

THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS ICCPR Art. 25

Sophia Mård



A Practical Guide for
Civil Society Organizations

In collaboration with
THE
CARTER CENTER



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List of Abbreviations

CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
COBS	Concluding Observations
HR Committee	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
LOI	List of Issues
LOIPR	List of Issues Prior to Reporting
OHCHR	Office of the High Commissioner for Human Rights

Foreword

As emphasized by the *Human Rights and Elections Standards* plan of action developed by the Carter Institute in cooperation with the Office of the United Nations High Commissioner for Human Rights, participation in public affairs has received insufficient attention from the universal and human rights systems - largely due to a lack of communication between the human rights and elections communities.¹ This is problematic given the fact that despite claims of the achievement of equitable, universal suffrage, research shows that human rights in the context of participation in public affairs continue to be relatively under-developed in their pure practical purchase.

This publication aims to in part address this shortage by offering a brief, complementary analysis outlining the coverage of the UN Human Rights Committee (HR Committee) on the right to participate in public affairs. It is further intended to bridge the above shortcoming by providing guidance to NGOs and practitioners seeking to engage with the HR Committee's approach on the right to participate in public affairs. Such institutions and individuals play an essential role in the documenting and reporting of human rights concerns, and the reporting procedures are very much dependent upon the provision of complementary information to avoid bias and omissions in their coverage of treaty rights such as the one examined here. The focus on the HR Committee is further tantamount for two main reasons: to highlight the existing utility and importance of the right to participate in public affairs under the ICCPR, and to highlight areas that could be further developed or where the necessary information has not been sufficiently provided. In examining the current approach, our hope is that such institutions and individuals will be able to identify how they, in their engagement and advocacy, can drive the development of the HR Committee's approach to this important right.

In aiming to do so, the present publication has been structured into five main parts. The introductory chapter introduces the aim of the project as well as the methodology of the research. The second chapter briefs the interested reader on the scope of Article 25. The three following chapters develop three key thematic areas of implementation: (1) the holding of genuine periodic elections, (2) the nurturing of an environment conducive to and supportive of the participation in public affairs, as well as ensuring the (3) rights of various special groups.

Victor Rodriguez-Rescia

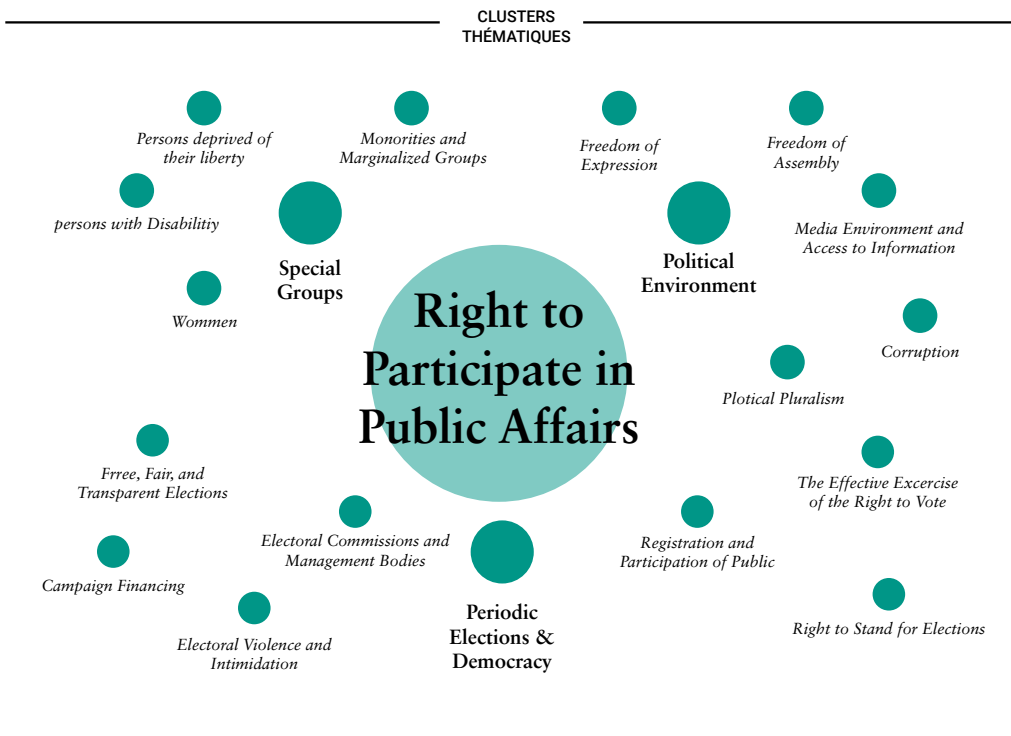
President of the Board of CCPR-Centre
and former member of the Human Rights Committee

¹ Available here: <https://www.ohchr.org/EN/Issues/Pages/HRElections.aspx>

Introduction

1.1. Methodology

Our research on the HR Committee’s approach to the right to participate in public affairs was conducted in three phases. In the first phase, data was collected from the 201 concluding observations adopted between 2000-2019, and all concluding observations were reviewed for issues and recommendations relating to the right to participate in public affairs. In the second phase, a brief analysis of the existing data led to the adoption of three core chapters and 16 individual thematic clusters (available below) of the HR Committee’s current coverage. Every data point was then categorized into thematic clusters. In the third phase, individual themes were analysed and preliminary conclusions on the HR Committee approach were drawn. In the fourth and final phase, early drafts of the existing document were shared with two panels of experts and human rights defenders, and their feedback was iteratively implemented into the present publication.

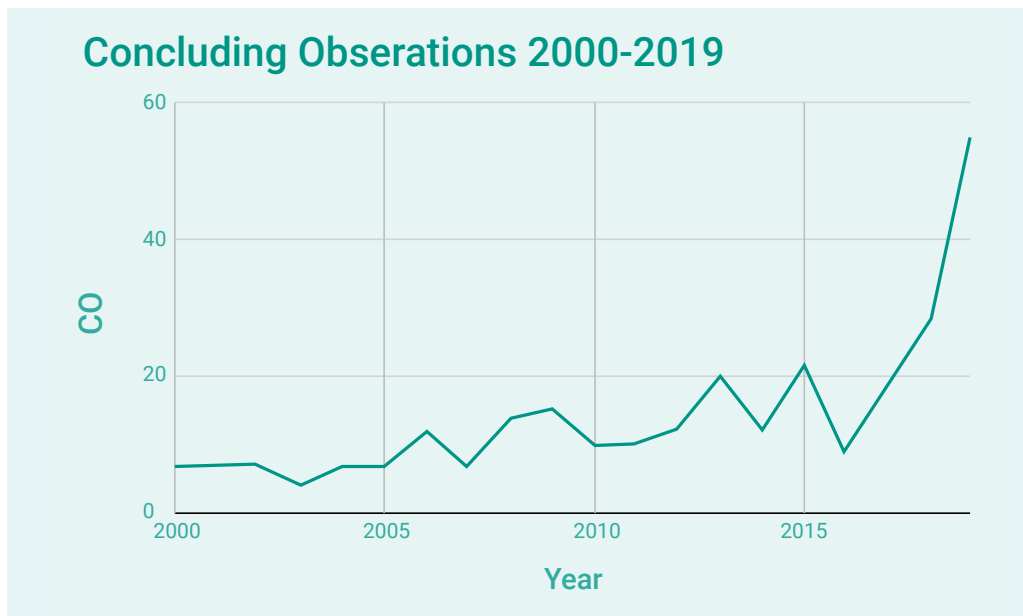


On the basis of this methodology, two caveats are important to consider when reviewing this publication. Firstly, since the themes were drawn from an analysis of the data

available, thematic omissions will not be immediately reflected in the document. Secondly, as identified earlier, the interrelation and interdependence of the right to participate in public affairs means that frequency statistics must be considered with some caution – it is possible that an issue area of concern may be more commonly considered from the perspective of another human right, such as freedom of expression or assembly.

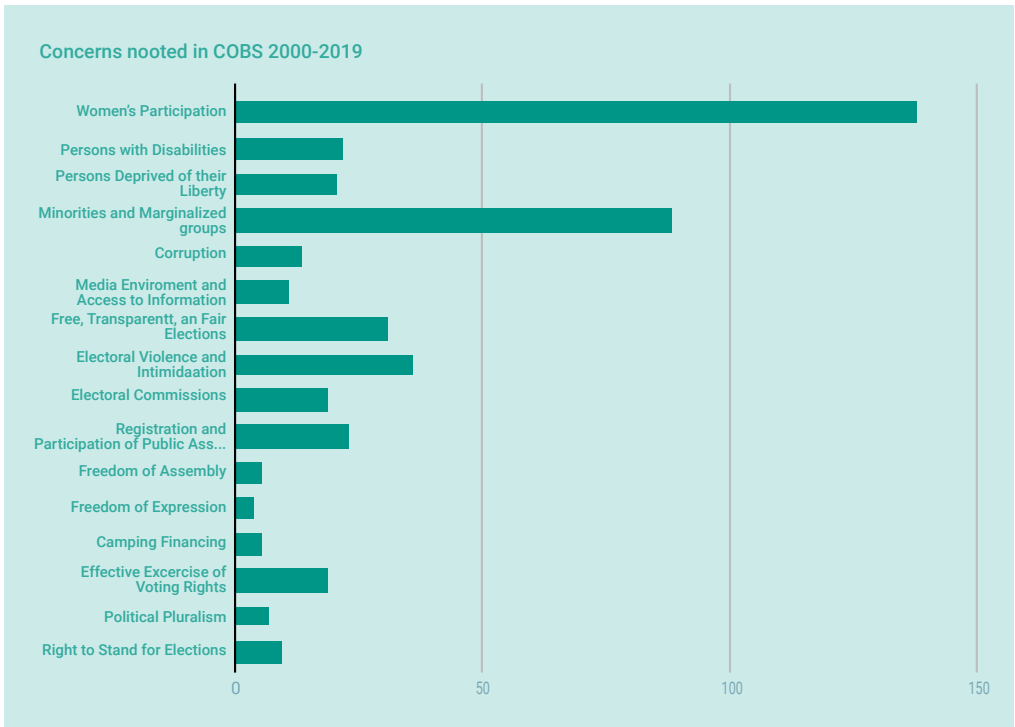
1.2. Overview of Data

The HR Committee conducted 201 state reviews between 2000 and 2019. In these reviews, the Committee referred to the right to participate in public affairs on 402 occasions – accounting for roughly 80% of all sets of concluding observations surveyed. When considering why Article 25 was not being raised in the States representing the remaining 20%, it is not immediately obvious why concerns relating to the right to participate in public affairs was not explicitly considered. Additionally, until 2017, the Committee did not consider Article 25 in a dedicated paragraph in the majority of occasions in which it appeared. Post 2017 however, there has been a marked increase in the number of paragraphs directly dedicated to participation in public affairs – rising to 36 such paragraphs in 2018. In terms of the broader trend, the adoption of concluding observations related to Article 25 shows a relatively consistent, marginal increase until 2017, where a sharp increase is reflected. It is important to note that this does not necessarily mean that more Article 25 related issues are being raised in more concluding observations on average, but that more issues are raised under the scope of the Article.



In order to explore these trends further, this research divides the HR Committee’s approach to the right to participate in public affairs into three main chapters: (1) periodic

elections & democracy, (2) the political environment, and (3) special groups, which may be further divided into 16 core thematic clusters. It is evident from a cursory overview of the concluding observations surveyed, and as illustrated in the graph below, that women’s participation in public affairs remains the most frequent issue under Article 25, mentioned in roughly one-third of all observations. The participation of minority and marginalized groups in public affairs is also frequently identified, appearing in roughly 21% of all occasions. With the exception of delays in holding periodic elections as mandated by Article 25(b), nearly every issue area saw at least a marginal increase in mentions over time - preliminarily suggesting that the Committee is gradually adopting a more comprehensive and consistent approach to the right to participate in public affairs.



From a geographical perspective, the Committee expressed concern over the effective participation in public life in Africa most frequently – with 39% of all mentions, or 140 times during the period in question. It also noted concerns in relation to the right to participate in public affairs in Europe 89 times (or 25%), Asia 85 times (23%), North America 30 times (8%), Oceania two times (1%) and South America 17 times (5%). The most frequent issue in all but one region was women’s participation in public affairs - particularly from a representational perspective with reference to various public bodies. The remaining region was Oceania where concerns surrounding the participation of indigenous peoples in decision-making structures was the most frequent issue.

