

SECTION TWO

Human Rights – The Basis for Inclusiveness, Transparency, Accountability and Public Confidence in Elections*

Elections belong to the people. Principles for democratic elections are usually traced to the precept that citizens have the right to take part in government and in the conduct of public affairs of their countries. This precept is enshrined in Article 21 of the Universal Declaration of Human Rights (Universal Declaration) and Article 25 of the International Covenant on Civil and Political Rights (ICCPR), as well as in other international human rights instruments.¹

These threshold concepts embody the understanding that sovereignty belongs to and flows from the people of a country, stated in the Universal Declaration as: “The will of the people shall be the basis of the authority of government....”² Article 25 of the ICCPR requires that every citizen therefore must be provided “the right and the opportunity,” without discrimination based on distinctions such as race, gender, religion, language, property or political or other opinion and without unreasonable restrictions “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....”³

Elections therefore are organized explicitly to ascertain and honor the people’s will as to who should occupy elected office and govern in the people’s interest. This illustrates the collective character of the right to genuine elections, while international human rights instruments principally address individual rights in the electoral context.⁴ The collective element of the right to genuine elections goes to the essence of sovereignty

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belonging to the people, who have the right to self-determination, including the right to freely determine their political status and freely pursue their economic, social and cultural development through participation in government and public affairs, directly or through their freely chosen representatives.⁵

International principles for democratic elections have been increasingly recognized in recent years. State acceptance of principles concerning democratic elections is evidenced by assent to treaties, declarations and other international instruments,⁶ by decisions in international legal fora⁷ and by what is now a general practice of inviting election observers from intergovernmental and nongovernmental organizations that base their activities on respect for and promotion of international human rights.⁸ Recognition is also evidenced by publications of highly respected institutions⁹ and publicists¹⁰ in the field.¹¹ In effect, state practice demonstrates consensual participation in a process of normative development, where electoral processes are assessed based on principles that reflect internationally recognized human rights and fundamental freedoms.¹²

While universal and equal suffrage, exercised through the rights to vote and to be elected, may be subjected to reasonable restrictions, for elections to be "genuine" the franchise must be extended broadly. Reasonable restrictions on the exercise of electoral related rights must be imposed only in good faith and be necessary in order for governments to meet their obligations to respect and ensure electoral related rights.¹³ Other legal principles contained in internationally recognized rights reinforce this point, including the right to equality before the law, equal protection of the law and the provision of effective remedies required to redress violations of rights.¹⁴

Similarly, for elections to be genuinely democratic, other internationally recognized human rights must also be broadly exercised in the electoral context, without discrimination or unreasonable restrictions, including:

- The right to associate into political organizations (such as political parties, candidate support organizations or groups favoring or opposing referenda propositions);¹⁵
- The right to peacefully assemble for meetings, rallies and to otherwise demonstrate support for electoral competitors;¹⁶
- The right to move freely to build electoral support;¹⁷
- The right to be free of the threat of violence or other coercion, while making political choices or exercising political expression;¹⁸
- The right to hold political opinions without interference;¹⁹ and
- The right to freedom of political expression, including the freedom to seek, receive and impart information and ideas in order to develop informed choices required for "the free expression of the will of the electors."²⁰

Each of these rights is also applicable for citizens who choose to associate and act in community to promote electoral integrity, through organizations that conduct nonpartisan domestic election monitoring, popular education about electoral related rights, activities to encourage participation in election processes and similar actions relating to the rights to vote and to be elected.²¹ The actions of such groups depend upon and simultaneously reinforce the principles discussed in

this Section - inclusiveness, transparency and accountability, which provide the bases for public confidence in elections.

DEMOCRATIC ELECTIONS REQUIRE INCLUSIVENESS

The interrelationships between and among the right to genuine elections and other internationally recognized civil and political rights illustrates that democratic elections must be inclusive both for citizens who want to exercise their right to vote and for those who seek to be elected. An anti-discrimination norm obliges states to provide inclusiveness in electoral processes. The norm against discrimination takes the force of a principle for democratic elections as the requirements for universal and equal suffrage combine with the general prohibition against discrimination, the rights to equality before the law and equal protection of the law and the right to remedies that effectively redress rights violations. Provisions concerning all of these concepts are found in international human rights instruments.²²

The principle of inclusiveness is a central consideration in the choice of a country's electoral system.²³ While there are numerous types of electoral systems and possible combinations of systems, to be democratic, the principle of the authority of government deriving from the will of the citizens - expressed through universal and equal suffrage - is a prerequisite that must be respected.²⁴ The principle of inclusiveness also applies to the development of the combination of laws that make up the legal framework for election processes.²⁵ The decision making process concerning the structure, composition and powers of election administration also must be a subject of inclusiveness, because that governmental body has to demonstrate that it is free of discrimination towards the electors and the electoral competitors and that it is capable of "guaranteeing" that the free expression of the will of the electors will be accurately recorded and honored.²⁶

Ensuring the Right and Opportunity to Vote:

In addition to avoiding unnecessary restrictions, the inclusiveness principle requires countries to identify factors that impede citizens from exercising the right to vote and to take positive measures to overcome those factors. Positive obligations are based on governments' responsibility to provide an opportunity, as well as a right, to vote without discrimination or unreasonable restrictions.

