, AfCHPR, art. 12; OAS, ACHR; art. 22; Arab Charter on Human Rights, art. 26; CIS, Convention on Human Rights, art. 22)

Freedom of Movement is a fundamental right that ensures that everyone, including candidates, voters, domestic monitors, and poll workers are able to move throughout the territory.

***Obligation/Interpretation:*** Freedom of movement also obligates that everyone has the right to leave and return to his own country (OB: UN, ICCPR, art. 12).

The right of Freedom of Movement may only be restricted when provided by law, necessary in a democratic society and consistent with other rights (OB: UN, ICCPR, art. 12). Interpretation of this obligation indicates that any such restrictions must be proportionate and appropriate to the protective function they seek to achieve (IN: UNHRC, General Comment 27, para. 14). Restrictions may include those in the interests of:

- national security (OB: UN, ICCPR, art. 12);
- public order (OB: UN, ICCPR, art. 12);
- public health or morals (OB: UN, ICCPR, art. 12);
- protection of the rights and freedoms of others (OB: UN, ICCPR, art. 12); and
- prevention of a crime (OB: OAS, ACHR, art. 22).

***Freedom of Movement in the context of specific parts of the electoral process:*** While generally applicable to the electoral process, specific additional guidelines regarding the campaign, voter registration, and voting periods are offered below.



## **Candidacy and Campaigning**

*State practice (other sources):* Freedom of movement must be respected in the context of political rallies and meetings (OS: IPU, Declaration on Criteria for Free and Fair Elections, art. 4).

## **Voter Registration**

*State practice (political commitments):* Political commitments indicate that people displaced against their will should have the opportunity to be considered resident in their former place of residence (PC: UN, Guiding Principles for IDPs, Principle 22).

## **Voting Operations**

*State practice (political commitments):* If voters have been displaced in advance of voting, the possibility should exist for them to return on election day to cast their ballot (PC: UN, Guiding Principles for IDPs, Principle 22).

## ***Prevention of Corruption***

States must take measures to prevent corruption

(OB: UN, UNCAC, art. 18; OAS, Inter-American Convention Against Corruption, art. 2; AU, Convention on Corruption, art. 7).

An understanding of the obligation of Prevention of Corruption, and its fulfillment in practice, is crucial to a complete assessment of the election management process, campaign period, voter registration, and voting and counting.

*Obligation/Interpretation:* Treaty obligations establish the general requirement to prevent corruption and indicate that States shall promote transparency in public decision making as a means of combating corruption (OB: UN, UNCAC, art. 13).

*State practice (other sources):* Other sources, as evidence of State practice, indicate that electoral legislation should include procedures and penalties aimed at preventing corruption (OS: UN, Human Rights and Elections, para. 118).

*Obligation:* Treaty sources define corruption as including:

- the solicitation or acceptance of something of value in exchange for an advantage (OB: AU, Convention on Corruption, art. 4);
- the offering or granting of something of value in exchange for an act or omission in the performance of a public function (OB: UN, UNCAC, art. 19);
- fraudulent use or concealment of property derived from corrupt activities (OB: AU, Convention on Corruption, art. 4);
- participation or conspiracy to commit corrupt activities (OB: AU, Convention on Corruption, art. 4);
- any act or omission of official functions by a public official to gain illicit benefits (OB: AU, Convention on Corruption, art. 4);
- the use of State property for purposes other than those for which they were intended for the benefit of the public official or a third party (OB: AU, Convention on Corruption, art. 4);
- improper influence (OB: UN, UNCAC, art. 18).

***Prevention of Corruption in the context of specific parts of the electoral process:*** Additional guidance on the applicability of the Prevention of Corruption to specific parts of the electoral process is offered below.

## **Election Management**

*Obligation:* Particularly relevant to the election management process, States must ensure transparency, efficiency and equity in the recruitment of officials (OB: UN, UNCAC, art. 7),

*State practice (other sources):* Other sources indicate that this is a valuable means to ensure public confidence in the management body (OS: Commonwealth Secretariat, Good Practice, para. 11).

*Obligation:* States are encouraged to implement or maintain effective policies that encourage public participation in order to discourage corruption (OB: UN, UNCAC, art. 5).