Chapter 1. Scope of art. 25 ICCPR

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

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

In the preceding decades, **elections** have emerged as the primary means by which to secure the right to participate in public affairs. In doing so, (genuine) elections - marked by being free, fair, and transparent - have enabled people to participate in the decision-making processes which concern them, bestowed legitimacy upon government authority, allowed for smooth, peaceful transitions of power, and formed the core of democratic, representative governance based upon the will of the people. Perhaps unsurprisingly, then, the right to participate in public affairs has become known as the “right of rights” and is a necessary condition for the creation of an environment conducive to the protection and promotion of human rights.²

As such, it is important to note that the right to participate in public affairs – although sometimes referred to as the right to vote - extends beyond the immediate electoral context to **encompass non-electoral activities** such as e.g. the provision of information, through consulting and dialogue, or co-drafting in decision-making processes. Article 25 contains three paragraphs, of which only one refers to elections:

- **Paragraph a)** relates to the participation in public life in general. As explained in accompanying General Comment 25: “The conduct of public affairs is a broad concept: it relates to the exercise of legislative, executive and administrative powers. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by Article 25 should be established by the constitution and other laws.”
- **Paragraph b)** spells out how citizens can exercise their right to participate in public affairs directly: when they exercise power as members of legislative bodies or by holding executive office. Another example of direct participation in public affairs, is deciding on public issues through referenda, or voting.

² See e.g. Waldron J (1999) Law and disagreement. Cambridge University Press, Cambridge

This paragraph also sets out the requirements of these processes: “genuine periodic elections are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors.” Lastly, the General Comment goes into more detail on free, reliable and transparent elections: “(they) must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. The results of genuine elections should be respected and implemented. (...) The principle of one person, one vote must apply. (...) Electors should be fully informed of these guarantees.”

- **Paragraph c)** deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. The General Comment explains this in more detail: “the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secure tenure, ensure that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under Article 25.”

As such, the lack of accountability, the lack of the ability to exercise power, and the exercise of excessive power all fall within art. 25 of the ICCPR.

States are allowed to **limit** the exercise of the rights in Article 25, but only on the basis of objective and reasonable criteria, that are established by law. For example, a minimum age for presidential candidates can be a lawful restriction to Article 25. Discriminatory criteria are in itself unlawful, like education, residence or descent, or political affiliation. Some unreasonable restrictions are explicitly mentioned in the General Comment:

- It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements.
- Persons who are deprived of their liberty, but not convicted, should be able to exercise their right to vote.

An important aspect regarding the scope of this right, is to whom it applies to. It is limited to “**citizens**”, instead of the usual “individuals within the territory and subject to the jurisdiction of the State”. However, States should define citizenship without distinctions on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. As an individual right, persons who feel their right to participate in public affairs has been violated may submit complaints under the first Optional Protocol of the ICCPR.

The right to participate in public affairs is **intrinsically linked** and interdependent upon a number of other human rights. These prerequisite rights include the right to freedom from discrimination, the right to freedom of opinion and expression, the right to freedom of association and of peaceful assembly, and the right to freedom of movement, without which true participation in public life would not be possible. Political parties, for example, fall under the right to freedom of association, guaranteed in Article 22 of the Covenant.

International obligations in relation to this right have nearly been fully generated by UN treaties. In its drafting, Article 25 maintains most of the core provisions of Article 21 of the Universal Declaration of Human Rights. As elaborated by General Comment 25, the conduct of public affairs “is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers ...[covering] all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels”. Conceived in this broad manner, participation encompasses many areas of life, and state and private sector organization, and involves a number of activities.

Throughout General Comment 25, the HR Committee lists several **State obligations** related to this right:

- States should adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights in Article 25.
- States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Assistance provided to the disabled, blind or illiterate should be provided, but independent.
- Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movements which prevent persons entitled to vote from exercising their rights effectively.
- Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by criminal laws and those laws should be strictly enforced.

- States should guarantee the enjoyment of other rights: the participation in public life is closely linked to the freedom of expression, assembly and association.
- States should take measures to guarantee the requirement of the secrecy of the vote during elections. This implies that voters should be protected from any form of coercion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process.
- An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.

Chapter 2. Periodic Elections & Democracy

Although the right to participate in public affairs is not limited to the electoral-context, elections remain the primary means by which individuals participate in public affairs. As such, Article 25(b) of the ICCPR provides citizens with the right and opportunity to vote, to be elected at genuine periodic elections which are to be by universal and equal suffrage and held by secret ballot, guaranteeing the free expression of the will of the electorate (see section 1.0). This chapter seeks to consider cluster themes relating to the holding of such elections, such as electoral violence and intimidation, electoral commissions and management bodies, the registration and participation of public association, and the effective exercise of the right to vote and the right to stand for elections.

2.1. Electoral Violence and Intimidation

Intimidation and violence in the electoral process generally refers to coercive acts targeted at humans, property, and/or infrastructure, and covers a range of different manifestations and outcomes such as violence or the threat of violence, attacks on polling places, legal threats or coercion.³ Such undue pressures can occur at any time in the electoral process. Most troublingly, violence associated with elections may generate significant casualties, hinder a peaceful transition of power between incumbent and successor government, and form part of an escalatory process towards civil war. The fundamental value of the obligation to impose sanctions on acts of intimidation and violence is thus naturally to protect the legal interests that are to be achieved through the exercise of elections, and ultimately the right and opportunity to participate in public affairs. As such, Article 25 requires that “intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced”, and that there is protection from “unlawful or arbitrary inference with the voting process”.

The Committee has raised concerns in relation to electoral violence and intimidation on 36 occasions. In its consideration of Belarus (2018), the Committee noted reports of “pressure, persecution, intimidation, harassment and detention of voters and opposition political candidates”. Similarly, it raised “intimidation during 2013 elections” as a cause for concern in the examination of Guinea (2018). In the case of Guinea, the Committee recommended that the States takes active measures to “investigate, prosecute, and convict those responsible for acts resulting in death or injury in connection with the violence surrounding February 2018 elections”. Beyond harassment of political opposition, the 2015 consideration of Venezuela contained the following exemplary recommendation against intimidation, harassment and threats against human rights defenders:

³ See e.g. Birch S, Daxecker U, Höglund K. Electoral violence: An introduction. *Journal of Peace Research*. 2020;57(1):3-14. doi:10.1177/0022343319889657 on the distinctiveness of electoral violence

The State party should take the necessary steps to:

- (a) **Provide effective protection** to journalists, human rights defenders, social activists and lawyers who are subjected to intimidation, threats and/or attacks because of the work they perform in monitoring and providing information on human rights issues and other matters of public interest;
- (b) **Ensure that no public official takes measures or performs acts that may constitute intimidation, persecution, disparagement or undue interference** in the work of journalists, human rights defenders, social activists, lawyers or members of the political opposition or in the exercise of their rights under the Covenant;
- (c) **Ensure that all allegations concerning intimidation, threats and attacks are promptly, thoroughly, independently and impartially investigated** and that the perpetrators are brought to justice and duly punished.

Whilst most observations made by the Committee relating to electoral violence and intimidation were focused on the use or threat of violence in the electoral process, recent research suggests *harassment* and *intimidation* is more common in the electoral context. This focus on acts of lethal violence may, at least partially, be attributed to the fact that such violence is typically more comprehensively documented and therefore less subject to underreporting in the majority of available sources. Nevertheless, electoral-related harassment and intimidation has arguably not received sufficient coverage at the universal level if we consider the Electoral Contention and Violence (ECAV) report more than three violent events in over 50% of elections, and deadly violence in approximately 30% of elections.⁴ However, it should be noted that electoral violence often takes place in contexts where other forms of organized violence are already pervasive - such as in armed conflict - and distinguishing between an incident of electoral violence from an incident of non-electoral violence may prove difficult.⁵ Troublingly, most concerns relating to electoral violence and intimidation have been regarding the safety of opposition candidates, to the comparative (but not wholesale) neglect of activists, journalists, human rights defenders, and groups of voters as well as elections-related property and infrastructure required to exercise the right to participate in public affairs.

2.2. Electoral Commissions & Management Bodies

General Comment 25 explains that an independent electoral authority should be established to supervise the electoral process and ensure that it is conducted fairly, impartially, and in accordance with established laws that are compatible with the Covenant. Such an independent electoral commission or management body takes on a variety of institutional formats and models globally, but they share their sole purpose,

⁴ See Daxecker, U., Amicarelli, E., & Jung, A. (2019). Electoral contention and violence (ECAV): A new dataset. *Journal of Peace Research*, 56(5), 714–723. <https://doi.org/10.1177/0022343318823870>

⁵ Birsch, *supra* note 3

and legal responsibility, in managing the requisite elements that are essential for the conduct of free and fair elections. Essential elements include (but may ultimately be tasked to multiple bodies): determining who is eligible to vote, receiving and validating the nominations of electoral participants, counting the votes, and tabulating the votes. In order to ensure the aforementioned fair and impartial conduct required by Article 25, national legal frameworks should give careful attention to provisions of appointment, security of tenure, definition of conflicts of interest, swearing in, remuneration, duties, powers, qualifications, and reporting structure of electoral staff.⁶

Issues relating to electoral commissions were raised by the Committee 19 times in the concluding observations surveyed. For instance, the relative effectiveness and independence of the local Electoral Commission was raised in the consideration of Guinea (2018), Tajikistan (2019), Equatorial Guinea (2019), and Mauritania (2019). Similarly, in the consideration of Tunisia (2020), the Committee recommended that the “State party should take the necessary measures to ensure the effective and independent functioning of the Independent High Electoral Commission”. A lack of adequate resources and financial autonomy was raised in the examination of Nigeria (2019), and Gambia (2018) respectively. In addressing Jordan, the Committee recommended that the State “takes adequate steps to further guarantee free and transparent elections, including the establishment of an independent electoral commission responsible for systematic election monitoring”. Finally, in the consideration of Nigeria (2019), the Committee was concerned with respect to the “Mandate of the Independent National Electoral Commission, the appointment of its members, the conditions for referrals thereto, its staffing levels, and its annual budget”.

A recommendation of the HR Committee on the establishment of an electoral court:

45. The State party should:

- (a) Remove undue restrictions on standing for public office;
- (b) Amend the legislative framework and adopt procedures to ensure that the right to vote can be exercised without discrimination, in compliance with Article 25 of the Covenant;
- (c) Remove any physical obstacles to accessing polling places;
- (d) Implement the Constitutional Review Committee’s recommendation to establish an electoral court equipped with the necessary resources and trained magistrates enabling it to efficiently adjudicate election-related disputes in a timely fashion.

⁶ See International Institute for Democracy and Electoral Assistance (2014), ‘International Obligations for Elections: Guidelines for Legal Frameworks’. Bulls Tryckeri, Stockholm

Key Issue	Frequency of Consideration
Does the legal framework allow the electoral commission to act independently?	High
Are electoral commissions required to operate transparently?	Substantial
Are electoral commissions financially accountable and are they provided with adequate resources?	High
Are there provisions ensuring security of tenure and the prohibition of conflicts of interests for electoral commission positions?	Low

2.3. Registration and Participation of Public Associations

For electoral processes to function, dedicated national legal frameworks for elections are required to provide the right of all individuals and groups, to form in full freedom, their own public associations with the necessary legal guarantees to enable them to function democratically and compete with each other on the basis of equitable treatment before the law. General Comment 25 further emphasizes that the right to freedom of association, including the right to form and join organizations and associations concerned with public affairs, is an *essential* adjunct to the rights protected by Article 25. Most principally, regulations governing the registration and participation must not be used “to limit the rights of association guaranteed by the Covenant”.

The HR Committee has expressed concern with the registration and participation of public associations in 23 instances. A wholesale prohibition on the establishment of political parties was raised as a concern both in the consideration of Eritrea (2019) and Viet Nam (2019). In its review of Turkmenistan (2017), the Committee raised concerns about “excessive restrictions on the establishment and functioning of political parties, as well as provisions permitting representatives of the Central Elections Committee and the Ministry of Justice to monitor meetings of political parties”. Similarly, in the consideration of Kazakhstan (2011, 2016), the Committee noted that regulations on the registration of public associations, including political parties, “impose undue restrictions on the exercise of freedom of assembly and political participation”. Undue or unreasonable restrictions were also cited in the review of Tajikistan, where the Committee recommended that the State should “bring its law governing the registration of NGOs into line with the Covenant.” In the examination of Moldova, the Committee noted that “certain requirements that the State party places upon the registration of political parties, such as conditions with respect to their territorial representation, may violate Article 25 of the Covenant by restricting the right of individuals to the full expression of their political freedoms”. In its consideration of Kuwait (2011), the Committee raised concerns that no legal framework currently regulates the existence of political parties. This was also raised as an issue in the Democratic People’s Republic of Korea, where the delegation’s explanation that

no regulation or legislation governing the creation of political party was envisaged as there was “no popular manifestation of any desire to create new political parties” was considered to run counter to the provisions of Article 25 of the Covenant.

On this basis, we may infer that the Committee principally considers the registration and participation of public associations in two-fold: whether the right to form public association is not unreasonably restricted, and, whether objective criteria regulate the creation of public associations.⁷Beyond this dominant focus, the Committee also briefly covered a third issue-area of whether objective criteria determine the de-registration of political parties, as was the case in the dissolution of two pro-reform political parties in Iran.