Positive obligations are illustrated clearly when considering electoral related rights provided in the ICCPR. The requirement to provide a genuine opportunity to exercise electoral related rights combines with the ICCPR's general character of creating immediate obligations for states that are parties to the treaty.²⁷ Governments therefore should take steps to educate people about their electoral related rights and remove barriers to participation for those traditionally underrepresented in election processes and participation in government and public affairs, such as women, minorities (including those who communicate in minority languages), citizens who do not read or write and those with physical challenges and disabilities.²⁸

The inclusiveness principle is the guiding force for the process of devel-

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oping a registry of voters.²⁹ The primary purposes of developing a voter registry are: on the one hand, to maximize the opportunity for eligible citizens to vote, by pre-screening them and reducing election day bureaucracy, thus promoting universal suffrage; and, on the other hand, to limit the possibilities for ineligible people to vote and to limit possibilities for illegal multiple voting, thus protecting equal suffrage by preventing dilution of the weight of legally cast ballots.³⁰

Restrictions on the right and opportunity to vote must be limited generally to requirements concerning citizenship, residency and minimum age (usually the age of majority) or to smaller categories of citizens relating to mental incapacity, criminal record or present service in the military or police.³¹ The trend concerning the latter categories is to broaden the franchise, for example, by requiring a court proceeding to determine that a person does not have the capacity to make an informed electoral choice, by allowing military and police personnel to vote and by limiting restrictions on the voting rights of those convicted of crimes in accordance with the principle of proportionality of punishment to the nature of the crime.³²

A voter registration process, for example, must present a genuine opportunity for citizens to appear on the registry on a nondiscriminatory basis, including a reasonable chance to inspect and correct the voter registry before elections take place. Likewise, the location of polling stations and supplies provided them must offer citizens a genuine and equivalent opportunity to cast their votes. Governments also must inform citizens sufficiently about these and other matters relating to the right to vote (and to be elected) so that opportunities presented by law can be realized in practice.³³

Ensuring the Right and Opportunity to Be Elected:

The principle of inclusiveness also applies to those who seek to exercise their right to be elected. Legal recognition of political parties must not be unreasonably restrictive, nor may access to the ballot be unreasonably restricted for political parties and candidates competing for election.³⁴

Candidature requirements, for example, concerning minimum age or educational levels, residence, descent or criminal record must be based on reasonable and justifiable criteria, as should provisions relating to the doctrine of incompatibility of offices.³⁵ Requirements for collection of signatures for legal recognition or ballot qualification, deposits or fees and the timing of filing deadlines for qualifying for inclusion on the ballot must not be overly burdensome or discriminatory.³⁶ Likewise, the application of acceptable requirements for legal recognition, access to the ballot and other rules may not be enforced by election authorities in a manner that is arbitrary or discriminatory or that creates barriers to inclusiveness of those seeking to be elected.³⁷

A failure to apply the principle of inclusiveness to those seeking to be elected not only abridges the rights of would-be candidates. The right to vote includes the right to choose among those who seek to represent the electors.³⁸ Elections in which voters go to the polls, even in large numbers, when candidates and political parties have been unjustly denied the opportunity to appear on the ballot or where they are denied a full opportunity to appeal for votes may be electoral exercises, but they are not genuine, democratic elections.³⁹

Fair electoral competition is also based on the principle of inclusiveness. Electoral competitors must not be subject to legal or administrative obstacles to appealing for the support of the electors.⁴⁰ This applies to the exercise of the rights of association, assembly, movement and expression, which are necessary for conducting a campaign to garner electoral support.⁴¹

Electoral competitors also must be able to enjoy freedom from violence, intimidation, coercion and retribution for their electoral efforts, just as citizens must be free from these factors when making their electoral choices.⁴² Fair electoral competition requires equality before the law, equal protection of the law and provision of effective remedies for violation of the rights of electoral competitors. This applies to governmental agencies and officials well beyond election authorities, including the police, prosecutors, courts, administrative law bodies, government employees and even government controlled mass media and authorities empowered to address fairness and conduct of private media, as well as to those charged with overseeing requirements concerning campaign finance.⁴³

Universal and equal suffrage, therefore, have multiple applications when the conditions for suffrage are considered in the context of the right to vote and to seek election. The prohibition against unreasonable restrictions – which is consistent with the principle of good-faith adherence to obligations to respect and ensure the exercise of internationally recognized human rights – combines with the anti-discrimination norm to demand inclusiveness toward electors and electoral competitors alike.