*State practice (other sources):* To deter corruption, other sources suggest that bodies appointing members of electoral commissions are unable to dismiss them at will (OS: Venice Commission, Code of Good Practice, sec. II.3.1.77). It is also desirable that electoral commissions take decisions by a qualified majority or by consensus (OS: Venice Commission, Code of Good Practice, sec. II.3.1.80).

## **Candidacy and Campaigning**

*Obligation:* The Prevention of Corruption is important in the context of campaign financing. States should foster a balanced and transparent system of political party financing (OB: UN, UNCAC, art. 7).

*State practice (other sources):* Other sources provide additional guidance concerning the need for regulations to clearly identify what counts as a campaign expenditure (OS: van Biezen, Guidelines, p. 31), and for there to be an established campaign period for the purposes of expenditure (OS: van Biezen, Guidelines, p. 31). Other sources also make clear that material public resources should not be abused in support of a particular political party or candidate (OS: The Carter Center, Financing Democracy: Political Parties, Campaigns, and Elections, p. 2), and that parties may not receive clandestine or fraudulently obtained financial aid (OS: Venice Commission, Good Practice in the Field of Political Parties, para. 42). The law should also be clear regarding the extent to which public employees may be involved in a campaign (OS: OSCE/ODIHR, Handbook (5<sup>th</sup> Ed), p. 47).

## **Vote Counting**

*State practice (other sources):* In relation to the vote counting process, other sources indicate that steps to prevent corruption should include ensuring that the locations of results centers are established and centers are easily accessible (OS: EISA, PEMMO, p. 27). All party agents and accredited observers should be given copies of all protocols and tabulation sheets from results centers (OS: Norwegian Helsinki Committee, Human Rights Monitoring, p. 14). Further, such sources indicate that ballot tallies must be transmitted to higher levels in an open manner (OS: CoE, Handbook for Observers of Elections, para. 4.6).

## ***Security of the Person***

<p>Everyone has the right to security of the person without arbitrary arrest or detention (OB: UN, ICCPR, art 9; AU, AfCHPR, art 6; OAS, ACHR, art 7(1); LAS, Arab Charter on Human Rights, art. 14; CIS, Convention on Democratic Elections, art. 8; CoE, ECHR, art 5).</p>
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The right to Security of the Person is established in international and regional treaties and is applicable throughout the electoral process. It requires that individuals be free from physical and mental violence at all times.

*State practice (other sources):* Other sources expand this obligation to include a requirement that law enforcement behave in a neutral manner during the electoral process (OS: EU, Handbook (2nd Ed.), p. 52).

***Security of the Person in the context of specific parts of the electoral process:*** While Security of the Person is particularly relevant to aspects of the electoral process, it is important to understand the general applicability of this obligation throughout.

### **Candidacy and Campaigning**

*State practice (other sources):* Other sources expand upon the obligation of Security of the Person to ensure that the right to security of the person applies to candidates (OS: IPU, Declaration on Criteria for Free and Fair Elections, art. 3). Conversely, candidates and parties should not engage in violence (OS: IPU, Declaration on Criteria for Free and Fair Elections, art. 3). In addition, public employees should not be coerced to vote for a particular party or candidate (OS: OSCE/ODIHR, Handbook (5<sup>th</sup> Ed), p. 47).

### **Voter Registration**

*Interpretation:* In the context of voter registration, interpretative sources indicate that for voter registration to be respected, States must ensure that interference with registration, intimidation or coercion of potential voters is prohibited (IN: UNHRC, General Comment 25, para. 11).

### **Voting Operations**

*Interpretation:* Interpretative sources state that voters must be free to vote for any candidate for election, for or against any referendum or proposal, for or against the government, without undue influence or coercion of any kind which may distort or inhibit free expression (IN: UNHRC, General Comment 25, para. 19).

*State practice (other sources):* In addition, examples of State practice expand this interpretative guideline to require that safeguards should be in place to prevent removal of evidence of how a voter has voted from the polling station (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, art. 51-52).

The role of security forces during election day is critical to the proper functioning of the electoral process. State practice indicates that voters have a right to security provided by police and security forces in polling stations, but without interference from them (OS: International IDEA, Legal Framework, p. 72).