A recommendation of the HR Committee on the registration of public associations:

55. The State party should revise relevant laws, regulations and practices with a view to bringing them into full compliance with the provisions of Articles 22 and 25 of the Covenant, including by:

- (a) Simplifying registration rules so as to ensure that public associations and political parties can exercise their right to association meaningfully;
- (b) Repealing Article 193-1 of the Criminal Code and considering not replacing it with an administrative offence;
- (c) Ensuring that regulations governing foreign funding for public associations do not lead in practice to undue control or interference over their ability to influence public opinion and to operate effectively, including by revisiting the list of activities for which foreign funding may be used;
- (d) Addressing the obstacles to the registration and operation of trade unions, lifting the undue limitations on the right to strike, investigating all reports of interference in the activities of trade unions and of the retaliatory treatment of trade union activists, and revising the procedures governing collective bargaining with a view to ensuring compliance with the Covenant. (CCPR/C/BLR/CO/5)

⁷ This consideration of objective and reasonable criteria is also reflected in a number of cases brought before the Committee relating to the participation of political parties. In *Bwalya v. Zambia*, for example, the Committee observes that “that restrictions on political activity outside the only recognized political party amount to an unreasonable restriction of the right to participate in the conduct of public affairs.”

Key Issue	Frequency of Consideration
Is the right to form political parties unreasonably restricted?	High
Do objective criteria regulate the creation of political parties?	High
Do objective criteria determine the de-registration and/or non-registration of political parties?	Substantial
Does the legal framework provide for a timely remedy against de-registration and/or non-registration of political parties?	Low
Can NGOs and CSOs register and operate freely?	Substantial
Are there provisions requiring the timely treatment of registration application for CSOs/NGOs?	Low
Does the legal framework allow observation of the entire electoral process?	Low
Are there objective criteria and timeframes for accreditation?	Substantial

2.4. The Effective Exercise of the Right to Vote

The right to vote is at the core of any democratic process based on the will of the people, and is a fundamental guarantee contained in Article 25. As General Comment 25 indicates, the right to vote (in elections and referendums) must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote.⁸ It is, for instance, considered unreasonable to restrict the right to vote on the grounds of physical disability or to impose literacy, educational or property requirements. General Comment 25 further sets out that the right to vote also encompasses its effective exercise; that the equal opportunity to vote also obligates the state to “take effective measures to ensure that all persons entitled to vote are *able* to exercise that right” (emphasis added). The Comment explains that such an effective exercise entails that “positive measures should be taken to overcome specific difficulties such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevents persons entitled to vote from exercising their rights effectively. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.” The table below briefly serves to show how these kinds of specific difficulties may differ between social voting groups.

⁸ On the flipside, the Committee held in *Christopher Alger v. Australia* that compulsory voting in federal elections is compatible with the Covenant when the submission of casting a blank or non-compliant ballot paper, without undue influence or coercion of any kind, is possible and any fine is set out by the legal framework.

Examples of Social Groups and Possible Specific Difficulties in the Electoral Process

<i>Social Group</i>	<i>Specific Difficulties</i>
Illiterate	Access to information, Accessibility of Polling Booths
Persons with Disabilities	Access to information, Accessibility of Polling Booths
Prisoners	Access to Polling Booths, Access to information
Homeless	Residency Requirements, Lack of Documentation
Internationally Displaced Persons	Residency Requirements, Discrimination, Conflict and Security, Lack of Documentation
Linguistic Minorities	Access to information, Discrimination, Linguistic Barriers

The Committee expressed concerns relating to the right to vote and the effective exercise of voting rights on 19 occasions. Most generally, in the examination of Nigeria (2019), the Committee recommended that the State should “ensure that the effective exercise of voting right is guaranteed to all and that persons with the right to vote, as well as activists and candidates are protected from violence and threats”. In its consideration of Haiti (2014), the Committee recommended that the State should take “the necessary steps to organize the municipal elections due to have been held in 2011, in order to ensure that citizens have effective access to their rights under Article 25”. The need for the timely holding of electoral processes was also raised in the consideration of Malawi (2011), Congo (2000) and Bahrein (2018), as concerning restrictions on the effective exercise of voting rights and as a deprivation of the right to take part in public affairs. In the examination of the United States of America, the Committee was further concerned that “voter identification and other recently introduced eligibility requirements may impose excessive burdens on voters and result in the de facto disenfranchisement of large numbers of voters, including members of minority groups”. In the concluding observations of Tajikistan, the Committee also raised concerns regarding the limited number of polling stations abroad. Finally, universal suffrage, including plans to institute suffrage, was raised in the consideration of China (Hong Kong), and China (Macau) by the Committee whilst acknowledging reservations to Article 25(b) of the Covenant. In the case of Nepal, the Committee also noted that 4 million people still lacked citizenship certificates, “which is essential for the enjoyment of Rights guaranteed by the Covenant, including the right to vote”.

The HR Committee consistently noted that the right to vote does not only encompass the necessary enfranchisement but also the effective exercise of that right through the imposition of enabling measures. It is also evident from Article 25 itself that the execution of the right to vote also encompasses the holding of periodic, timely elections. In terms of enfranchisement, the Committee has comprehensively addressed persons with disabilities, linguistic minorities, persons deprived of their liberty, and minority groups. However, the right to vote of IDPs has received marginal attention – with the issue

only noted in the concluding observations of Colombia (2004), where the Committee recommended that the State should “take all necessary measures to ensure that displaced persons are able to exercise the rights guaranteed in Article 25”. In addition, none of the obstacles IDPs are likely to face in aiming to exercise their right to vote have received any detailed consideration - such as restrictive residency requirements, lack of documentation, discrimination, lack of access, and conflict and insecurity. The rights of homeless persons to exercise their vote has also been largely neglected in State examinations, which is concerning given that General Comment 25 directly holds that “residency requirements must not be imposed or applied in such a way as to exclude the homeless from the right to vote”. Those who are homeless are likely to face specific difficulties in effectively exercising such rights, thereby placing an obligation on the State to take the necessary measures to ensure they are able to exercise their vote. A cursory overview of the literature preliminarily suggests that few states have imposed such enabling measures.

A recommendation of the HR Committee on electoral regulations and practices:

The State party should bring its electoral regulations and practices into full compliance with the Covenant, including its Article 25, inter alia by:

- (a) Giving full effect to the right of every citizen to genuinely take part in the conduct of public affairs and fostering a culture of genuine political pluralism;
- (b) Refraining from using criminal laws as a tool to harass and exclude opposition members from meaningful participation in public life and electoral processes, and conducting a thorough, credible and impartial investigation into the alleged enforced disappearance of Ehsan Odinaev ;
- (c) Revising the limitations on the right to stand for election, with a view to ensuring their compatibility with the Covenant;
- (d) Revising legislation that provides for a blanket denial of the right to vote to all convicted prisoners, which does not meet the requirements of Article 10 (3), read in conjunction with Article 25, of the Covenant and for denial of the right to vote to any person declared incompetent by a court;
- (e) Ensuring the full independence of the Central Commission for Elections and Referendums;
- (f) Implementing equal electoral campaigning conditions for all, including equal access to State-run television.

Key Issue	Frequency of Consideration
Does the law enfranchise all citizens of voting age?	High
Are restrictions on the right to vote objective and reasonable?	High
Is the right to vote restricted in a discriminatory or arbitrary manner?	High
Are detainees and convicts deprived of the right to vote?	High
Do voter eligibility criteria discriminate against minorities?	Substantial
Do the laws or procedures on acquiring or conferring citizenship discriminate based on gender?	Substantial
Are persons with mental disabilities and those under guardianship enfranchised?	High
Are any residency requirements on the exercise of the right to vote reasonable?	Low
Are there provisions allowing for registration from abroad?	Low
Are eligible resident non-citizens allowed to register to vote in local elections?	Low

2.5. Right to Stand for Elections

The right to stand for elections, also known as passive suffrage, likewise facilitates democratic governance based on the free will of the people through freely elected representatives. On the basis of General Comment 25, we may infer that this right may not be unreasonably restricted - such as by requiring candidates to be members of parties or of *specific* parties. Reasonable restrictions on this right may, in turn, include elements such as age requirements or mental incapacity. Such restricting requirements, however, must be set out in the national legal framework.⁹

The HR Committee identified a number of unreasonable limitations and arbitrary exclusions on the right to stand for elections in the concluding observations surveyed. In the concluding observations of Burkina Faso (2016), the Committee raised concerns in relation to reports of the “sweeping and ill-defined exclusion of several candidates from the 2015 parliamentary and presidential elections”. In the case of Mongolia (2016), the Committee recommended that the “State party should remove restrictions on the right to participate in public life, including the right to stand for elections”. In addition, in the consideration of Iran, the Committee listed a number of issues that had unduly restricted the right to stand for elections in 2009 – which ultimately resulted in only 4 out

⁹ The consideration of what may constitute such reasonable restrictions has been comprehensively examined in the individual communications procedure. See e.g. Mohamed Nasheed v. Republic of Maldives

of 450 prospective candidates having obtained the requisite approval for the presidential elections. Finally, the Committee raised concerns regarding “undue limitations on the right to stand for elections owing to strict eligibility requirements, such as those relating to language, education and residency” in its consideration of Tajikistan (2019). Interestingly, in terms of the right to vote, steps taken to ensure the participation of persons with disabilities was consistently referenced by the Committee. However, in terms of the right to stand for elections, the consideration of persons with disabilities has arguably been comparatively neglected.

A recommendation of the HR Committee on presidential term limits:

45. In the light of the Committee’s general comment No. 25 (1996) on participation in public affairs and the right to vote, the State party should adopt the necessary measures to:

- (a) Ensure that the next elections are free and fair; that the effective exercise of voting rights is guaranteed; and that persons with the right to vote, as well as activists and candidates, are protected from violence, threats, compulsion or manipulative interference of any kind;
- (b) Ensure a fair and impartial electoral process and ensure transparency in campaign financing;
- (c) Guarantee the security of ballot boxes and that votes are counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process;
- (d) Respect the eligibility criteria set forth in the Constitution, in particular the presidential term limit. (CCPR/C/HND/CO/2).

Key Issue	Frequency of Consideration
Is the right to stand restricted only in a reasonable, objective and non-discriminatory manner?	High
Are limitations on the right to stand for elections by persons convicted of electoral offences limited in time?	Substantial
Can independent candidates stand for all levels of elections?	Low
Does the law protect candidates from discrimination or disadvantage?	High
Do registration procedures guarantee equal treatment for all candidates?	Substantial

Key Issue	Frequency of Consideration
Are procedures and timelines for candidate registration reasonable and defined by law?	Substantial
Do candidacy criteria address conflicts of interest?	Low
Are signature requirements reasonable?	Low

2.6. Free, Transparent and Fair Elections

Ensuring the free expression of the will of the electors under Article 25 requires a free, transparent, and fair electoral process. In turn, such a process naturally requires conditions conducive to the free exercise of electoral choice. To this end, the Committee note in General Comment 25 that an independent scrutiny of the voting and counting process is required, that the results of genuine elections should be respected and implemented, that elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights, and that State reports should describe “the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security, and validity of the voting process are guaranteed by law”. On this basis, the achievement of free, transparent, and fair elections as required under Article 25 encompasses on-going obligations throughout the electoral cycle, rather than being confined to the immediate election day and verification process.

The Committee noted concerns in relation to the achievement of free, transparent and fair electoral processes on 31 occasions. In its review of Rwanda (2016), the Committee noted “the procedural defects reported during the December 2015 referendum process, which led to the Constitutional amendment protecting the President from prosecution in relation to treason and serious and deliberate violations of the Constitution if legal proceedings were not initiated while he or she was in office”. Similar alleged irregularities were also noted in the electoral process of Azerbaijan (2009), North Macedonia (2008), Viet Nam (2019), Tajikistan (2019), the Russian Federation (2003) and Equatorial Guinea (2019). In its consideration of Belarus, the Committee raised concerns over the transparency of the vote-counting process. Similarly, in its examination of Togo, the Committee noted that “the legislative elections ..., in which part of the opposition refused to participate, might not have been sufficiently in keeping with the requirements of transparency and honesty under Article 25 of the Covenant.” Other concluding observations noted the more general need to take active measures to ensure “free, reliable and transparent elections” or the insufficiency of current measures (see e.g. Gambia, 2018; Senegal, 2019; Niger, 2019; Jordan, 2010).

A recommendation of the HR Committee on the holding of genuine, periodic elections:

48. The State party should: (a) cooperate with all stakeholders in agreeing on an electoral calendar for the holding of free, peaceful and fair elections as soon as possible; (b) respect the constitutional right of every citizen to participate in public affairs; and (c) put an end to the intimidation of opponents and candidates in the presidential election and to violations of their Covenant rights, by taking the necessary measures to ensure their effective protection. (CCPR/C/COD/CO/4)

On the basis of the above, we may infer that the Committee's assessment of free, transparent, and fair elections under Article 25 is generally broad in nature and takes into consideration any reported irregularities in the immediate elections and verification process. However, earlier stages in the electoral process have received comparatively little consideration under Article 25.

2.7. Campaign Financing and Candidate Expenditures

As outlined earlier, elections are a means by which to translate the free expression of the will of the electors into a representative government. To achieve this objective, it is necessary that national legal frameworks give careful attention to the financing of political party activities - such as, perhaps most prominently, campaign financing or other candidate expenditures. As the Committee notes, the State "should treat all political parties on an equal footing and offer them equal opportunities to pursue their legitimate activities, in accordance with Articles 25 and 26 of the Covenant". Further, General Comment 25 states that "reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined, or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party". Campaign financing regulations act as both a means to ensure access to the right and equal opportunity to be elected under the law, but also as a strategy to prevent corruption in the electoral process.

