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POLICY PAPER

OVERVIEW OF STATE OBLIGATIONS RELEVANT TO DEMOCRATIC GOVERNANCE AND DEMOCRATIC ELECTIONS

**OVERVIEW OF STATE
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TO DEMOCRATIC
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STRENGTHENING INTERNATIONAL LAW TO SUPPORT DEMOCRATIC GOVERNANCE AND GENUINE ELECTIONS

INTRODUCTION

International law contains a large number of obligations relevant to democratic governance and democratic elections. International human rights treaties guarantee key elements of democracy, such as the respect of human rights, the rule of law, transparency and accountability in public administration, and a free media. The separation of powers, the independence of the judiciary, and pluralistic system of political parties and organisations are also part of international legal obligations. UN General Assembly resolution 59/201 (2005)¹ and various other resolutions of the General Assembly confirm these elements of a democracy. International law also protects key principles of democratic elections, including universal suffrage, the secrecy of the vote, the right to vote and to be elected, the right to freely assemble and associate, and the right to an election that is “genuine,” all of which are enshrined in various human rights treaties.

The International Covenant on Civil and Political Rights (ICCPR) is the cornerstone of democratic governance and genuine elections in international law. Article 25 of the ICCPR explicitly grants the right to take part in the conduct of public affairs and to equal suffrage. The ICCPR also guarantees other core elements of a democracy and genuine elections, such as the freedoms of association, assembly, and expression and the independence of

the judiciary. With 167 State parties from all regions of the world, the ICCPR constitutes nearly global consensus on minimum requirements for democratic governance and genuine elections. Other human rights treaties contain similar or virtually identical provisions, thereby complementing the ICCPR.

As developed by State practice or treaty bodies, these obligations are often detailed and comprehensive. The United Nations Human Rights Committee (HRC) and other treaty bodies routinely interpret these provisions, thereby helping to further develop consensus on the meaning of a relevant norm. Views on individual petitions and General Comments of the HRC provide an authoritative understanding of the obligations States have undertaken to respect democratic governance and genuine elections. While often surprisingly detailed and comprehensive, ambiguities and gaps remain within this framework. International law is often general in nature and does not cover all relevant aspects of democratic governance and genuine elections. Many of the shortcomings could be addressed through a new or revised General Comment by the HRC on articles 21, 22, and 25 of the ICCPR. Treaty amendments are generally not required to bridge the gaps, although they would provide for the highest possible degree of legal certainty.

¹ UN General Assembly, “Enhancing the role of regional, sub-regional and other organisations,” (2005). With 172 States in favour, 15 abstentions, and no rejections, resolution 59/201 marks a nearly global consensus on key elements of a democracy.

ABOUT THIS PAPER

This paper gives an overview of the extent to which States are obliged to organize themselves as a democracy and to hold genuine elections. For easy access, the paper consists of a table matrix. The table summarizes the relevant State obligations and their content and meaning. The table also provides an overview of the gaps and ambiguities in international law and provides recommendations on how to address these shortcomings. Using traffic light symbols, the table offers a summary evaluation on whether international law largely, partially, or inadequately covers a given issue.

This paper is based on the study “Strengthening International Law to Support Democratic Governance and Genuine Elections”. This comprehensive study discusses State obligations under international law relevant to democratic governance and genuine elections in detail and can be downloaded at the websites of Democracy Reporting International and The Carter Center.

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² This paper was written by Dr. Nils Meyer-Ohlendorf of Democracy Reporting International and Avery Davis-Roberts of The Carter Center, who are also the authors of the study “Strengthening International Law to Support Democratic Governance and Genuine Elections”.

³ <http://www.democracy-reporting.org/programmes/democracy-standards.html>.