### **Vote Counting**

*State practice (other sources):* Security of the Person, as defined by other sources indicative of State practice, requires that counting should take place in an environment free from intimidation (OS: EU, Handbook for EU Election Observers, p. 82).

### **The Media**

*State practice (political commitments):* Political commitments extend the right of Security of the Person specifically to members of the media (PC: OAS, Inter-American Principles on Freedom of Expression, Principle 9).

## ***Right to an Effective Remedy***

Everyone has the right to an effective remedy for acts that violate their rights or freedoms

(OB: UN, ICCPR, art. 2; OAS, ACHR, art 25; CoE, ECHR, art. 13).

The Right an Effective Remedy is fundamental to ensuring all other human rights may be fulfilled. As such, the Right to an Effective Remedy is applicable wherever other fundamental human rights are considered, throughout the electoral process.

*State practice (political commitments):* Political commitments explain this relationship, indicating that individuals must have the right to a remedy for violations of their participatory rights relating to the

election process (PC: CoE, Declaration on the Code of Good Practice, p. 1), and that remedies should be available for complaints arising throughout the electoral process (PC: ECOWAS, Protocol, art. 7).

*Obligation/Interpretation:* PIL requires that States ensure that remedies, when granted are effective. Effective redress requires disputes to be dealt with in a timely manner (OB: AU, AFCHPR, art. 7), and that States must enforce the remedy when granted (OB: UN, ICCPR, art. 2). Cessation of a violation is an essential element of an effective remedy (IN: UNHRC, General Comment 31, para. 15), and interpretative sources expand upon this, stating that prevention of a recurrence of the violation of the covenant (IN: UNHRC, General Comment 31, para. 17). Such sources also indicate that an effective remedy requires reparation, and at times may require States to take interim measures (IN: UNHRC, General Comment 31, paras. 16,19).

***Right to an Effective Remedy in the context of specific parts of the electoral process:*** While the Right to an Effective remedy is fundamental to understanding all parts to the electoral process, PIL offers specific guidance in respect to the campaign period, voter registration, vote counting procedures, the media, and electoral dispute resolution.

### **Candidacy and Campaigning**

In addition to the general obligations described above, the Right to an Effective Remedy other sources suggest that parties be granted an opportunity to challenge State decisions that restrict their formation or activities (OS: Venice Commission, Legislation on Political Parties, para. E).

### **Voter Registration**

*State practice (other sources):* Other sources (indicative of state practice) explain that an effective remedy should be available for complaints regarding the voter registration process. In cases of inadequate voter registration, disenfranchisement should be corrected and ineligible people prevented from voting (OS: EU, Handbook on EU Election Observation (2nd Ed.), p. 44).

Decisions on requests for a remedy during voter registration should be made within a time period set by law (OS: OSCE/ODIHR, Legal Framework, p. 16-17). Further, to ensure the finalization of the voters register and provide clarity on election day, the timeline for filing complaints arising from the voter registration period may be limited directly before the election (OS: OSCE/ODIHR, Legal Framework, p. 16), and all complaints relating to the voters register should be resolved prior to election day (OS: EU, Handbook on EU Election Observation (2nd Ed.), p. 44).

*State practice (political commitments):* With regard to the protection and use of personal data, everyone who offers proof of identity has the right to have rectifications made to information about them in the case of unlawful, unnecessary or inaccurate entries (PC: UNGA, Guidelines concerning computerized personal data files, art. 4).

### **Vote Counting**

*Interpretation:* To ensure that effective remedies are available for violations of rights occurring during the counting process, interpretative sources state that there should be impartial scrutiny of the counting process and access to judicial review or other equivalent processes (IN: UNHRC, General Comment 25, para. 20).

*State practice (political commitments and other sources):* In addition, other sources indicate that vote counting procedures should be verifiable and votes should be preserved for review to ensure necessary evidence is available in case of complaints (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, art. 98).

Political commitments also indicate that arrangements should be made to hear petitions related to the announcement of results (PC: ECOWAS, Protocol on DGG, art. 7), while other sources specifically indicate that the

right to challenge election results should be provided for by law (OS: SADC, Principles and Guidelines, para. 2.1.10). Fair rules should:

- provide clear grounds upon which complaints and appeals are allowable (OS: OSCE/ODIHR, Legal Framework, p. 36);
- define and govern the right to demand a recount (OS: CoE, Handbook, para. 4.8);
- provide an opportunity to challenge and invalidate all or part of the election results (OS: SADC, Principles and Guidelines, para. 2.1.10).