In the concluding observations surveyed, Article 25 was mentioned in the consideration of St Vincent and the Grenadines (2019) with reference to concerns surrounding the current legal framework guarding campaign financing. In the consideration of Tajikistan (2019) for its lists of issues, the HR Committee similarly noted concerns surrounding high financial deposits required from candidates. In addressing Equatorial Guinea (2019), the Committee raised concerns surrounding the fact that the PDGE apparently received public funds while opposition parties had to raise their own funds. Finally, in its consideration of Honduras (2017), the Committee recommended that the State party should adopt the necessary measures to "ensure a fair and impartial electoral process and ensure transparency in campaign financing."

Notably, the HR Committee addresses the issue of campaign financing relatively comprehensively, having raised concerns in relation to reasonable caps on financial

contributions, the equitable distribution of public funding, and the abuse of state resources in the electoral process. Nonetheless, two areas of concern remain comparatively but not wholly undermentioned: regulations in relation to donations by non-national persons or entities, and whether the legal framework requires the transparency of political party and candidate contributions and expenditures.

Key Issue	Frequency of Consideration
Does the legal framework require the transparency of political party and candidate contributions and expenditures?	Low
Are there reasonable caps on financial contributions to, or spending by and on behalf of, political parties and candidates?	High
If public funding to political parties is provided, is it distributed equitably?	Substantial
Is the abuse of state resources regulated?	Substantial
Does the legal framework define and sanction the concealment of illicit campaign funds?	Low

Chapter 3. Political Environment

The equal realisation of the right to participate in public affairs in all of its three dimensions is dependent upon the realization of a conducive political environment. This point is directly reiterated by the *Guidelines on the Effective Implementation of the Right to Participate in Public Affairs*, which note that “the effective exercise of this right requires an environment where all human rights, in particular the rights to equality and non-discrimination, to freedom of opinion and expression and to freedom of peaceful assembly and of association, are fully respected and enjoyed by all individuals.” As such, the following chapter considers these interdependent dimensions of the right to participate in public affairs.

A recommendation of the HR Committee on undertaking constitutional reform to devolve power to democratically elected branches of government:

53. The State party should bring its constitutional framework into compliance with the Covenant, including with Article 25, inter alia by:

- (a) Fostering a culture of political pluralism, ensuring freedom of genuine and pluralistic political debate, and allowing the registration of opposition political parties, including to contest elections, field candidates and participate in the formation of government;
- (b) Undertaking a constitutional reform process with the objective of devolving power to democratically elected branches of government, and guaranteeing the right of every citizen to take part in the conduct of public affairs and have access to public service on general terms of equality;
- (c) Guaranteeing free and fair elections;
- (d) Ensuring the independence and effectiveness of the bodies in charge of elections and anti-corruption. (CCPR/C/SWZ/CO/1)

3.1. Political Pluralism

The concept of political pluralism - and particularly political party pluralism - refers to a democratic environment where a multiplicity, diversity or plurality of opinions exists and where groups are free to express themselves within a political system. For our purposes, political pluralism may be seen as giving effect to the free expression of the will of the electors through a diversified and free choice of representatives in the electoral process. The necessity of political pluralism in giving effect to Article 25(b) is relatively apparent in Committee jurisprudence; for instance, the introduction of a multi-party system in Equatorial Guinea (2004) was noted as a positive aspect. Relatedly, in its review of Eritrea (2019) both for the lists of issues and following concluding observations, the HR Committee recommended holding national elections that allow for political pluralism.

Additionally, in the 2019 consideration of Equatorial Guinea (2019), the Committee noted that the existing political system limits political pluralism in practice. In turning to Belarus (2018), the Committee raised concerns surrounding limitations to a pluralistic political debate. Finally, in the reviews of Algeria (2018), Uzbekistan (2015) and Laos (2018), the Committee recommended “efforts to promote political pluralism”, “fostering a culture of political pluralism”, and the “promotion of political pluralism” respectively.

Key Issue	Frequency of Consideration
Does the legal framework effectively allow for political party pluralism?	Substantial

3.2. Corruption

States have an obligation to take necessary measures to prevent corruption at all levels, including in ensuring citizen’s access to participation in public affairs. Corruption may undermine the expression of the free will of the public and may impact the impartiality of the electoral process - therein impeding the exercise of the right to participate in public affairs. This connection is readily demonstrated in the consideration of Bosnia and Herzegovina (2017, emphasis added) in which the Committee recommended that the State “step up its measures to combat corruption, particularly among government figures to ensure effective participation in public life” (emphasis added).

Across all concluding observations surveyed, the Committee considered corruption in the context of public participation on 14 occasions. In its review of Madagascar (2017), the Committee raised concerns over reports that “corruption remains fairly widespread within the political community”. Similarly, in its lists of issues of Guatemala and Viet Nam (2019) the Committee expressed concerns about the prevalence of corruption in politics and public life more generally. In other reviews which examined the enjoyment of rights under Article 25, the Committee noted concerns directly concerning the elections process. For example, in the concluding observations of Angola and St Vincent and the Grenadines, the Committee noted reports of corruption during the 2017 and 2015 elections respectively. In inspecting the references made by the Committee, we can observe that concerns relating to corruption under Article 25 are relatively broad, and usually confined to statements relating to the existing spread of corruption.

A recommendation of the HR Committee on participation in public affairs, and corruption:

52.The Committee is concerned that the concentration of power in the King, which, inter alia, gives him excessive powers of appointment over the Government, Parliament and the judiciary, is incompatible with Article 25 of the Covenant. It is also concerned that the elections held in the State party in 2013 did not comply with international standards for free and fair elections, and that

political parties as such are unable to register, contest elections, field candidates or otherwise participate in the formation of a Government. It is further concerned that neither the Elections and Boundaries Commission nor the Anti-Corruption Commission are adequately independent, impartial or effective (arts. 19, 21, 22 and 25). (CCPR/C/SWZ/CO/1)

Key Issue	Frequency of Consideration
Does the State take active measures to prevent corruption within the electoral process?	Substantial
Is the electoral process, at large, free from corruption and interference?	High

3.3. Freedom of Assembly

The ICCPR recognizes the obligation to guarantee freedom of assembly - although not as an absolute right. In the context of the right to participate in public affairs, it provides that all persons have the right to assemble freely, which allows candidates and political parties to conduct activities such as electoral campaign gatherings. The HR Committee has specifically highlighted that the “freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected.” In this manner the right to freedom of assembly is naturally interrelated with the right to participate in public affairs. The Committee reaffirmed this relationship when expressing concern over “the restrictions on public meetings and demonstrations” under Article 25 in its review of Viet Nam (2002). Later, in its review of Guinea and St Vincent and the Grenadines for their lists of issues respectively, the Committee explicitly referred to freedom of assembly in the context of elections.

Key Issue	Frequency of Consideration
Are restrictions on the freedom of assembly necessary, objective, and proportionate?	High

3.4. Freedom of Expression

Although the media are one of the conventional beneficiaries of the freedom of expression, the right to freedom of expression also extends to all persons, including to political candidates and parties engaged in an electoral campaign. As cited in section 2.11 above, the right to freedom of expression may be envisaged as an essential condition for the

effective exercise of the right to vote. For its part, the HR Committee identified the right to freedom of expression in the context of Article 25 in the concluding observations of Libya (2007), referring to reports of an extensive limitation on the freedom of expression imposed in response to peaceful opposition groups and criticism of the government. Similarly, in the case of Russia (2015), the Committee noted alleged violations of freedom of expression and information under the right to participate in public affairs.

Key Issue	Frequency of Consideration
Are restrictions on the freedom of expression necessary, objective, and proportionate?	High

3.5. Media Environment & Access to Information

Keeping the public informed in a balanced and unbiased manner during the electoral cycle requires an adequate legal framework to ensure that all political parties and candidates have access to the media. In turn, such regulations enable parties and candidates to compete on the basis of equitable treatment under the law. As outlined in General Comment 25, “the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential [in order to ensure the full enjoyment of rights protected by Article 25]. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion”.¹⁰

The Committee raised concerns relating to the media environment and access to information in the public interest on 11 occasions. In its consideration of Venezuela (2015), the Committee noted concerns regarding “reports alleging the limited nature of access to information that is in the public interest”. Similarly, in its 2013 consideration of China (Hong Kong) the Committee identified a “deterioration in media and academic freedom”. In the case of Cabo Verde (2019), the Committee recommended that the “State Party should step up its efforts to increase transparency and accountability in public administration and among public officials and should consider the adoption of legislation on access to public information”. The Committee also raised concerns relating to the media environment under Article 25 in the lists of issues of Belarus; noting allegations of limited access of opposition candidates to the media. Finally, in considering Equatorial Guinea (2019), the Committee raised concerns over reports that opposition parties are allocated less air time than the Partido Democrático de Guinea Ecuatorial. It is also notable that concerns involving the use of media and the access to information are still predominantly focused upon the role of State television, although citizens are increasingly relying on online sources.

¹⁰ Interestingly, claims surrounding a ban on the publication of polling data was considered insufficiently substantiated and therefore inadmissible in the case of *Kim Jong-Cheol v. Republic of Korea*

Key Issue	Frequency of Consideration
Are there provisions granting citizens and media access to information?	Substantial
Can private media operate freely and without censorship?	Low
Does public media cover electoral processes in an equitable manner?	Substantial
Are there provisions restricting the incitement of hatred and violence in the media?	Substantial
Are there measures to ensure the security of journalists?	Low

Chapter 4. Special Groups

Discrimination against various special groups such as women, minorities, marginalized groups, or persons with disabilities presents a clear barrier to the universal realization of the right to participate in political and public affairs. As such, special care is often required to ensure that their rights are protected, respected and fulfilled. This chapter will examine the political participation of four recognised groups - including women, persons with disabilities, persons deprived of their liberty as well as minorities and marginalized groups. This list is far from exhaustive, and as identified in earlier feedback, certain groups deserve further consideration in ensuring their access to public participation – such as albino people and the participation of the LGBTI groups in decision-making processes that affect them.

4.1 Women’s Participation in Public Affairs

In the context of Article 25, the focus of gender equality has been primarily on political representation and participation in a broad sense, with the vast majority of concerns under Article 25 referring broadly to the “limited participation of women in political and public life”. Of all the special groups identified, women’s participation in public affairs remains the most frequently raised group, and issue-area as a whole, under Article 25.

The Committee raised concerns in relation to women’s participation in public affairs on 138 occasions. In its reviews of Austria (2007, 2015), the Committee expressed concerns in relation to the limited representation of women in political and public life. In the review of Liechtenstein (2004), the Committee encouraged the state to take “measures designed to enhance the participation of women in Government and decision-making processes and to further promote equality of men and women in non-public areas”. Similarly, in its review of Nigeria (2019), the Committee recommended that the State party “promote the participation of female candidates in elections”. In a variety of other State reviews, the HR Committee was more specific in its recommendations, pointing out particular industries and sectors which may require improvement. Such areas include academia (see e.g. Sweden, 2009), the private sphere (see e.g. Hungary, 2010), the public sphere (see e.g. El Salvador, 2010), higher echelons of the judiciary (see Sweden, 2019), decision-making posts (see e.g. Mongolia, 2011), the executive (see e.g. Kuwait, 2011), civil service (see e.g. Nicaragua, 2008), and the legislative (see e.g. Bosnia and Herzegovina, 2006) - as well on the local and regional scale (see Suriname, 2015 and Czech Republic, 2013 respectively). It often recommended that the State parties take temporary special measures (TSMs) to address concerns in relation to women’s participation in public affairs.

However, there are concerning inconsistencies in legal basis used by the Committee when addressing women’s participation in political affairs, even when the observation or recommendation is identical or near identical. Additionally, it is often unclear why, or when,

each basis is chosen. To illustrate, in the concluding observations of Mozambique (2013) the Committee notes “the low representation of women” as an issue impacting the enjoyment of Article 25. Yet, in the concluding observations of North Macedonia (2015), where the Committee noted the “low representation of women” in public affairs, the Committee only cites Article 3. In addition, the Committee’s consideration of women’s participation in political life is also comparatively vague. For example, in its review of Mauritius, the Committee only noted that the “participation of women in political life remains inadequate”. It is also important to note that beyond the *representation* that is predominantly considered in the concluding observations surveyed, it is equally important to consider the *promotion* of the participation of women in all areas of public and political life.