⁴ <http://www.cartercenter.org/peace/democracy/des.html>

TABLE OF RECOMMENDATIONS – DEMOCRATIC GOVERNANCE

Key:

Largely covered by international obligations: ●

Partially covered by international obligations: ●

Not or inadequately covered by international obligations: ●

| Issue | Status | Content / Citation | Recommendation |
|---|--------|--|---|
| SEPARATION OF POWERS | | | |
| The term “separation of powers” is not explicitly used in international human rights instruments; however, the HRC has recognized the principle on various occasions. | | | |
| Relationship between the executive and the legislature | ● | International law prohibits an overconcentration of powers in the executive (ICCPR articles 19, 25). According to the HRC, cases of inadmissible over-concentration of powers include: <ul style="list-style-type: none"> • Unaccountable decision-making; • Legislative powers of unelected institutions or unfettered executive powers of unelected bodies; and, • Powers of government bodies to issue laws, decrees, and decisions without being subject to independent review. | The principle of no-overconcentration of powers in the hand of the executive seems largely unknown and should be subject to awareness activities. A new General Comment 25 could make this principle explicit and could elaborate on the principle in light of its decisions. |
| MINIMUM RIGHTS OF PARLIAMENT | | | |
| Meaningful parliaments are a necessary precondition to render citizens' right of political participation and suffrage effective, as granted by article 25 of the ICCPR. For this reason a number of minimum rights derive from article 25. These minimum rights include—to differing extents—the right to supervise the executive, the right to legislate, the right to procedural autonomy, the right to adopt the State budget, and the immunities of parliamentarians. | | | |
| Supervision of the executive | ● | No explicit right to supervise the executive exists in international law but it derives from article 25 of the ICCPR: summon government, conduct hearings, access to information or criticize government in public. | Stakeholders should raise awareness for the implicit rights to Parliament. A new General Comment 25 should elaborate on identified minimum parliamentary rights in more detail. |
| Right to legislate | ● | No explicit right to legislate exists in international law but it derives from article 25 of the ICCPR. Article 25 of the ICCPR forbids the full delegation of legislative powers to government. | |
| Procedural autonomy | ● | No explicit procedural autonomy exists in international law but derives from article 25 of the ICCPR. | |
| Budget autonomy | ● | International law contains no explicit guarantee of Parliament's autonomy. However, the right to adopt national budgets is a key aspect of independent parliaments. It is incompatible with article 25 if Parliament cannot survey and adopt significant parts of the national budget. | |

| Issue | Status | Content / Citation | Recommendation |
|--------------------------------|---|---|----------------|
| Immunities of Parliamentarians |  | International law is silent on parliamentary immunities. Parliamentary immunities can only be derived from article 25 of the ICCPR to a very limited extent in as far as they are vital for ensuring the functioning of parliament. | |

INDEPENDENCE OF THE JUDICIARY

Under international law, the relationship between the judiciary and the executive is largely determined by article 14 of the ICCPR and similar provisions of regional human right treaties. Article 14 guarantees the right to a “fair and public trial by a competent, independent and impartial tribunal established by law.”

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| Tenure and dismissal of judges |  | International law forbids insecure tenure or the dismissal of judges without reasoning in law (ICCPR article 14). | The legal framework set by international law is adequate in principle. |
| Interference |  | International law forbids the ending of or interference in proceedings by executive. | |
| Validity of court decisions |  | Non-judicial bodies may not adjudicate. Court decisions are binding and may not be changed by other branches of government. | |

CONSTITUTION-MAKING

According to article 25 of the ICCPR, citizens must have an effective opportunity to take part in the conduct of public affairs, which includes constitution-making processes.

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| Process |  | According to the HRC, constitution-making processes should be transparent and inclusive. Other issues, such as broad based consensus on a constitution or qualified majority for adoption, are not part of international law. International law contains neither an obligation for States to put a constitution to a referendum nor a subjective right to demand direct participation through referenda or plebiscite. | New General Comment 25 should make explicit that constitution-making processes must be transparent and inclusive. |
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STATE OF EMERGENCY

During a state of emergency democratic governance is diminished. The ICCPR and other international treaties provide a number of detailed procedural and substantive legal rules on the state of emergency.