## **The Media**

*State practice (political commitments):* Political commitments regarding the Right to an Effective Remedy, when considered in the context of the media environment, indicate that a system to file complaints for media should be available to all citizens (PC: AU, Principles on Freedom of Expression in Africa, Principle. 9.2).

## **Electoral Dispute Resolution**

*Obligation:* Electoral dispute resolution processes are a critical means to ensure the availability of effective remedies for violation of fundamental rights. As such, disputes should be dealt with in a timely manner (OB: AU, AfCHPR, art. 7).

*State practice (political commitments and other sources):* Political commitments also suggest that the legal framework for elections should provide effective redress for violations of electoral rights (PC: AU, ACDEG, art. 17), and the ability to challenge election results should be provided for by law (OS: SADC, Principles and Guidelines, para. 2.1.10).

## ***Right to a Fair and Public Hearing***

Everyone is entitled to a fair and public hearing by a competent, impartial and independent tribunal in determination of his rights

(OB: UN, ICCPR, art. 14; OAS, ACHR, art. 8; CIS, Convention on Human Rights, art. 6; CoE, ECHR, art. 6).

A fair and public hearing is one means of ensuring a right to an effective remedy.

*Obligation/Interpretation:* As indicated by interpretative sources, the notion of a fair trial includes the guarantee of a fair and public hearing, absent of influence (IN: UNHRC, General Comment 32, para. 25). In addition, a fair trial must be expeditious (IN: UNHRC, General Comment 32, para. 27). The right to a public hearing must be protected except for specific and objective reasons as determined by law (OB: UN, ICCPR, art. 14).

The right to appeal is not guaranteed in the determination of a suit at law (IN: UNHRC, General Comment 32, para 46), and the obligation for a public hearing does not necessarily apply to appellate proceedings (IN: UNHRC, General Comment 32, para 28).

*State practice (other sources):* Other sources, as evidence of State practice, state that appeal channels, when available, should be narrowly constructed to avoid ‘forum shopping’ (OS: Venice Commission, Code, sec II.3.3.b).

*Obligation/Interpretation:* In the determination of suits at law, the independence and impartiality of tribunals is an absolute right (OB: UN, ICCPR, art. 14). Interpretative sources expand this obligation stating that a fair and public hearing requires an independent, impartial and competent tribunal (IN: UNHRC, General Comment 32, para. 19).

While interpretative sources are clear that that any body that meets the criteria of impartiality and independence can be considered a tribunal (IN: UNHRC, General Comment 32, para 18), they also state that a situation in which the executive and the judiciary are not clearly distinguishable is incompatible with the notion of an independent and impartial tribunal (IN: UNHRC, General Comment 32, para 19).

Independence of the tribunal requires proper procedures detailing appointment, term limits, security, and remuneration of tribunal members (IN: UNHRC, General Comment 32, para 19). Impartiality requires that judges act without bias, and that the tribunal appears unbiased to the reasonable observer (IN: UNHRC, General Comment 32, para 21). While a Fair and Public Hearing is one essential means of promoting an effective remedy for violations of other fundamental rights, remedy must also be available for violations of the Right to a Fair and Public Hearing itself (IN: UNHRC, General Comment 32, para. 58).

***Right to a Fair and Public Hearing in the context of specific parts of the electoral process:*** While the right to an effective remedy is applicable throughout the electoral process, the Right to a Fair and Public Hearing, is particularly relevant to the aspects of the electoral process which involve the functioning of electoral dispute resolution bodies. Although the Right to a Fair and Public Hearing should be understood in the context of the constituent parts of dispute resolution and election management (as election management bodies often play a critical role in the resolution of electoral disputes), sources did not provide specific guidance with regard to the electoral process.

### ***States Must Take the Steps Necessary to give Effect to Human Rights.***

States are obligated to take the steps necessary to give effect to human rights

(OB: UN, ICCPR, art. 2; AU, AfCHPR, art. 1; OAS, ACHR, art. 2; CIS, Convention on Human Rights, art. 1; CoE, ECHR, art. 1).