A recommendation of the HR Committee on women’s participation in public affairs:

19. The State party should take more robust legal and policy measures to effectively achieve, within specified time frames, an equitable representation of women in public and political life, particularly in decision-making positions, including in legislative and executive bodies and the judiciary at all levels, if necessary through appropriate temporary special measures, in order to give effect to the provisions of the Covenant. (CCPR/C/CZE/CO/4)

Key Issue	Frequency of Consideration
Are women sufficiently represented in elected political posts and positions of responsibility?	High
Do women hold a sufficient proportion of seats in the legislature or decision-making posts in the executive and judicial branches of government?	High
Are women sufficiently represented in decision-making posts in the private sector?	Low
Does the electoral system indirectly or directly disadvantage candidates based on gender?	Low
Are there provisions to promote gender equality in election administration?	Low
Are there any measures that indirectly restrict women’s right to vote, stand for office, or otherwise participate in political affairs?	Low
Are there measures to promote gender equality in political party leadership?	Substantial

4.1.1. Committee on the Elimination of All Forms of Discrimination Against Women

During 2010-2019, the Committee on the Elimination of Discrimination Against Women (CEDAW) noted concerns in relation to the participation of women in public and political life 487 times in throughout 127 concluding observations. The Committee issued corresponding recommendations on virtually all of these occasions - at a total of 483 times. In terms of geographical distribution, most concerns were addressed to countries located in Asia (19%), followed by Europe (27%), Africa (19%), North America (10.3%), South America (7.1%) and Oceania (7.1%).

Between 2015 and 2019, the CEDAW consistently raised concerns relating to women's participation in political and public life. Almost all of these concerns related to women's representation in decision-making bodies and posts - most commonly at the parliamentary or ministerial level, as well as judicial, armed forces, civil service, and diplomatic posts. Some of the concerns were raised in relation to under-representation in more specific sectors of political and public life, for instance "the underrepresentation of women at decision-making levels in existing mechanisms for the prevention and management of vector-borne disease epidemics". On roughly half of these occasions, the Committee raised the implementation of temporary special measures to achieve substantive equality for women in public and political life. Moreover, it bears to note that the CEDAW is consistently specific in addressing the low participation of women in public and political life. It conventionally employs the use of threshold percentages across a comprehensive examination of various decision-making bodies and posts, and consistently and comprehensively addresses the need for temporary special measures aimed at increasing the participation of women in political and public life.

4.2. Persons with Disabilities

Persons with long-term physical, mental, intellectual or sensory impairments may face barriers to full and effective participation in society - particularly in environments with varying attitudes and perspectives. As specified in the General Comment pertaining to Article 25, these barriers give rise to the need for positive measures to be implemented by States "to overcome [these] specific difficulties" so that all citizens may exercise their right to participate in public affairs under the ICCPR.

The Committee expressed concerns over the enjoyment of the right to participate in public affairs and the right to vote by persons with disabilities 22 times. In its consideration of Serbia (2017), the Committee noted that persons with disabilities still face many challenges in getting access to political participation. In the concluding observations of Poland (2016), San Marino (2015), Albania (2013), Czech Republic (2013), Hungary (2018), Lithuania (2018), Tajikistan (2019) and China (2013) respectively, the Committee raised more specific concerns over the fact that persons with mental, psychosocial, and/or intellectual disabilities are reportedly subject to an unreasonable or disproportionate

deprivation or restriction on their legal capacity - including their right to vote. Illustratively, in the above-noted consideration of Poland, the Committee recommended that the “State party should revise its legislation to ensure that it does not discriminate against persons with mental and intellectual disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable and objective relationship to their ability to vote.” Restrictions on the effective exercise of the right to vote by persons with disabilities were also addressed in the consideration of North Macedonia (2015), and Malta (2014). In the former, the Committee raised concerns in relation to reports that administrative obstacles prevented persons with disabilities from exercising their voting rights. In the latter, the Committee noted reports alleging an inability to safeguard the secrecy of the vote for persons with blindness or visual impairments, due to the obligation to vote verbally in front of a group of people.

In addressing the above “specific difficulties” of persons with disabilities in electoral processes, the HR Committee covers the majority - and arguably the most fundamental - barriers faced by this group in their State examinations. However, a few prominent barriers have remained unaddressed or under-addressed within the human rights Treaty Bodies at large: the absence of easy-to-read electoral material, inaccessible electoral media (e.g. no sign language or subtitles for main debates and electoral ads), the absence of civic and voter education, as well as the lack of training for polling staff on handling person with disabilities. In addition, and in contrast to the issue of women’s participation, the HR Committee has raised no concerns in the State dialogues relating to the low participation of persons with disabilities in non-electoral contexts: such as information-gathering or consulting in decision-making processes. Instead, the focus remains primarily on barriers to the effective exercise of voting rights and the secrecy of the ballot.

A recommendation of the HR Committee on depriving the right to vote of persons with disabilities:

18. The State party should:

- (a) Ensure that persons with disabilities are not discriminated against , in law or in practice , particularly in their access to inclusive education , reasonable accommodation , employment and marriage , or in their right to vote and stand for election on grounds that are disproportionate or have no reasonable and objective relation to their ability to vote or stand for election , taking account of Article 25 of the Covenant;
- (b) Ensure that any restriction on legal capacity is no greater than necessary , only imposed pursuant to appropriate legal and procedural safeguards and free and effective legal representation , and that the individuals affected have prompt access to effective judicial review of the decisions regarding their legal capacity. (CCPR/C/BGR/CO/4)

Key Issue	Frequency of Consideration
Are persons with disabilities effectively granted an equal right to vote?	High
Does the legal framework facilitate voter registration for persons with disabilities?	Low
Are there provisions to safeguard the secrecy of the vote for persons with disabilities?	Substantial
Are there provisions requiring polling stations to be accessible to the disabled?	Substantial
Are persons with mental disabilities and those under guardianship enfranchised?	High
Are there provisions prescribing civic and voter education concerning the rights of persons with disabilities?	Low
Are persons with mental disabilities and those under guardianship enfranchised?	High

4.2.1 The Committee on the Rights of Persons with Disabilities

Within the 2010-2019 period, the Committee on the Rights of Persons with Disabilities raised concerns relating to the right to participate in public affairs and the right to vote 93 times and issued 93 corresponding recommendations. These concerns and recommendations were issued in the consideration of 56 states. The geographical distribution of the concerns along these individual states were as follows. One third of all concerns were related to European states - corresponding to roughly one-third of all concerns. Followingly, the Committee raised 11 concerns (or 12%) in both South America and North America respectively. The Committee also raised 19 concerns in Asia (20.7%), 15 in Africa (16.3%), and 8 in Oceania (8.7%).

The Committee primarily focused upon three main areas: the wholesale deprivation of legal capacity (21 times), unreasonable restrictions on the right to vote for persons with disabilities (14 times), and mechanisms enabling the participation of persons with disabilities in decision-making processes (12 times). The remaining concerns were primarily in relation to ensuring the secrecy of the ballot for persons with disabilities (4 times), accessibility of polling stations (10 times), and ensuring meaningful participation of persons with disabilities in public and political life more generally. In the majority of cases, the Committee did not provide examples of concrete steps that might be taken by the State in aiming to respond to the above-noted concerns.

The consideration of concerns relating to the participation in public affairs by the CRPD peaked in 2015, with the years following showing a slight decrease in concerns raised.

In terms of separate paragraphs, the Committee issued 34 paragraphs dedicated to the right to participate in political and public life under Article 29 of the CRPD. The frequency of such paragraphs has been relatively inconsistent - in 2012 five such paragraphs were issued, in 2015 twelve were issued, and in 2018 only two such paragraphs featured.

4.3. Persons Deprived of Their Liberty

As established, restrictions on the right to vote must be objective, reasonable, and established by law, and any persons whose voting rights have been suspended should have access to effective remedy, even while in prison. A blanket ban on prisoners voting rights is therefore widely considered to be counter to the enjoyment of rights articulated under Article 25. The presumption of innocence further requires that pre-trial detainees must be allowed to vote. States are equally required to restore voting rights to citizens who have fully served their sentences. Finally, the Committee has frequently held in its jurisprudence that any restriction on the right to vote or stand for elections owing to the conviction of a serious offence must be proportionate to the offence in question.¹¹

The Committee raised concerns relating to persons deprived of their liberty on 21 occasions. In the consideration of Senegal (2019), Paraguay (2019), Viet Nam (2019), Niger (2019), Estonia (2019), Uzbekistan (2015), Liberia (2018), and Cambodia (2015) the Committee respectively raised concerns over the fact that there was a blanket ban on those deprived of their liberty to exercise their right to vote - which ultimately “does not meet the requirements of Article 10(3), read in conjunction with Article 25, of the Covenant”. In its consideration of Belize, the Committee similarly raised concerns that those serving a custodial sentence above 12 months in length were denied their right to vote under existing legal provisions. This issue was also raised in the concluding observations of the United Kingdom (2015) where the right to vote was denied to prisoners serving a custodial sentence. Finally, in the case of the United States, the Committee exemplarily recommended that:

The State party should ensure that all states reinstate voting rights to felons who have fully served their sentences; provide inmates with information about their voting restoration options; remove or streamline lengthy and cumbersome voting restoration procedures; as well as review automatic denial of the vote to any imprisoned felon, regardless of the nature of the offence. The State party should also take all necessary measures to ensure that voter identification requirements and the new eligibility requirements do not impose excessive burdens on voters and result in de facto disenfranchisement. The State party should also provide for the full voting rights of residents of Washington, D.C.

¹¹ To date, every individual communication delineating a restriction of longer than seven years has been found to contain a violation of Article 25 – preliminary, but not conclusively, suggesting that the timeline of what is considered a proportionate restriction on the right to stand for elections remains short.

While the HR Committee has consistently raised concerns in relation to unreasonable and/or blanket-ban restrictions on the right to vote for persons deprived of their liberty in the examination of States, the Committee has not raised the issue of pre-trial detainees. Indeed, while the majority of jurisdictions today grant pre-trial detainees the right to vote, this does not apply to all countries at the time of writing. For example, in Peru (reviewed 2011) pre-trial detainees legally do have the right to vote, but they are not able to exercise this right in practice as there are no voting facilities in prison. Notably, the issue of pre-trial detainees has been raised in one individual communication before the Committee.

A recommendation of the HR Committee on prisoners’ right to vote:

34. The State party should review its legislation that denies convicted prisoners the right to vote in the light of the Committee’s general comment No. 25 (1996) on participation in public affairs and the right to vote (para. 14). (CCPR/C/EST/CO/4)

Key Issue	Frequency of Consideration
Are convicts and detainees disenfranchised?	Substantial
Are restrictions on the right to vote for currently serving criminal convicts objective, reasonable, and established by law?	Substantial

4.4. Minorities and Marginalized groups

Effective participation in public affairs has long been neglected for minorities and marginalized groups in the electoral process, in part due to the lack of definition of a ‘minority’ at the universal level. Article 25 does not specifically mention minorities, however it has been argued that where a minority is un-represented or under-represented in national political processes, special processes and structures for political participation must be developed to respond to the spirit of Article 25(a). The focus on Article 25(a) is particularly notable given the predominance of concerns relating to compliance with 25(b) throughout the consideration of the right to political participation. The General Comment also touches upon the issue of the effective representation of minorities and marginalized groups in stating that the State should not “distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the rights of citizens to choose their representatives freely” (p. 21).

The Committee expressed concerns relating to equal opportunities for minorities and marginalized groups on 56 distinct occasions, which can be categorised as concerns relating to indigenous peoples, ethnic minorities, and religious minorities respectively. Firstly, the Committee noted concerns surrounding the participation of indigenous peoples on 32 occasions. In a relatively general and broad approach, the Committee

noted “concerns in relation to indigenous people’s participation in public affairs in South Africa (2016) and Paraguay (2019). In its respective consideration of Australia (2009), Guatemala (2012), Mexico (2010), Sweden (2009), Angola (2019), and Norway (2019), the Committee also noted that “indigenous peoples are not sufficiently consulted in the decision-making process with respect to issues affecting their rights”. In the review of Suriname, the Committee recommended that a mechanism to allow for indigenous and tribal peoples to be consulted and to participate in the decisions that affect them should be established.¹²

A recommendation of the HR Committee on the participation of indigenous peoples in decision-making that concerns them:

45. The State party should ensure that meaningful consultations are held in good faith with the indigenous peoples concerned with a view to obtaining their free and informed prior consent before the adoption or application of any measure that may have an impact on their way of life and/or culture. The State party should also ensure that indigenous peoples are consulted prior to the adoption of any regulatory instrument relating to the consultations. It should redouble its efforts to ensure that the rights of indigenous peoples, particularly in relation to land, territory and natural resources, are promoted, protected and recognized in law and in practice. The State party should ensure that interpretations as to which persons are considered indigenous are based on their right to belong to an indigenous community or nation and their right to determine their own identity and membership. (CCPR/C/MEX/CO/6)

Secondly, the Committee noted concerns with respect to ethnic minorities (excluding indigenous peoples) on 54 occasions. In its consideration of Austria (2015), Paraguay (2019), and Tajikistan (2019), the Committee raised general concerns over the low representation of ethnic minorities in political and public life - including in the legislative and executive bodies. In addressing Israel, the Committee recommended that “the State party should step up its efforts to achieve equitable representation of Israeli citizens of Arab origin in the civil service, in particular in decision-making positions in legislative and executive bodies, including the Knesset and the Government”. In the review of Georgia (2014), whilst noting efforts to integrate minorities, the Committee remained concerned about the poor knowledge of the Georgian language (including mandatory use by local authorities) which served to bar integration processes, limiting representation in political life. Such linguistic elements were also raised in the consideration of Namibia (2004) as those who do not speak the official language may be discriminated against in the participation of public affairs and the administration of justice. In its consideration of

¹² In the individual communications procedure, the Committee has made two notable findings in relation to cases involving indigenous peoples: (1) that the right to participate may have a collective dimension and must be consistent with the principle of internal self-determination for indigenous peoples (*Tiina Sanila-Aikio v. Finland*), and (2) that 25(a) cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of participation in the conduct of public affairs (*Marshall et al. and the Mikmaq tribal society v. Canada*).