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| Process |  | A state of emergency must be officially declared by constitutionally competent body. | Legal framework regulating a state of emergency is detailed and comprehensive but would benefit from clearer language on the rights of Parliament during a state of emergency. Revised General Comments could clarify Parliament’s rights. Relevant OSCE commitments could inform the revision of General Comment 29. |
| Requirements |  | A state of emergency may only be declared in extreme times that threaten the life of the nation and its existence. It may not be inconsistent with international law and may not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin. | |

| Issue | Status | Content / Citation | Recommendation |
|--------------------|---|--|----------------|
| Duration and scope |  | Emergency measures must be limited to the extent strictly required by the exigencies of the situation and meet proportionality tests. The ICCPR regulates only to a limited extent the dissolution of Parliament during a state of emergency; it should prohibit dissolution of parliament, at least in general terms. General Comment 29 contains no geographic limitations or accountability requirements, unlike the OSCE, which adopted more detailed commitments on the state of emergency. | |

CIVILIAN CONTROL OF ARMED FORCES

Implicitly deriving from article 25 of the ICCPR and principle of separation of powers, the security sector—as part of the executive—must be supervised and controlled by elected authorities.

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| Civilian supervision |  | The HRC has developed the requirement of “full and effective” civilian control over the military. To ensure full and effective civilian supervision, the mandate, composition, command, and number of the armed forces must be clearly defined in law. | There is only limited case law and no explicit mention of civilian supervision in relevant ICCPR case law. It would be beneficial if a revised General Comment 25 could strengthen civilian supervision. The principles of separation of power and no-overconcentration of powers in the hand of the executive could serve as key benchmarks for elaborating on civilian supervision (see above). |
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TRANSPARENCY

The principle of transparency, i.e. the right of access to government proceedings and information as well as information disseminated by public authorities, is enshrined in several international treaties.

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| Access to information |  | The right to access to information held by public bodies is enshrined in article 19 (2) of the ICCPR and further specified by HRC decisions. | With the new General Comment 34, the legal framework on transparency has become more detailed and comprehensive but it would still benefit from clearer guidance on refusing access to information. |
| Refusal of access |  | Public authorities should circumscribe access to information narrowly but the ICCPR contains no details on legitimate grounds to refuse information. General Comment 34 only requires States to substantiate “any refusal to provide access to information.” | The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters could inform the debate. |

POLITICAL PARTIES

Article 22 of the ICCPR guarantees the right to freedom of association, which includes the right to establish and operate political parties. According to article 22, freedom of association may only be restricted by law and in the “interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” Articles 20 of the UDHR, 11 of the ECHR, 10 of the ACHPR, and 16 of the ACHR also guarantee freedom of association. Treaty bodies have specified detailed requirements on registration, operation, and banning of political parties.

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| Registration |  | Key aspects of political party registration are implicitly regulated by international law, including requirements for a registration framework in law and a prohibition on excessively restrictive registration processes and requirements. | International law provides only a broad framework for political party registration, merely forbidding excessive restrictions on registration. Although international law is unlikely to regulate the details of registration, the existing framework would |
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| Issue | Status | Content / Citation | Recommendation |
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| | | HRC decisions have developed criteria for party registration only in general terms. | benefit from more detailed and illustrative interpretation of articles 22 and 25, either through a revised General Comment or detailed decisions under the first protocol. |
| Discrimination and harassment |  | The ICCPR requires State parties to treat political parties on equal footing, for example concerning access to media, and forbids harassment of political parties through, for example, detentions, fines, or travel restrictions. | The legal framework to prevent discrimination and harassment of political parties is adequate in principle. |
| Multiparty system |  | Today it is largely uncontested that the ICCPR forbids one-party systems and requires State parties to allow multiparty pluralism. | The framework on party-pluralism as developed by the HRC and other bodies constitute an adequate basis. |
| Ban of political parties |  | International law sets only general and vague requirements, such as proportionality, in regards to the banning of political parties. | New General Comments on articles 21 and 22 could specify the requirements regarding the banning of political parties and issues of internal party democracy. |
| Inner party democracy |  | Article 25 of the ICCPR requires State parties to ensure internal party democracy in general terms. | |

CIVIL SOCIETY ORGANIZATIONS

Article 22 of the ICCPR protects the right of association, which includes the rights of citizens to register and operate civil society organisations (CSOs). Treaty bodies have specified in general terms requirements on registration and operation of CSOs.