The obligation upon States to take the steps necessary to give effect to human rights applies to the entire electoral process and all electoral rights.

***Interpretation:*** Interpretation of this obligation indicates that this obligation is unqualified and of immediate effect (IN: UNHRC, General Comment 31, para 14), and includes a need to take various positive measures. These include educating the population and State officials in human rights (IN: UNHRC, General Comment 31, para 3) and the prevention, punishment, investigation and/or redress violations of human rights by non-State actors (IN: UNHRC, General Comment 31, para 8). All branches of the government, and other public or governmental authorities are responsible for meeting this obligation (IN: UNHRC, General Comment 31, para 4).

***Necessary Steps in the context of specific parts of the electoral process:*** While the obligation upon States to take necessary steps is applicable throughout, public international law offers additional guidance in relation to specific parts of the process. This guidance is outlined below.

### **Legal Framework**

***Obligation:*** The legal framework is an important tool through which the State may fulfill its duty to protect the fundamental human rights of all within their jurisdiction (OB: UN, ICCPR, art. 2).

***State practice (political commitments and other sources):*** Political commitments and other sources provide guidance on aspects of the legal framework. Namely that States should ensure transparency in the management of public affairs (PC: AU, ACDEG, art. 3), and that legislation should give clear instructions on the role of the election commission in interpreting and administering the election law (OS: OSCE/ODIHR, Legal Framework, p. 6).

In addition, other sources indicate that the fundamental aspects of the electoral law should be enshrined in the Constitution or at another level higher than ordinary law (OS: EISA, PEMMO, p. 9). The legal framework for elections should also provide effective redress for violations of electoral rights (PC: AU, ACDEG, art. 17), and should include appropriate sanctions where necessary (OS: UN, Human Rights and Elections, para. 118).

*Interpretation:* With regard to derogations from international obligations, interpretative sources indicate that the State must publicly announce a state of emergency before any derogation measures are put into place (IN: CESCR, Siracusa Principles, para. B.42-44). In applying a limitation to rights, a State must use the least restrictive means required (IN: CESCR, Siracusa Principles, para. A.11).

Derogation measures cannot discriminate on the basis of race, colour, sex, language religion or social origin (IN: UNHRC, General Comment 29, para. 8), and any limitations must respect the non-derogable nature of certain rights. Derogation measures cannot undermine the exercise of rights protected by other international obligations of the State (IN: CESCR, Siracusa Principles, para. D.58-60), and must be justified by law and subject to review (IN: CESCR, Siracusa Principles, para. E.62).

### **Boundary Delimitation and Electoral System**

*Obligation/Interpretation:* States must take steps to ensure that laws are consistent with international human rights norms and standards (OB: UN, ICCPR, art. 2). The electoral system must be consistent with international human rights. Interpretation of this obligation indicates that while no electoral system is prescribed by international law, any system chosen should be consistent with international obligations and should be clearly stated in law (IN: UNHRC, General Comment 25, para. 21).

*State practice (other sources):* Other sources (indicative of State practice) state that the rules for the election should clearly state the electoral formula to be used to convert votes into mandates and the electoral timeline for the announcement and certification of results (OS: EISA, PEMMO, p. 9). They also go further to add that fundamental aspects of the electoral process, such as the electoral system, should be enshrined in the Constitution or other similar high-level law (OS: EISA, PEMMO, p. 9).

Similarly, In the context of boundary delimitation, other sources indicate that the delimitation of boundaries should be enshrined in the constitution or at a level higher than ordinary law (OS: Venice Commission, Code of Good Practice, sec.II.2.b) and that boundary delimitation should be managed by an independent and impartial body (OS: EISA, PEMMO, p. 13).

### **Voter Education**

*State practice (political commitments and other sources):* Other sources, as evidence of State practice, indicate that an adequate voter education process is necessary to ensure the electorate is able to utilize their rights (OS: Norwegian Helsinki Committee, Manual, sec. 5.5). As such, States should take steps to provide civic (including voter) education (PC: AU, ACDEG, art. 12), which should be responsive to the needs to the electorate (OS: International IDEA, Code: Election Administration, p.14-15).