Bosnia and Herzegovina (2012), the HR Committee raised concerns over legal provisions barring people who do not belong to one of the State Party's constituent peoples (namely Bosnians, Croats, and Serbs) from being elected to the House of Peoples and to the Presidency. Procedural processes requiring minorities to register their ethnic identity under the self-government systems was raised in the constructive dialogue with Hungary (2010), as it could be seen to deter those who do not wish their ethnic identity to be known from registering in elections.

A recommendation of the HR Committee on public participation in the conclusion of contracts involving a social or environmental impact:

50. The State party should intensify its efforts to ensure public participation and hold genuine consultations with local communities before concluding contracts related to natural resource management or to projects that have a social and environmental impact in order to obtain their free, prior and informed consent. (CCPR/C/GIN/CO/3)

Finally, in terms of religious minorities, the Committee noted in its consideration of Germany (2004) that “adherence to certain religious organizations or beliefs constitute one of the main grounds for disqualifying individuals from obtaining enjoyment in the public service and that this may in certain circumstances violate the rights guaranteed in Articles 18 and 25 of the Covenant”. In Ireland, a similar concern was raised as the State required senior public officials wishing to take public office, such as the President, members of the State Council, or members of the judiciary, to take religious oaths. As such, the Committee recommended that “the State party should take concrete steps to amend Articles 12, 31 and 34 of the Constitution that require religious oaths to take up senior public office positions”.

Overall, the Committee's primary focus within the current thematic area was overwhelmingly on the status of *ethnic* minorities (with roughly 61% of all mentions) – to the comparative neglect of, for example, gender-based groups. The vast majority of concerns were also, in similarity to women's participation in public affairs, from a broad representational angle outlining the low representation of a specific group in specific areas of public life, such as in local decision-making structures and recommending the promotion of such representation. Linguistic barriers to participation, particularly after 2001 and the *Ignatane v. Latvia* individual communication were also consistently addressed. Equitable representation within state services is also well-recognized. Finally, it is important to note that in addressing equal opportunities for minorities and marginalized groups, the HR Committee has highlighted the innate intersectionality of issue groups in a few instances. For example, in its consideration of the United States of America (2014), the Committee noted the disproportionate impact on minorities stemming from the “persistence of state-level felon disenfranchisement laws”.

Key Issue	Frequency of Consideration
Does the legal framework protect the civil rights of minorities?	High
Does the electoral system directly or indirectly disadvantage minorities?	Substantial
Does the electoral system promote equal representation?	High
Does the drawing of electoral boundaries, or the method of allocating votes, distort the distribution of voters or discriminate against any group?	Substantial
Are there any special measures to promote the representation of minorities?	High
Does voter eligibility criteria discriminate against minorities?	Low
Does the legal framework provide effective measures to include minorities on the voter register?	Low
Are electoral laws and election materials translated into minority and local languages and made widely available?	Substantial
Do conditions for candidate registration disadvantage or exclude minorities?	Low
Does the law prohibit and sanction the incitement of hatred and violence against minority groups?	Low

4.4.1. The Committee on the Elimination of Racial Discrimination

During 2010-2019, the Committee on the Evaluation of Racial Discrimination (hereafter CERD) raised concerns relating to the participation in public affairs and the right to vote on 152 occasions and in relation to 80 individual states. It issued corresponding recommendations on 148 of the aforementioned occasions. The majority of concerns were issued to States located in Europe (at 32.4%) and Asia (at 27.9%). The Committee also raised concerns in relation to 3 States located in Oceania (2.7%), 16 in Africa (14.5%), 11 in North America (10%), and 14 in South American (12.7%).

The participation of minorities and marginalized groups in public and political life is, perhaps unsurprisingly, one of the most commonly cited concerns by the CERD. For the vast majority of cases, this concern is raised with broad references to either the discrimination, low levels of representation, or social exclusion faced by a particular group.

The number of concerns issued by the Committee has decreased over the last ten years. In 2019, participation in public affairs and the right to vote was only raised 16 times - which represents a relatively marginal number in comparison to an average of 40 concerns per year at the start of the preceding decade.

Chapter 5. General Conclusions

The HR Committee's approach to the right to participate in public affairs and the right to vote remains relatively unsystematic and under-developed. This can be demonstrated by three key issues: (1) a curious oscillation between detailed concerns and broad, vague references to e.g. low representation of various social groups, (2) the inconsistent articulation of the legal basis, and (3) a tendency to not raise examples of steps to take to address concerns, and the overall exclusion and neglect of some thematic areas specified in General Comment 25. Nevertheless, the number of concerns and recommendations has been consistently increasing over the time-period surveyed, and the Committee has adopted an increasingly comprehensive approach to a number of cluster-themes surveyed. As an early reviewer pointed out, one must not neglect to emphasize the existing utility of the Article in the current approach of the HR Committee – as there are instances where the Committee has examined issues which are conventionally neglected. NGOs and human rights defenders should taking note of such exceptional recommendations (see also Appendix), in order to make sure that they are also applied to their local contexts.

Firstly, to briefly consider the first point raised, the concluding observations surveyed directly demonstrates that the HR Committee, in its consideration of the right to participate in public affairs, frequently oscillates between a detailed and broader approach to concerns raised. This is perhaps most evident in the consideration of women's participation in public affairs as at times the Committee merely notes the "low representation of women in decision-making structures", while at other times the Committee notes representational concerns with a number of references to relevant statistics, developments, and a variety of relevant bodies and posts. One such example is the 2017 concluding observations of Mauritius, where the Committee expressed concern that "the percentage of women elected to the National Assembly (11.4 per cent) and appointed to the Cabinet (12 per cent), remains low (arts. 3 and 25)." It is not clear why at times the Committee adopts one approach over the other and the usage of both approaches remain relatively inconsistent over time. It does seem to be the case, however, that the introduction of the more detailed approach was relatively recent, even if it is not adopted to date with greater consistency. It is also the case that when the Committee notes a more detailed concern, it also is more likely to raise relevant examples for steps to take in its recommendations. A lack of concreteness, however, remains dominant to date. Such a lack of concreteness may at least in part be attributable to the lack of relevant information provided by those choosing to engage with the Committee.

In turning to the second point, and acknowledging the natural intertwining of the right to participate in public affairs with other tangential rights, it is also evident from the concluding observations surveyed that the Committee is not consistent in the legal basis adopted for its concerns. At times the Committee may refer to multiple Articles of the Covenant, while at others- with near-identical wording - the Committee may refer to merely one Article. On the above example of women's participation in public affairs, the Committee occasionally omits reference to Article 25 altogether, simply noting the "low

representation of women” in various public bodies. At other times, with the same wording of the “low representation of women” it refers solely to Article 25. In a third sub-set of such examples, both Articles are cited as the legal basis for the concern. It is not clear why one approach is adopted over the other.

Thirdly, in terms of the third point referring to the neglects certain cluster themes and omits examples of steps for States to take to address certain recommendations. While the latter has largely been canvassed in earlier chapters, it bears to briefly bring attention to a few crucial issues. As was pointed out during the consultative webinars, the approach of the HR Committee with respect to, for example, cyber-interference in foreign elections processes (or the use of the internet to spread electoral misinformation more generally) remains largely non-existent. References to adjacent issues such as access to the media remain focused upon the equal access to State television. In addition, administrative obstacles to hold office or as factors in impeachment proceedings remain neglected – for instance, the role of “moral incapacity” in Peru was pointed out as a prominent example above. On the second claim, we can observe that multiple recommendations made in recent years feature the need to bring the respective area of concern “in line with the Covenant” without further clarification on how that can be achieved. This is particularly evident in cases involving civic and voter education. Indeed, General Comment 25 directly states that “voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community”, and furthermore, that “electors should be fully informed of the guarantees”. However, the HR Committee has not addressed civic and voter education in a single concern or recommendation during 2010-2019. This is striking given that issues such as the participation of persons with disabilities may directly depend upon civic and voter education initiatives being available, in order for them to effectively exercise their right to vote. Finally, while the consideration of 25(b) is comparatively comprehensive, there is arguably a neglect of consideration for 25(a) & 25(c) - or, in other words, a focus beyond the immediate electoral context. This is the case for virtually all issue areas barring some of the special groups. This can be directly contrasted with the individual complaints procedure, wherein 25(c) remains noted in over half of the cases in which Article 25 is invoked.

Chapter 6. Engagement with the Human Rights Committee

It is well recognised that effective civil society engagement enriches the work of the HR Committee in its coverage of all human rights, including the right to participate in public affairs. While the preceding chapters have focused on the approach of the Committee, it is worth noting that going forward civil society actors can draw attention to the issues that have not been sufficiently addressed in the reporting or complaints procedures to-date. By highlighting cases of human rights violations relating to the right to participate in public affairs, civil society actors can not only drive the dialogue with States on these issues, but also assist in clarifying ambiguities. This work serves to foster the development of the substantive scope, and in turn supports a broader enjoyment of the right to participate in public affairs. Indeed, in the majority of cases where civil society actors have raised issues in relation to the right to participate in public affairs, the issues have been later raised in the constructive dialogues.

With the aim of improving civil society engagement on the right to participate in public affairs with the HR Committee, this chapter seeks to outline where, when, and how possibilities for engagement exist. The first section briefly introduces the HR Committee, and outlines methods of engagement in the reporting and individual communications procedure. The following section proposes possible alternative mechanisms. The final section outlines a list of existing resources to aid institutions and individuals in engaging with the HR Committee.

6.1. A Brief Introduction to the Human Rights Committee

The HR Committee is the body of independent experts that monitors the implementation of the International Covenant on Civil and Political Rights. The HR Committee is composed of 18 members, who serve in their personal capacity and not as a representative of his or her State.

The HR Committee meets for three to four weeks during its tri-annual sessions typically held in March, July, and October. In doing so, it has four primary functions:

- (i) Reviewing State Reports
- (ii) Considering Individual Communications
- (iii) Issuing General Comments
- (iv) Considering Inter-State Complaints

NGO and civil society engagement with the Committee is targeted primarily at the first two functions, namely reporting and individual communication work. The focus of this

chapter is primarily on engagement within these two functions. However, we should note that NGO participation may also indirectly influence the latter two functions of e.g. the issuing general comments, by way of continuous, consistent and substantive engagement on certain thematic issues.

6.2. Engagement in the Reporting Process

A State party to the ICCPR should submit an initial report one year after the Covenant enters into force for that State. Thereafter, the State must submit periodic reports at intervals specified by the HR Committee. The date for the following report is given in the Concluding Observations. In these reports, the State party should detail the measures adopted to give effect to the rights guaranteed by the Covenant and the progress made in ensuring the enjoyment of those rights.

The reporting cycle is typically divided into **three phases**: (1) Adoption of the List of Issues (Prior to Reporting) (LOI or LOIPR), (2) Review of the State Report and Adoption of the Concluding Observations, (3) Implementation and Follow-up. There are possibilities for NGO interaction throughout each of these three phases.

During Phase 1, the Committee drafts and adopts an LOI or LOIPR. These are series of questions for the State in relation to their implementation of the rights enshrined in the Covenant. NGOs have the opportunity to submit written contributions in the form of civil society reports both before the adoption of the LOI(PR) (to provide suggestions on their content) and after their adoption (to provide information in response to the issues raised). A specific deadline is typically set for such submission – conventionally 8 weeks prior to the session at which the LOI(PR) is scheduled to be adopted. Engagement during this initial phase is crucial as it provides the structural basis for the State reviews.

During Phase 2, the State report is examined, the constructive dialogue is held, and the Concluding Observations are ultimately adopted. The Committee conventionally holds formal and informal NGO briefings during which NGOs have the opportunity to address the Committee on subjects of concern related to any of the States under review. NGOs interested in pursuing engagement at this stage are invited to contact the CCPR Centre and the Committee Secretariat. NGOs may also attend these sessions to monitor what the State says, but they may not speak during the review itself.

During Phase 3, the HR Committee monitors the implementation of the follow-up recommendations. The State response is assessed, and ultimately graded. The key possibility for engagement, herein, relates disseminating the Concluding Observations, engaging with national bodies and reporting back to the HR Committee. The latter is particularly relevant – as the Committee mainly considers information provided by two bodies: the government and NGOs.

6.2.1. Written Submission Best Practices and Guidelines

Written information submitted to the HR Committee should not repeat the information provided in the State report, but rather seek to correct, expand or corroborate. The written submission should ideally review and analyse how far the national laws, policies, and other measures comply with the ICCPR. NGOs are strongly encouraged to work in coalition to draft their reports, firstly as consistency is taken very seriously by the Committee, and secondly as the unified voice of multiple actors from civil society is much more difficult for State delegations to dismiss. Coalition reports are also very useful in alleviating concerns of a resource and research intensive process by sharing the workload.