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| Registration |  | The HRC has criticized onerous registration requirements for NGOs in addition to cases of intimidation. There are no HRC decisions on NGO cooperation with foreign partner organizations, or on abusive taxing—another practically relevant issue. | There is no General Comment on article 22, the ICCPR provision on the freedom of association, which explains to some extent why international law governing CSOs is limited. A General Comment on article 22 could address this gap. |
| Operations |  | | |

MEDIA

Article 19 (2) of the ICCPR protects the freedom of media, one of the cornerstones of a democratic society. The HRC has reinforced the freedom of media and press in numerous cases and, most recently, in General Comment 34.

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| Licensing and accreditation |  | With a new General Comment on article 19 and extensive case law, the scope and content of the freedom of media is well established and elaborated in significant detail. | Protection of the freedom of media is well established. |
| Independent and unrestricted media |  | | |
| Overconcentration of media |  | | |

RIGHT OF SELF-DETERMINATION

Article 1 of the ICCPR protects in general terms internal political self-determination.

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| Internal political self-determination |  | Article 1 of the ICCPR guarantees broad autonomy within a State and participation of people in the State's political decision-making process. Article 1 makes no reference to democracy but is based on elements of democracy. | As relevant HRC jurisprudence is thin, a revised General Comment should be considered. A new General Comment should state that article 1 must be interpreted in conjunction with the political rights under the ICCPR. |
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TABLE OF RECOMMENDATIONS – DEMOCRATIC ELECTIONS

| Issue | Status | Content / Citation | Recommendation |
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| GENUINE ELECTIONS THAT GUARANTEE THE FREE EXPRESSION OF THE VOTERS | | | |
| Genuine elections that guarantee the free expression of the will of the voters are addressed in international law, specifically in UN, ICCPR article 25 (b). | | | |
| Definition of “genuine elections” |  | While genuine elections are required in international law, there remains a lack of clarity regarding the definition of the term “genuine election.” | A new or revised General Comment on article 25 could include: <ul style="list-style-type: none"> • Greater clarity regarding the definition of the term “genuine election;” and, • Clarity regarding whether the will of the people requires that the candidates/s with the most votes win. |
| PERIODIC ELECTIONS | | | |
| Periodic elections are addressed in international law emanating from the United Nations as well as regional bodies such as the Organization of American States and the African Union. | | | |
| Interval between elections |  | International law states that elections should be held periodically and that the interval between elections should not be unduly long (General Comment 25). There is little guidance regarding the circumstances under which it is permissible for elections to be postponed or cancelled. | A new or revised General Comment on article 25 could provide greater clarity on: <ul style="list-style-type: none"> • The permissible interval between elections; • The circumstances under which is permissible to postpone elections; and, • The circumstances under which elections should not be held. |
| SECURITY OF THE BALLOT | | | |
| The secrecy of the ballot is well established in international law (UN, ICCPR article 25 (b)). | | | |
| Secret ballot |  | The need for secrecy of the ballot is well established in international law. International law provides little guidance, however, regarding possible measures that can be taken to guarantee the secrecy of the ballot, or the potential impact and challenges of new election technologies on the enjoyment of this right. | A new or revised General Comment on article 25 could include: <ul style="list-style-type: none"> • Greater detail regarding the measures States may take to protect secrecy of the ballot; and, • The impact of new election technologies on the enjoyment of secrecy of the ballot and other fundamental rights and freedoms. |