While election management bodies bear principal responsibility for voter education (OS: EISA, PEMMO, p. 22), political parties, civil society and international organizations may contribute to voter education efforts (OS: EISA, PEMMO, p. 19). State voter education campaigns should be conducted in an impartial manner (OS: UN, Human rights and elections, para. 87) and should be designed to provide sufficient information with registration and the voting process (OS: NDI, Domestic monitoring, p. 52). In addition, voter education should be conducted in a timely manner (OS: EU, Handbook (1<sup>st</sup> Ed), p. 65).

### **Election Management**

*State practice (political commitments and other sources):* Other sources and political commitments (as evidence of State practice) state that States should take steps to institutionalize good governance through

accountable, efficient and effective public administration (PC: AU, ACDEG, art. 32). The impartiality of election management bodies should be ensured at all levels; from the national commission to the polling station (OS: Venice Commission, Code, sec. II.3.1.b). The central election commission should be permanent in nature (OS: Venice Commission, Code, sec. II.3.1.c), and sufficient funding and resources should be provided for the conduct of the electoral process, free from interference from any other electoral stakeholders (OS: SADC, Principles and Guidelines, art. 7.6). Training for members of bodies responsible for election management should include training on human rights (PC: UN, Declaration on Rights and Responsibilities, art. 15).

The election administration body should act in conformity with the law (PC: UN, Declaration on Rights and Responsibilities, art. 11) and laws regulating the membership of electoral commissions should be enshrined in the Constitution or at another level above ordinary law (OS: Venice Commission, Code of Good Practice, I para I.2.b). Everyone participating in the election shall recognize the authority of the election commission (PC: AU, Declaration on the Principles Governing Elections, art. IV(13)). Further, everyone has the right to submit to governmental bodies, agencies and organizations criticisms and proposals for improving their function (PC: UN, Declaration of Right and Responsibility, art. 8).

### **Candidacy and Campaigning**

*State practice (other sources):* Other sources (as evidence of State practice) indicate that States should provide for the independent monitoring of campaign and political funding (OS: ACE Project, Reporting and Public Disclosure of Party Finance) through a multiparty independent monitoring body (OS: EISA, PEMMO, para. 4.7). Legislation should define:

- the procedure for appointing members to the monitoring body (OS: van Biezen, Guidelines, p. 64);
- the definition of their specific powers and activities (OS: van Biezen, Guidelines, p. 64);
- the types of breaches of the law to be sanctioned (OS: van Biezen, Guidelines, p. 64);
- and procedures for appeal against decisions of the agency (OS: Transparency International, Policy Position No. 2/2005, p. 4).

Other sources add that the monitoring body should have security of funding and be free from political pressure (OS: Transparency International, Policy Position No. 2/2005, p. 3), and, according to other sources, must have autonomous capacity to seek out violations (OS: Transparency International, Policy Position No. 2/2005, p. 3). It is important that the monitoring body provide accessible and timely information (OS: Transparency International, Policy Position No. 2/2005, p. 4) and respect human rights (OS: Transparency International, Policy Position No. 2/2005, p. 4). AS one concrete measure to ensure freedom from political influence, election commissioners should not be eligible for re-appointment (OS: van Biezen, Guidelines, p. 66).

States should also require that the infringement of rules regarding party funding be subject to effective and proportionate sanctions (OS: CoE Committee of Ministers, Recommendation (2003)4, art. 16). A means of facilitating this requirement is for States to promote specialization of branches of the government in the fight against illegal campaign funding (OS: CoE Committee of Ministers, Recommendation (2003)4, art. 15).

### **Voter Registration**

*State practice (other sources):* States should take steps to ensure the voter registration process is conducted in a manner which respects a variety of rights. For this reason, other sources suggest that States take steps to establish an effective procedure for voter registration (OS: IPU, Declaration on Free and Fair Elections, para. 4). Such steps include ensuring that:

- voter registration forms and guidelines are available in minority languages of the country (OS: OSCE/ODIHR, National Minorities, p. 21);
- remedy procedures are clearly stated in law;



- pursuit of these procedures should be allowed within a reasonable limit of time (OS: OSCE/ODIHR, Legal Framework, p. 16); and
- such procedures allow for the filing of both claims (of unjustified exclusion) and objections (for incorrect inclusion) (OS: Klein and Merloe, Building Confidence, p. 15).