NGO reports should be submitted in one (or more) of the HR Committee's working languages – English, French, and Spanish. It is advisable to structure the report into an introduction detailing the NGOs involved and methodological information on how the information was collected, a substantive section addressing the implementation of ICCPR Articles and/or related issues, and a concluding section including suggested recommendations or any remaining questions. References may also be valuable in offering credibility to the information presented. To get an idea of the language and substance of recommendations in relation to the right to participate in public affairs see Appendix 1. To avoid duplication of issues previously examined, NGOs should also consult the issues already outlined in the State report, LOI/LOIPR, and the recommendations of other treaty bodies. Finally, it is important to note that NGO reports are not confidential and are made public on the OHCHR website.

6.3. Engagement in the Individual Complaints Procedure

The thinking behind the individual complaints procedures of the treaty bodies is that any individual may bring a complaint against a State party alleging a violation of treaty rights. For the HR Committee, these violations must relate to **rights enshrined in the ICCPR**, and be brought against State parties to the **First Optional Protocol to the ICCPR** in which States recognise the competence of the Committee.

In order for the Committee to consider the substance of the complaint – proceeding to the so-called Merits stage of the individual communications – it is further necessary that the complaint satisfies the following **conditions**:

- The alleged victim is individually and directly affected by the alleged violation
- All available domestic remedies have been exhausted, and typically no more than 5 years have expired since this exhaustion
- The same matter (same author, same facts, and same substantive rights) is not under examination in another international mechanism or settlement (with the exception of complaints submitted to Special Procedures).

- If the complaint is submitted on behalf of someone else, the complaint needs to sufficiently demonstrate authorization to act on their behalf, or justify why obtaining such consent is not possible
- The complaint relates to rights protected by the ICCPR, and to which the State party of concern has entered no reservations.
- The claims put forward are sufficiently substantiated

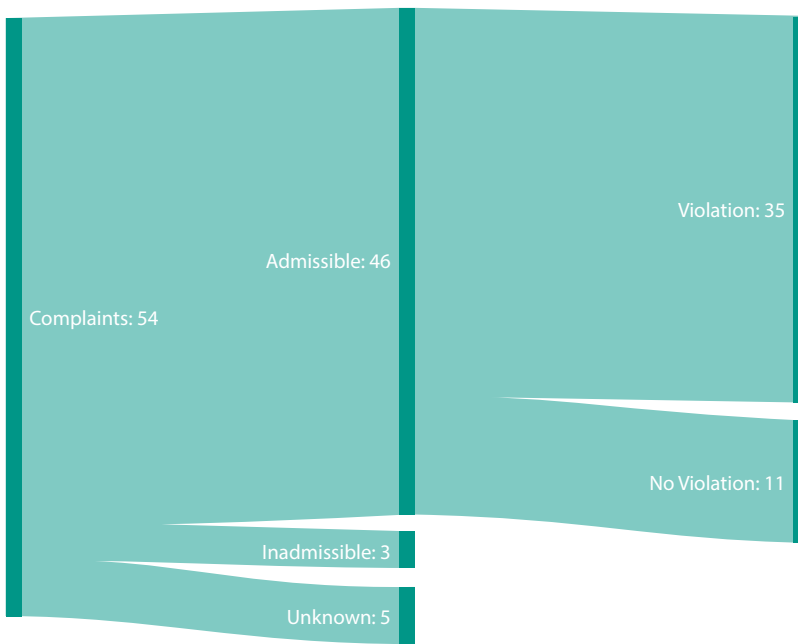
A **submission typically includes** basic information, the State party to which the complaint is directed against, the rights of the ICCPR that are alleged to be violated, the steps taken to exhaust domestic remedies, a chronological list of facts on which the complaint is based, and a checklist encompassing supporting documents. The information may perhaps most easily be submitted through the [model complaint form](#). The complaint must be submitted in one of the official UN languages (Arabic, Chinese, English, French, Russian and Spanish), and the complaint should not exceed 50 pages (excl. annexes).

Notably, it is possible to request the imposition of **interim measures** in the complaint. The Committee may grant these if there is a risk of irreparable harm to the alleged victim in connection with the claims in the case. Interim measures are, for example, commonly granted in cases alleging a violation of the principle of non-refoulement where the State Party will be requested not to deport the alleged victim until the case has been examined by the Committee. A failure to uphold these interim measures are in themselves a violation of the Covenant. Interim measures have comparatively rarely been issued in cases invoking the right to participate in public affairs – however, the Committee did issue, in a very exceptional case, interim measures recently in relation to the right to participate in public affairs. The Committee requested Brazil to take all necessary measures to ensure that the author of a coming individual communication, Lula, could enjoy and exercise his political rights while in prison, as candidate in the 2018 presidential elections. This included having appropriate access to the media and members of his political party. The Committee also requested Brazil not to prevent him from standing for election in the 2018 presidential elections, until his appeals before the courts have been completed in fair judicial proceedings. It should be emphasized that the imposition of such interim measures, although often requested in this type of context, remains rare.

The **right to participate in public affairs** has been invoked 54 times in the individual communications procedure of the HR Committee. Out of these 54 times, 46 individual communications were declared admissible and proceeded to the consideration of merits. Of the remainder that were declared inadmissible, the majority were declared inadmissible due to insufficient substantiation of the author's claims. In a majority of admissible cases (65%), the HR Committee found a violation with respect to Article 25. Notably, a disproportionality large portion of the adopted views under the individual communications procedure (30% of those that proceeded to merits) had a dissenting or concurring opinion issued – demonstrating the residual ambiguity that still exists regarding state obligations under the comparatively complex Article 25.

Thematically, roughly 90% of all individual communications invoking Article 25 in the individual complaints procedure may be categorized into one of the following thematic categories: disqualifications from electoral races, Selection of or Removal from Office of Public Servants and Elected Officials, and the Right to Vote. The majority of these cases involves the determination of whether a particular restriction may be considered objective and reasonable, and set out by the national legal framework. Beyond this common line of argumentation, the Committee has also approached a number of more atypical cases involving e.g. the consideration of whether compulsory voting may be considered compatible with Covenant, as well as various reported irregularities in the immediate electoral and campaign process.

Figure: Violations of Individual Communications invoking Art. 25



6.4. Alternative Mechanisms for Engagement

As earlier emphasized, the HR Committee may not always be the best mechanism for engagement on issues relating to the right to participate in public affairs. In urgent cases, for example, the lag in the adoption of views on individual communications means that HR Committee should not be considered as the first point of engagement. It may also be the case that the scheduling of State reporting timelines means there are currently no possibilities for submission. In such cases, Charter-based mechanisms and other

Treaty Bodies may be considered, as briefly outlined below. Those interested in litigating or engaging with the below mechanisms should further consult the OHCHR website for additional information and resources.

Charter based Mechanisms

Charter-based mechanisms refer to UN mechanisms whose authority and legal basis stems centrally from the UN Charter, or from a resolution by a Charter based body. NGOs have three main points of engagement in this arena: the Human Rights Council, the Universal Periodic review and the Special Procedures.

The **Human Rights Council** provides for a multilateral forum for States and advocates to raise and address human rights violations whenever and wherever they occur. In particular, it responds to human rights mechanisms and makes recommendations on how to better protect human rights on the ground. To engage, NGOs may observe Council sessions, submit written statements, make oral interventions, and organize parallel side-events on issues relevant to the Council's work.

The **Universal Periodic Review** is an inter-State mechanism of the Human Rights Council in which the general human rights situation of all UN Member States is reviewed every four and a half years. NGOs may contribute to this process by participating in consultations held by governments in preparation for their national reports, attend sessions of the Working Group on the UPR, engage in the Pre-sessions, meet with diplomats, and submit shadow reports on the human rights situations in their country.

Finally, a number of **Special Procedures** accept communications from individuals, groups or NGOs who claim to have been victims of, or have direct knowledge of, human rights violations. These complaints, unlike those submitted to the HR Committee, do not have to relate to rights of a specific treaty to which the State has ratified. The Special Procedures are independent human rights experts with a thematic or country-specific mandate, which allows them to respond or intervene in a tailored and specific manner.

Treaty Bodies

Beyond the HR Committee, there are **nine other Treaty bodies** consisting of independent experts responsible for monitoring the other nine international human rights treaties. Each respective body differs to some extent in their working methods, however NGO participation remains relatively consistent and is focused on the reporting and complaints procedure. In the case of the CAT, CEDAW Committee, CRPD Committee, CESCR and the CRC, there is also the possibility of submitting information on serious, grave, and systematic violations through confidential inquiries and early warning and urgent action procedures.

The below non-exhaustive table illustrates **potential human rights violations** relating to restrictions on the right to participate in public affairs that have been either litigated before other treaty bodies, or arisen through information submitted in the reporting

procedure. Recognising the interrelated nature of the right to participate in public affairs, this table aims to provide a brief illustration of suitable mechanisms for specific issues and scenarios related to the overall enjoyment of Article 25.

Mechanism	Example Areas of Possible Restriction on the Right to Participate in Public Affairs
CAT	<p>The failure to prevent, investigate, and prosecute attacks on protesters, seizing polling stations, and the use of intimidation and violence to suppress votes (CAT/C/BGD/CO/1)</p> <p>The consultation of Sami people in the investigation and development of an action plan aimed at the prevention of, protection from and addressing violence, including sexual assault in the Sami community (CAT/C/NOR/CO/8)</p> <p>The inclusion of the LGBTI community in any matter concerning their interests (CAT/C/MKD/CO/3)</p> <p>The inclusion of the concerns of LGBTI people in the preparation and adoption of the national strategy for equality and non-discrimination (CAT/C/MKD/CO/3)</p>
CEDAW	<p>The existence of programs and strategies to ensure the participation in political and public life of Roma women, rural women, and women with disabilities (CEDAW/C/BGR/CO/8)</p> <p>The equal participation of women in political and public life including in high-level positions, the civil service, the diplomatic service, and the judicial service (CEDAW/C/IRQ/CO/7)</p> <p>The adequate participation of women in the development and implementation of programs on climate, change, disaster response and disaster risk reduction (CEDAW/C/SYS/CO/6)</p> <p>The existence of disaggregated data on the political participation of women (CEDAW/C/KAZ/CO/5)</p>
CRPD	<p>The guaranteeing of unhindered physical access to voting, the ensuring of the secrecy of the ballot, and the availability of other voting materials in accessible formats (CRPD/C/GRC/CO/1)</p> <p>The accessibility of information and electoral proceedings for all persons with disabilities (CRPD/C/IND/CO/1)</p> <p>The inclusion of representative organizations of persons with disabilities in consultations, decision-making processes and policy development efforts (CRPD/C/IRQ/CO/1)</p> <p>The existence of support measures enabling girls and boy with disabilities to express their views on all matters that concern them (CRPD/C/KWT/CO/1)</p>

Mechanism	Example Areas of Possible Restriction on the Right to Participate in Public Affairs
CED	<p>The unrestricted participation of victims of enforced disappearances in judicial procedures relating to such acts (CED/C/GAB/CO/1)</p> <p>The incorporation of gender perspectives adapted to the sensitivities of girls and boys when implementing rights and obligations under the Convention (CED/C/CUB/CO/1)</p>
CESCR	<p>The adequate consultation of representatives of indigenous peoples and national minorities in a draft law concerning them (E/C.12/UKR/CO/7)</p> <p>The adequate participation of social partners and workers in the formulation of employment policies (E/C.12/GIN/CO/1)</p> <p>The adequate consultation and the free, prior, and informed consent of indigenous peoples on the establishment and management of protected areas (E/C.12/ECU/CO/4)</p> <p>The adequate advancement of women’s leadership across different political, social, and economic institutions (E/C.12/SVK/CO/3)</p> <p>Women’s representation in senior and decision-making positions in both the public and private sphere (E/C.12/KAZ/CO/2)</p>
CRC	<p>The meaningful participation of children, and their views, in developing policies and programs addressing climate change (CRC/C/FSM/CO/2)</p> <p>The due consideration of children’s views in all relevant administrative and judicial processes concerning them (CRC/C/BLR/CO/5-6)</p> <p>Child participation in developing policies and decisions concerning child rights at all levels (CRC/C/BIH/CO/5-6)</p> <p>The meaningful participation of indigenous children in the planning, implementation, and evaluation of policies concerning them (CRC/AUS/CO/5-6)</p>

6.5. Resources for Engagement

The following resources may be useful for any civil society actors or NGOs seeking to engage with the HR Committee on issues in relation to the right to participate in public affairs:

- Summary document of previous individual communications invoking Article 25 (Appendix)
- CCPR Centre “UN Human Rights Committee: Participation in the Reporting Process”. Available here: https://ccprcentre.org/files/media/NGO_Guidelines_English1.pdf

- Model Complaint Form. Available here:
https://www.ohchr.org/Documents/HRBodies/ComplaintFormOPICCPR_CAT_CERD.doc
- General Comment 25 on the Right to Participate in Public Affairs.
Available here:
<http://ccprcentre.org/ccpr-general-comments>
- OHCHR “Working with the United Nations Human Rights Programme: A Handbook for Civil Society”.
- Available here:
<https://www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx>
- CCPR Centre “FAQ: How to Engage with the Human Rights Mechanisms in Practice”.
Available Here:
<https://corruption.ccprcentre.org/faq/>
- If you any questions, feel free to contact us at info@ccprcentre.org.