| Issue | Status | Content / Citation | Recommendation |
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| THE RIGHT TO VOTE AND TO BE ELECTED | | | |
| The rights to vote and to be elected are protected by United Nations treaties such as the ICCPR, as well as regional treaties such as the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, and the Arab Charter on Human Rights. | | | |
| The right to vote and to be elected |  | The right to vote and to be elected is included in the ICCPR, as well as regional treaties. Additionally, reasonable and unreasonable restrictions are addressed in some detail in the ICCPR. | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> • The rights and status of individuals with double citizenship; • The rights of long-term residents to participate in public affairs; |
| Citizenship |  | <p>Citizenship has historically been left to the discretion of States. However, this is slowly changing.</p> <p>Citizens should enjoy electoral rights regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, or sexual orientation (UN, ICCPR articles 2 and 25).</p> <p>Long-term residents may enjoy rights to vote and to be elected, but this is left to the discretion of the State (HRC, General Comment 25, para. 3).</p> <p>Internally Displaced People should be granted full electoral rights (UN Guiding Principles on Internal Displacement, para. 22 (d); AU Convention for Internally Displaced People, article 9).</p> <p>The voting rights of refugees and asylum seekers to vote in their country of origin are unclear.</p> | <ul style="list-style-type: none"> • The rights of citizens outside of the boundaries of their country (including refugees and asylum seekers) to vote and to be elected; • The rights of military personal to vote and to be elected; • The impact of residency on the enjoyment of the rights to vote and to be elected; • Compulsory voting; • The impact of voter registration procedures on the enjoyment of article 25 rights; and, • The rights of independent candidates to contest elections. |
| Restrictions on the rights to vote and to be elected |  | International law indicates what constitutes a reasonable or unreasonable restriction on the rights to vote and to be elected (HRC, General Comment 25, para. 15). | |
| Compulsory voting |  | Compulsory voting is not addressed in international law. | |
| Voter registration |  | <p>Voter registration is recognized in international law as a means of ensuring the right to vote (HRC, General comment 25).</p> <p>International law only implicitly addresses the impact of voter registration procedures on the enjoyment of article 25 rights.</p> | |
| Independent candidacy |  | The requirement that no one be compelled to join a political association may require that independent candidacy be permitted. However, regional jurisprudence from the Americas conflicts with this (HRC, General Comment 25, para. 17; UDHR, article 20 (2)). | |

| Issue | Status | Content / Citation | Recommendation |
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| EQUAL SUFFRAGE | | | |
| Equal suffrage is protected by international law and is critical to the voting process, as well as to boundary delimitation processes (UN, ICCPR article 25(b)). | | | |
| Boundary delimitation |  | Equal suffrage lies at the heart of the boundary delimitation process. However, international law is unclear regarding the degree of deviation between districts that is permissible. While not explicitly addressed in international law, there are a number of means by which States can implement impartial boundary delimitation. | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> • The impact of the process of boundary delimitation on the exercise of electoral rights; • Reasonable and unreasonable deviations from equality between districts; • The frequency with which boundaries should be delimited; and, • The nature of the body responsible for boundary delimitation (e.g. whether it should be independent from other branches of government). |
| ELECTORAL SYSTEM | | | |
| International law recognizes the need for an electoral system. All electoral systems are permissible as long as they uphold international rights (HRC, General Comment 25, para. 21). | | | |
| Electoral system |  | Greater clarity could be provided on key issues such as quotas and the requirement of transparency in the means of converting votes into mandates. | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> • Transparency in the method for converting votes into mandates; and, • The use of quotas. |
| LEGAL FRAMEWORK FOR ELECTIONS | | | |
| International law recognizes the need for a legal framework for the electoral process (HRC, General Comment 25, para. 19). | | | |
| Stability of the legal framework |  | International law does not explicitly address the need for a stable election law in the months prior to the election (Exception: ECOWAS, Protocol on Democracy and Good Governance, article 2). | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> • The stability of the election law (recognizing that there may be circumstances in which changes close to election day are necessary); and, • The impact of the electoral calendar on the enjoyment of fundamental rights and freedoms (and vice versa), for example the need for clear and predictable timelines for voter registration, dispute resolution etc. |
| Electoral calendar |  | Elections occasionally place an extraordinary time constraint on processes that are essential to the fulfilment of rights—for example, voter registration or electoral dispute resolution processes. At other times, there may be too much time allowed for aspects of the process—for example, protracted election dispute processes. International law does not address the need for a clear electoral calendar that allows adequate time for all elements of the process. | |
| Sanctions |  | International law recognizes the need for sanctions and penalties in the case of violations of electoral and other human rights. In addition, broader principles established in General Comment 31 regarding the need for sanctions to be proportionate, appropriate, and enforceable also apply in the context of elections. | |

| Issue | Status | Content / Citation | Recommendation |
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CAMPAIGNING

Campaigning is recognized as a critical component of a genuine election. Campaigning as part of a genuine election process requires that a number of related rights and freedoms be enjoyed, for example the freedoms of expression, association, assembly, and movement (UN, ICCPR articles 12, 19, 21 and 22).