*State practice (political commitments):* Political commitments indicate the need for States to ensure complete transparency in the conduct of voter registration and maintenance of the voters register (PC: ECOWAS, Protocol on DGG, art. 6).

*State practice (other sources):* In particular, other sources (indicative of State practice) say that registration procedures should be clearly stated and readily accessible for review by potential voters (OS: Dundas, Dimensions, p. 13). They also state as critical, the need for the voters register to be publicly displayed (OS: Venice Commission, Code of Good Practice, sec. I.1.2.iii) and for there be sufficient time for public inspection of the voters list, including time for objections to be raised, and for the adjudication of appeals (OS: Commonwealth Secretariat, Good Practice, para. 17). Other sources underscore the importance of voters having access to a procedure that makes it possible to have errors on the voters list corrected (OS: Venice Commission, Code of Good Practice, sec. I.1.2).

### **Voting Operations**

*State practice (other sources):* In relation to voting operations, other sources (as evidence of State practice) state that States should take steps to prevent and punish voter fraud as an infringement upon free suffrage (OS: Venice Commission, Code of Good Practice, sec. I.3.26).

In the cases of e-voting technology, sources also indicate that the correct functioning of e-voting systems should be ensured by the State through an independent body (OS: CoE, Committee of Ministers Recommendation (2004)11 on e-voting, art. 28).

### **Vote Counting**

*Interpretation:* In order to fulfill rights in respect to the vote counting process, interpretative sources indicate that States should ensure that vote counting be observable, including by candidates or their agents and accredited observers (IN: UNHRC, General Comment 25, para. 20).

*State practice (political commitments and other sources):* That steps should be taken to ensure vote counting is a transparent and observable process is further supported by political commitments (PC: ECOWAS, Protocol on DGG, art. 6), and other sources which also indicate that the audit system for electronic technologies should be open and comprehensive (OS: CoE Committee of Ministers, Recommendation (2004)11 on e-voting, art. 102).

### **The Media**

*State practice (political commitments):* Political commitments indicate that necessary steps taken to ensure rights in the context of the media environment may include the establishment of an independent body to regulate election broadcasts (PC: AU, Principles on Freedom of Expression in Africa, art. 7). In addition, the State should take steps to ensure that the appointment and functioning of regulatory authorities is transparent (PC: AU, Principles on Freedom of Expression in Africa, art. 7.2), and that such authorities are independent and protected from interference (PC: AU, Principles on Freedom of Expression in Africa, art. 7).

### **Electoral Dispute Resolution**

*Interpretation:* In regards to the resolution of disputes, interpretative bodies have made clear that States have a duty to:

- protect the fundamental human rights of all within their jurisdiction (IN: UNHRC, General Comment 31, para. 8);
- investigate alleged rights violations (IN: UNHRC, General Comment 31, para. 15); and
- provide appropriate judicial and administrative means for addressing claims of rights violations (IN: UNHRC, General Comment 31, para. 15).

Further guidance from interpretative documents requires that this duty to investigate alleged rights violations includes the investigation of acts by private persons and entities (IN: UNHRC, General Comment 31, para. 8).

*State practice (political commitments):* In addition, the duty to protect the fundamental human rights of all includes, as evidenced by political commitments, a requirement that States ensure that all, individuals, groups of individuals and non-governmental organizations have standing before judicial bodies in cases of human rights violations, (PC: AComHPR, Principles and Guidelines, art. E).

*Interpretation:* Where a violation is found to have occurred, interpretation requires that States have a duty to punish those guilty of the violation (IN: UNHRC, General Comment 31, para. 18), including (as evidenced by other sources) violations which constitute any kind of electoral fraud (OS: Venice Commission, Code of Good Practice, sec. I.3.2.xv).

*State practice (other sources):* Other sources which illustrate State practice also indicate that effective implementation of electoral law requires sanctions against the infringement of electoral law (OS: Goodwin-Gill, Free and Fair (2006), p. 158).