Appendix I.

Sample Recommendations on the Right to Participate in Public Affairs

On women's participation in public affairs:

19. The State party should take more robust legal and policy measures to effectively achieve, within specified time frames, an equitable representation of women in public and political life, particularly in decision-making positions, including in legislative and executive bodies and the judiciary at all levels, if necessary through appropriate temporary special measures, in order to give effect to the provisions of the Covenant. (CCPR/C/CZE/CO/4)

On the participation of indigenous peoples in decision-making that concerns them:

45. The State party should ensure that meaningful consultations are held in good faith with the indigenous peoples concerned with a view to obtaining their free and informed prior consent before the adoption or application of any measure that may have an impact on their way of life and/or culture. The State party should also ensure that indigenous peoples are consulted prior to the adoption of any regulatory instrument relating to the consultations. It should redouble its efforts to ensure that the rights of indigenous peoples, particularly in relation to land, territory and natural resources, are promoted, protected and recognized in law and in practice. The State party should ensure that interpretations as to which persons are considered indigenous are based on their right to belong to an indigenous community or nation and their right to determine their own identity and membership. (CCPR/C/MEX/CO/6)

On electoral regulations and practices:

The State party should bring its electoral regulations and practices into full compliance with the Covenant, including its Article 25, inter alia by:

- (a) Giving full effect to the right of every citizen to genuinely take part in the conduct of public affairs and fostering a culture of genuine political pluralism;
- (b) Refraining from using criminal laws as a tool to harass and exclude opposition members from meaningful participation in public life and electoral processes, and conducting a thorough, credible and impartial investigation into the alleged enforced disappearance of Ehsan Odinaev ;

- (c) Revising the limitations on the right to stand for election, with a view to ensuring their compatibility with the Covenant;
- (d) Revising legislation that provides for a blanket denial of the right to vote to all convicted prisoners, which does not meet the requirements of Article 10 (3), read in conjunction with Article 25, of the Covenant and for denial of the right to vote to any person declared incompetent by a court;
- (e) Ensuring the full independence of the Central Commission for Elections and Referendums;
- (f) Implementing equal electoral campaigning conditions for all, including equal access to State-run television.

On prisoners' right to vote:

34. The State party should review its legislation that denies convicted prisoners the right to vote in the light of the Committee's general comment No. 25 (1996) on participation in public affairs and the right to vote (para. 14). (CCPR/C/EST/CO/4)

On public participation in the conclusion of contracts involving a social or environmental impact:

50. The State party should intensify its efforts to ensure public participation and hold genuine consultations with local communities before concluding contracts related to natural resource management or to projects that have a social and environmental impact in order to obtain their free, prior and informed consent. (CCPR/C/GIN/CO/3)

On the registration of public associations:

55. The State party should revise relevant laws, regulations and practices with a view to bringing them into full compliance with the provisions of Articles 22 and 25 of the Covenant, including by:

- (a) Simplifying registration rules so as to ensure that public associations and political parties can exercise their right to association meaningfully;
- (b) Repealing Article 193-1 of the Criminal Code and considering not replacing it with an administrative offence;
- (c) Ensuring that regulations governing foreign funding for public associations do not lead in practice to undue control or interference over their ability to influence public opinion and to operate effectively, including by revisiting the list of activities for which foreign funding may be used;

- (d) Addressing the obstacles to the registration and operation of trade unions, lifting the undue limitations on the right to strike, investigating all reports of interference in the activities of trade unions and of the retaliatory treatment of trade union activists, and revising the procedures governing collective bargaining with a view to ensuring compliance with the Covenant. (CCPR/C/BLR/CO/5)

On depriving the right to vote of persons with disabilities:

18. The State party should:

- (a) Ensure that persons with disabilities are not discriminated against , in law or in practice , particularly in their access to inclusive education , reasonable accommodation , employment and marriage , or in their right to vote and stand for election on grounds that are disproportionate or have no reasonable and objective relation to their ability to vote or stand for election , taking account of Article 25 of the Covenant;
- (b) Ensure that any restriction on legal capacity is no greater than necessary , only imposed pursuant to appropriate legal and procedural safeguards and free and effective legal representation , and that the individuals affected have prompt access to effective judicial review of the decisions regarding their legal capacity. (CCPR/C/BGR/CO/4)

On the establishment of an electoral court:

45. The State party should:

- (a) Remove undue restrictions on standing for public office;
- (b) Amend the legislative framework and adopt procedures to ensure that the right to vote can be exercised without discrimination, in compliance with Article 25 of the Covenant;
- (c) Remove any physical obstacles to accessing polling places;
- (d) Implement the Constitutional Review Committee ' s recommendation to establish an electoral court equipped with the necessary resources and trained magistrates enabling it to efficiently adjudicate election-related disputes in a timely fashion.

On the holding of genuine, periodic elections:

48. The State party should: (a) cooperate with all stakeholders in agreeing on an electoral calendar for the holding of free, peaceful and fair elections as soon as possible; (b) respect the constitutional right of every citizen to participate in public affairs; and (c) put an end to the intimidation of opponents and candidates in the presidential election and

to violations of their Covenant rights, by taking the necessary measures to ensure their effective protection. (CCPR/C/COD/CO/4)

On undertaking constitutional reform to devolve power to democratically elected branches of government:

53. The State party should bring its constitutional framework into compliance with the Covenant, including with Article 25, inter alia by:

- (a) Fostering a culture of political pluralism, ensuring freedom of genuine and pluralistic political debate, and allowing the registration of opposition political parties, including to contest elections, field candidates and participate in the formation of government;
- (b) Undertaking a constitutional reform process with the objective of devolving power to democratically elected branches of government, and guaranteeing the right of every citizen to take part in the conduct of public affairs and have access to public service on general terms of equality;
- (c) Guaranteeing free and fair elections;
- (d) Ensuring the independence and effectiveness of the bodies in charge of elections and anti-corruption. (CCPR/C/SWZ/CO/1)

On participation in public affairs, and corruption:

52. The Committee is concerned that the concentration of power in the King, which, inter alia, gives him excessive powers of appointment over the Government, Parliament and the judiciary, is incompatible with Article 25 of the Covenant. It is also concerned that the elections held in the State party in 2013 did not comply with international standards for free and fair elections, and that political parties as such are unable to register, contest elections, field candidates or otherwise participate in the formation of a Government. It is further concerned that neither the Elections and Boundaries Commission nor the Anti-Corruption Commission are adequately independent, impartial or effective (arts. 19, 21, 22 and 25). (CCPR/C/SWZ/CO/1)

On presidential term limits:

45. In the light of the Committee's general comment No. 25 (1996) on participation in public affairs and the right to vote, the State party should adopt the necessary measures to:

- (a) Ensure that the next elections are free and fair; that the effective exercise of voting rights is guaranteed; and that persons with the right to vote, as well as activists and candidates, are protected from violence, threats, compulsion or manipulative interference of any kind;

- (b) Ensure a fair and impartial electoral process and ensure transparency in campaign financing;
- (c) Guarantee the security of ballot boxes and that votes are counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process;
- (d) Respect the eligibility criteria set forth in the Constitution, in particular the presidential term limit. (CCPR/C/HND/CO/2).

Appendix II.

Summary Presentation

01

The Human Rights Committee & the Right to Participate in Public Affairs

Draft Guidelines

METHODOLOGY

1. DATA COLLECTION

2. ANALYSIS

3. CODIFICATION

- 201 concluding observations between 2000-2019 in 57 sessions
- Comparative analysis also of the concluding observations adopted by other Committees (CEDAW, CRPD and CERD) on certain related thematic clusters
- Bear in mind: no zero clusters
- Bear in mind 2: Significant overlap between interrelated rights

02

Draft Guidelines

Basic Overview

Full sample

- 201 concluding observations reviewed



Art 25 Data

- 402 issues raised under article 25
- 130 States
- 178 concluding observations contained art. 25 issues (88.5%)
- Most mentions issued under another paragraph, rather than being considered separately
- Omitted in 30 concluding observations

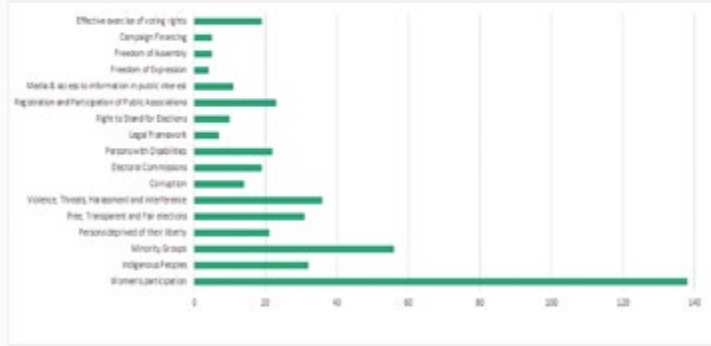
Consideration over time

Human Rights Committee and the right to participate in public affairs 200-2019



Thematic Coverage

- 16 core thematic clusters readily identifiable on the basis of the data



06

Draft Guidelines

Results: Electoral Participation

	Right to stand	Right to Vote	Public Associations	EMs	Free, Transparent, and Fair Elections	Electoral Violence and intimidation	Campaign Financing
Frequency	36	19	23	19	31	36	5
Core Approach	Unlawful restrictions on the right to stand	Positive measures to enable effective exercise, enfranchisement of all citizens; Holding of timely elections	Unreasonable restrictions on the registration and functioning of political parties	Independence, mandate, appointment, and sufficient resources to ensure functionality	Reported irregularities in the immediate elections and verification process	Electoral violence; Harassment of opposition candidates	Reasonable caps on financial contributions, equitable distribution of public funding, abuse of state resources
Underdeveloped Issue-areas	Right to stand for elections of persons with disabilities	Right to vote of homeless, IDPs	NA	NA	Earlier stages of the elections and verification process	Harassment and interference	Donations by non-national persons or entities, transparency
Sample concern	"Pressure, persecution, intimidation, harassment and detention of voters and opposition political parties"	"Universal suffrage, including plans to institute suffrage"	"Registration requirements impose undue restrictions on the exercise of freedoms of assembly and political participation"	Concerns vis-à-vis the "effective and independent functions of the Independent High Electoral Commission"	"Procedural defects reported during the December 2015 referendum process"	"Intimidate, pressure, and co-opt those responsible for acts ... In connection with the violence surrounding the 2008 elections"	"High financial deposits required by the candidates"

05

Draft Guidelines

Results: Political Environment

	Media Environment & Access to Information	Freedom of Expression	Freedom of Assembly	Corruption	Political Pluralism
Frequency	11	5	4	14	7
Core Approach	Balanced access to media; access to information in public interest	Freedom of expression as an essential condition for the effective exercise of the right to vote	Restrictions on public meetings, demonstrations, and electoral campaign gatherings	Reports of corruption in public life as a whole	Existence and promotion of political pluralism
Underdeveloped issue-areas	Functioning of private media	NA	NA	NA	NA
Sample concern	"reports alleging the limited nature of access to information that is in the public interest"	"alleged violations of freedom of expression and information"	"restrictions on public meetings and demonstrations"	"Prevalence of corruption in politics and public life more generally"	"the existent political system limits political pluralism in practice"

Results: Special and Social Groups

	Women	Minority and Marginalized Groups	Persons with Disabilities	Persons Deprived of their Liberty
Frequency	138	88	22	21
Core Approach	Representational perspective	Access to political participation; Enfranchisement	Unreasonable deprivation of legal capacity; Specific enabling measures	Unreasonable restrictions on the right to vote
Underdeveloped issue-areas	Promotion of Participation	Right to vote of homeless, IDPs	Accessibility of electoral media; training for polling staff; civic and voter education	Right to vote of pre-trial detainees
Sample concern	"limited participation of women in political and public life"	"the poor knowledge of the Georgian [including mandatory use by local authorities] language banning integration processes and political participation"	"inability to safeguard the secrecy of the vote owing to the blind and visually impaired having to vote verbally in front of a group of people"	"A blanket ban on those deprived of their liberty to exercise their right to vote does not meet the requirements of article 10(3), read in conjunction with article 25, of the Covenant"

Key Findings

The following four findings were identified on the basis of the analysis:

1. **Adoption of inconsistent legal basis**
2. **Oscillation between broad and detailed**
3. **Common tendency not to raise examples**
4. **(Certain underdeveloped areas)**



Centre for Civil and Political Rights
(CCPR Centre)
Rue de Varembe 1
CH-1202 Geneva Switzerland
PO Box 183 CH-1211
Geneva Switzerland
Tel : +41(0)22 / 33 22 555
Email : info@ccprcentre.org
Web : www.cprcentre.org



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