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| Freedom of assembly and association |  | The freedom of assembly and association is addressed in international law. In addition, the role of these freedoms on the electoral process is addressed. | A General Comment on articles 21 and 22 of the ICCPR would be useful. |
| Campaign periods |  | Official campaign periods are a common practice. However, it remains unclear whether the benefits of such a campaign period (i.e. for the regulation of campaign finance) outweigh the potential restrictions on rights and freedoms. | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> • Whether official campaign periods are a permissible restriction of rights; and, • The clear link between freedom of movement and the enjoyment of article 25 rights. |
| Freedom of movement |  | Freedom of movement is guaranteed by article 12 of the ICCPR. However, the enjoyment of article 25 rights is dependent on the fulfilment of this freedom. | |

PARTY AND CAMPAIGN FINANCE

International law only briefly references the role of party and campaign finance in the electoral process (UN, CAC, article 7 (3); HRC, General Comment 25, para. 19).

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| Party and campaign finance |  | International law inadequately addresses party and campaign finance. | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> • Access to information and the need for regular, public disclosure of campaign contributions; • The relationship between campaign contribution caps and freedom of expression; • The role of the State in providing public funds to support campaigns; • Eligibility to contribute to campaigns (for example, foreign or corporate donations); and, • Access to state resources and prevention of their misuse. |
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THE MEDIA AND ELECTIONS

The role of a pluralistic and diverse media in promoting genuine elections is recognized in international law. Particularly relevant is freedom of expression, protected in article 19 of the ICCPR and enshrined in regional treaties.

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| Election quiet periods |  | Election quiet periods are permissible in international law; however, there remains a lack of clarity about their duration (HRC, <i>Kim Jong-Cheol v Republic of Korea</i>). | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> • The question of equality versus equity vis-a-vis candidates' access to the media; • The regulation of free airtime for candidates; • Ensuring that citizens receive politically neutral information during an election; |
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| Issue | Status | Content / Citation | Recommendation |
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| Access to the media by candidates |  | International law partially addresses access to the media by candidates; however, it remains unclear whether that access should be equal or equitable (HRC, General Comment 25, para 25; AU Declaration of Principles Governing Democratic Elections in Africa, article III a). | <ul style="list-style-type: none"> The responsibilities of the media to provide electoral information to citizens; The permissible duration of election quiet periods; and, The impact and challenges of new media on the electoral process. |
| The internet and new media |  | International law is beginning to address the changes brought by the internet and new media. However, this has yet to be addressed explicitly in the context of the electoral process. | |
| Responsibilities of the media during elections |  | International law could be strengthened regarding the role of the media during the electoral process, specifically the responsibility of the media to provide information regarding electoral processes. | |

VOTER EDUCATION

International law recognises that voter education is necessary to ensure the enjoyment of electoral rights by an informed electorate (HRC, General Comment 25, para. 11).

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| Voter education |  | Voter education is recognized in international law as an important part of the electoral process (HRC, General Comment 25). However, there remains a lack of clarity regarding the role of the Election Management Bodies (EMB) in providing voter education | <p>A new or revised General Comment on article 25 could provide clarity regarding:</p> <ul style="list-style-type: none"> Whether the EMB should bear primary responsibility for ensuring that electors are informed of their rights. |
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ELECTION MANAGEMENT BODIES

International law states that an independent electoral authority should be established to supervise electoral processes (HRC, General Comment 25, para. 20).

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| The EMB as independent and impartial bodies |  | In reference to the need for an independent electoral authority, greater definition regarding the term “independent” would be helpful, e.g. whether independence requires complete independence from other branches of government. | <p>A new or revised General Comment on article 25 could provide clarity regarding:</p> <ul style="list-style-type: none"> The definition of “independent” in the context of the EMB; The role and responsibilities of the EMB, particularly vis-à-vis other organs of the State and specifically with regard to the independence of the EMB from other branches of government (including financial independence); The responsibilities of the EMB in the administration of elections and the fulfilment of rights; and, The need for transparency and accountability in the functioning of the EMB. |
| Composition of the EMB |  | International law does not address the composition of the EMB or the appointment of EMB members. | |
| The EMB and necessary steps |  | International law does not explicitly address the need for an election management body to take all steps necessary in order to ensure the enjoyment of article 25 rights. | |