*Interpretation:* Further, interpretative sources explain that States should take steps to protect the independence of the judiciary to ensure the proper functioning of dispute resolution processes (IN: UNHRC, General Comment 32, para. 19).

## ***Rule of Law***

States shall take measures to promote the principles of the rule of law (OB: UN, UNCAC, art. 5).

The rule of law is an implicit obligation in public international law, with initial reference made to this principle in the preamble to the Universal Declaration of Human Rights, and more recent codification at the treaty level in the United Nations Convention Against Corruption (UNCAC). Respect for the rule of law ensures a political and legal environment conducive to the conduct of a genuine electoral process and the fulfillment of electoral rights.

*Obligation/Interpretation:* The Rule of Law requires that all are equal before the law (OB: UN, ICCPR, art. 26), and that laws should be equally enforced (OB: UN, ICCPR, art. 26). Laws must also be consistent with international human rights norms and standards (OB: UN, ICCPR, art. 2), and interpretative sources indicate that laws and procedures must not be arbitrarily applied (IN: General Comment 25, para 4). Suspension or exclusion of participatory rights is prohibited except on grounds established by law and which are objective and reasonable (IN: UNHRC, General Comment 25, para. 4).

***Rule of Law in the context of specific parts of the electoral process:*** The Rule of Law is applicable throughout the entire electoral process, however it is particularly pertinent to the legal framework, candidacy and campaigning, voting operations and dispute resolution.

## **Legal Framework**

*State practice (political commitments and other sources):* Political commitments, as well as other sources which serve as evidence of State practice, indicate that no substantial change to the electoral law shall be made within the six months prior to the election without the consent of a majority of political actors (PC: ECOWAS, Protocol on DGG, art. 2). In addition, it is beneficial when electoral legislation for all elections is located in a single body of laws (OS: OSCE/ODIHR, Legal Framework, p. 6).

When electoral legislation exists at different levels of the law, it is important that such legislation does not conflict (OS: OSCE/ODIHR, Legal Framework, p. 5-6) and that clear and precise regulations and administrative instructions for the electoral process are laid out (OS: UN, Human Rights and Elections, para. 131).

The rule of law should be strengthened by public participation in decision making (PC: OAS, IADC, art. 2), and in all cases, electoral legislation should be publicly promulgated (OS: OSCE/ODIHR Legal Framework, p. 6) and be widely available to the public for review (OS: OSCE/ODIHR, Domestic Election Observers, p. 36). Specifically the legal framework should be available in the official languages of the country (OS: EISA, PEMMO, p. 9). Everyone is entitled to protection under the law when peacefully opposing acts that violate human rights (PC: UN Declaration on Rights and Responsibilities, art. 12).

## **Candidacy and Campaigning**

In order to ensure that candidates are able to enjoy, in practice, their right to be elected, other sources (indicative of State practice) underscore the importance of a clear deadline after which the validity of candidatures cannot be challenged (Petit, Resolving Election Disputes, para. II.F.28).

The system of campaign finance must be established with a respect for the rule of law, with all components of the system of party and candidate financing codified in the legal framework (OS: van Biezen, Guidelines, p. 14). Such legislation on political party and campaign finance should:

- be clear and unambiguous (OS: Dahl, in Political Finance in Post-conflict Societies, p. 129);
- avoid conflicting provisions governing the activities of political parties and their financial activities (OS: van Biezen, Guidelines, p. 15);
- avoid conflicting provisions between laws governing the financing of national and sub-national parties (OS: van Biezen, Guidelines, p. 15);
- be publicly available (OS: van Biezen, Guidelines, p. 15); and
- should cover fundamental issues, such as sources of funding, private donations, public subsidies to political parties, the financing of election campaigns and provisions for disclosure, reporting, monitoring and enforcement (OS: van Biezen, Guidelines, p. 15).

## **Voting Operations**

*State practice (other sources):* In the context of voting operations, States should ensure that voting processes are guided by regulatory frameworks and subject to the rule of law (OS: Norwegian Helsinki Committee, Manual, E.1).

## **Electoral Dispute Resolution**

*State practice (other sources):* When understanding the rule of law in regards to the dispute resolution process, it is critical that the law clearly state who has standing to file an election dispute (OS: OSCE/ODIHR, Legal Framework, p. XIV).