DEMOCRATIC ELECTIONS REQUIRE TRANSPARENCY

Transparency is a byword in any discussion of democratic elections,⁴⁴ yet the bases for claims that election processes must be transparent are not often explored.⁴⁵ It may be argued that transparency is implied in other election related rights. Indeed, it is impossible to imagine how citizens could take part in government and public affairs, as provided, for example, in Article 21 of the Universal Declaration and Article 25 of the ICCPR, unless the processes surrounding government and public affairs are open to public knowledge and scrutiny. More specifically, it is not possible to know whether the right to be elected and the right to vote are being ensured by governments unless electoral processes are “transparent.”⁴⁶

The principle of transparency in democratic elections is not predicated solely on such deductions, though they lead logically to the proposition that the transparency principle is identifiable in the penumbra of electoral related rights found in treaty obligations and other state commitments concerning genuine elections. The principle of transparency, nonetheless, is more directly based on internationally recognized human rights and fundamental freedoms.

The basis for the requirement for transparency in electoral processes is the freedom to seek, receive and impart information, which is integral to the right to freedom of expression.⁴⁷ The freedom to seek, receive and impart information takes on a powerful role in society, when it is

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exercised in the context of elections. In fact, the rights to vote and to be elected cannot be exercised without also exercising the freedom to seek, receive and impart information – if an election is to be genuine. While a person or a political party could theoretically seek to be elected and not seek to impart any information to the electors, and while a citizen could theoretically go to the polls without ever seeking or receiving information about the electoral competitors, such propositions are ludicrous.

The will of the people provides the basis for the authority of government, and in turn the government must guarantee the free expression of the will of the voters through genuine elections.⁴⁸ The right to seek, receive and impart information concerns the right of the electors to gain and share knowledge and opinions necessary to form their will regarding the electoral competitors, whether they are candidates, political parties or those supporting or opposing propositions put forth in referenda. It also concerns the freedom of the news media to cover issues they deem to be significant to the public debate surrounding elections.

The right to seek, receive and impart information is central to whether the electors and electoral contestants are able to pursue the “opportunity” as well as the rights to vote and to be elected.⁴⁹ In this respect, electors and electoral contestants must be provided with information about electoral procedures so that they may exercise their rights. The right to seek, receive and impart also encompasses information concerning the integrity of electoral processes. Such information concerns whether all elements of the overall process needed to realize universal and equal suffrage, including guaranteeing a secret ballot and an honest count, are being established effectively and honored.

Information Concerning Electoral Contestants:

Governments should ensure that no legal or administrative obstacles impede efforts of electoral contestants to provide information to citizens as part of their campaigns to gain support (or for the contestants to seek or receive information about citizen attitudes regarding election related issues).⁵⁰ Governments likewise should ensure that no legal or administrative obstacles impede efforts of citizens to seek, receive and impart information that might assist their decision making about electoral choices.⁵¹

These obligations include access to the mass communications media (such as newspapers, radio, television and the Internet), use of the mail service, telephone services and distribution by hand of flyers and other printed materials.⁵² Government controlled media have an obligation not to discriminate politically concerning electoral candidates and have an affirmative obligation to provide fair access for them to address the public with their appeals for electoral support; governments also have an obligation to take steps to ensure nondiscrimination concerning treatment of electoral contestants by private media.⁵³

Information Concerning the Exercise of Electoral Rights:

Providing the electorate and those seeking to be elected with sufficient, timely information about how, when, where and other requirements for candidate qualification, voter registration, voting and other electoral matters (whether referred to as “voter education” or by a broader

term) is essential to ensuring the opportunity to freely exercise electoral rights.⁵⁴ Positive obligations discussed above under “Ensuring the Right and Opportunity to Vote” apply in this respect.

Leaving prospective voters and electoral contestants in an information vacuum – without accurate information needed to exercise their rights – may, by omission, constitute an unreasonable restriction on the exercise of electoral related rights. Governmental obligations to provide information concerning the exercise of electoral related rights fall generally to election authorities, although, this activity should also be taken up by state controlled media, and electoral competitors and nonpartisan citizen organizations may also seek to provide this type of information to the public.⁵⁵ In the case of electoral contestants and citizen organizations, governments are obliged to ensure that there are no unnecessary restrictions on their disseminating such information.