| Issue | Status | Content / Citation | Recommendation |
|---|--------|---|---|
| VOTING AND ELECTION DAY PROCESSES | | | |
| Voting and election day processes are not well addressed in international law. | | | |
| Voting procedures | ● | International law is largely silent on the issue of voting procedures. This is likely in large part due to the variety of practice among States. However, election day procedures greatly impact the enjoyment of electoral rights. | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> Necessary steps to ensure that the right to vote and to be elected can be effectively enjoyed, such as ensuring polling stations are open beyond regular working hours; the provision of enough, conveniently located voting facilities; procedures that ensure women and those with disabilities are able to vote; and, The impact of electronic voting technologies on the enjoyment of article 25 rights. |
| VOTE COUNTING AND TABULATION | | | |
| International law does not address vote counting and tabulation processes in great detail. | | | |
| Vote counting procedures | ● | International law does not address vote counting procedures in any detail, most likely because they vary widely across countries. | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> A requirement of accuracy and honesty in the vote count so that the will of the people might be established; and, An explicit reference to access to information in the context of the vote counting process and results tabulation, including the need to post detailed polling station level results immediately after the polls and to publish all detailed and aggregated results promptly. |
| Accuracy of the count | ● | The need for an honest and accurate count of the election results is only implicitly addressed in international law in that elections should reflect the will of the people. | |
| Publication of detailed results | ● | International law does not explicitly require that polling station level election results be publicly posted. Rather, a case can be made that access to information, coupled with the rights to vote, to be elected, and to participate in public affairs, creates an obligation on the State to provide such information. | |
| ELECTORAL DISPUTE RESOLUTION | | | |
| Dispute resolution processes are well established in international law through the rights to an effective remedy and the right to a fair and impartial hearing (UN, ICCPR articles 2 and 14). | | | |
| Locus standi in election disputes | ● | International law does not explicitly address the need for citizens to have standing before a tribunal for violations of electoral rights. | A new or revised General Comment on article 25 could provide clarity regarding: <ul style="list-style-type: none"> The standing of key stakeholders to bring election related complaints; The timeline for dispute resolution processes that de facto ensures that citizens are granted effective and expeditious remedies within the time constraints imposed by the election process; |
| Election management bodies as arbiters of disputes | ● | International law provides fairly detailed general guidance on fair and impartial hearings. When applied to elections, however, international law is not explicit regarding whether these principles mean that EMBs should not serve as arbiters of election disputes (a common practice) because this may constitute a conflict of interest. | |

| Issue | Status | Content / Citation | Recommendation |
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| The role of the judiciary in electoral disputes |  | The role of an independent judiciary in the resolution of electoral disputes is implicitly addressed in international law. | <ul style="list-style-type: none"> • Whether election management bodies meet the criteria of a tribunal or if their decisions must always be subject to judicial appeal (per General Comment 32); and, • The role of the judiciary in the election dispute resolution process. |

OBSERVATION OF ELECTIONS

Observation of elections is broadly established in international law through the right to participate in public affairs, the right to be elected, and the concept that a genuine election guarantees the free expression of the will of the voters (UN, ICCPR article 25).

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|---------------------------------|--|--|---|
| Domestic observation |  | Citizens have the right to participate in the public affairs of their country, including through civil society organizations. However, international law does not address the value and special needs of domestic observer groups. | <p>A new or revised General Comment on article 25 could provide clarity regarding:</p> <ul style="list-style-type: none"> • The definition of “independent scrutiny” in General Comment 25; • The rights and responsibilities of domestic, non-partisan election observers; |
| Candidate and party observation |  | The rights of candidates, parties, and their representatives or agents to have access to the count is well established in international law. | <ul style="list-style-type: none"> • The ability of candidates and their agents to observe all aspects of the electoral process; and, • The role and responsibilities of international observers. |
| International observation |  | International observers do not have the same rights under international law as citizens of the country. Despite this, invitation of international observers is now common practice and an emerging international norm. | |

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