Information about Electoral Processes:

Rhetoric about transparency in election administration is common, and the commitment of many electoral officials to the principle of transparency is strong.⁵⁶ Application of the right to seek, receive and impart information about administrative elements of the election process, however, is not a simple matter.

A number of interests interface when transparency in election processes is considered, including efficiency in organizing elections, privacy interests of citizens (particularly concerning voter registration information) and proprietary interests of companies that supply and service electoral materials. Balancing of interests when approaching such issues should start with the recognition that the will of the people is the basis of the authority of government and that elections are organized precisely to ascertain and honor that will.⁵⁷ The interests of citizens, both as electors and as electoral competitors, in knowing that the processes surrounding elections are accurate and honest therefore should receive the paramount position when balancing of interests is required.

Other interests can and must be accommodated, but administrative convenience (even the need for administrative effectiveness), privacy or proprietary rights cannot be allowed to eclipse citizens' rights to information about election processes.⁵⁸ Since sovereignty belongs to the citizens of a country, and the authority of government derives from the will of citizens expressed in genuine elections, information concerning how a government meets its obligation to organize an election process that honors the electorate's will belongs to the citizens as well. Governments therefore have an affirmative obligation to provide electors and electoral contestants with information about the workings of electoral processes.

This obligation is established in international jurisprudence. It is clearly established, for example, that member states of the Organization of American States (OAS) have an affirmative obligation to provide government held information to their citizens under the freedom to seek, receive and impart information and ideas, which is protected by the American Convention on Human Rights (American Convention).⁵⁹ The Inter-American Court of Human Rights stated in *Marcel Claude Reyes, et al. v.*

*Chile*⁶⁰ that a state's actions "should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately."⁶¹ The case held directly that denial of a request by a nongovernmental organization for information concerning an environmental matter of public interest violated the right to seek, receive and impart information provided in Article 13 of the American Convention, and the reasoning in Marcel Claude Reyes should carry over to the electoral context with equal force.

The European Court of Human Rights has not yet ruled that state parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) have an affirmative obligation to provide citizens with access to government held information under the Convention's Article 10 right to seek, receive and impart information and ideas.⁶² However, the court recognized, in its admissibility decision in *Sdruzeni Jijoceske Matky v. Czech Republic*,⁶³ an independent Article 10 right to receive documents held by governmental authorities, which was violated by refusing a nongovernmental organization's request for information concerning the design and construction of a nuclear power station, when the group was a party in an administrative proceeding concerning the station's environmental impact and sought the information to help prove its claim.

The European Court of Human Rights is presently considering the right to seek and receive information in the electoral context, in the pending case of *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia*.⁶⁴ In that case, an Armenian nongovernmental organization is seeking redress for the failure of election authorities to provide requested information concerning the authority's decision making processes and information concerning campaign contributions and expenses of certain political parties. The case presents an opportunity for the court to recognize the importance of electoral transparency in explicit terms.

The principle of transparency is central when considering the ever widening role of electronic technologies in election processes. Whether electronic technologies are employed in delimitation of election districts, development of voter registries, recording and tabulating votes or other sensitive matters, the technology employed, in addition to benefits from its use, poses the risk of negating transparency. The rights of electoral contestants, citizen organizations that monitor and promote electoral integrity and the news media to see into, scrutinize and understand the accuracy and efficacy of such technologies is critical to genuine elections.

The impact of technologies, such as electronic voting and creation of voter registry databases, illustrates the importance of access to election processes by electoral contestants and citizens (through election monitoring groups and the news media, as well as through direct citizen involvement). Their involvement must begin at the early stages of formulating public policies about whether to employ such technologies, the requirements for technology design, procurement criteria, testing and certification processes and the means of providing effective remedies should problems develop in the use of electronic electoral technologies.⁶⁵

Election Monitoring and Observation:

State practice almost universally demonstrates acceptance that electoral contestants have a right to be present in polling stations on election day to witness and verify the integrity of voting, counting and results tabulation procedures. Best practices are increasingly expanding this example of the transparency principle to accepting the presence of party and candidate agents in all elements of election processes, such as during voter registration, printing of ballots, and packaging and distribution of sensitive election materials.⁶⁶

State practice also demonstrates a growing acceptance of the right of citizens to participate in public affairs and to seek and receive information about election processes through the activities of nonpartisan domestic election monitoring organizations, including accrediting them to be present in polling stations and to witness other election processes.⁶⁷ Both domestic and international news media commonly play roles as election monitors. International election observation also is largely accepted through state practice as further demonstration of the transparency principle in elections.⁶⁸ International organizations have defined a body of methodologies for international election observation that are premised on the principle of transparency.⁶⁹

The transparency principle, like the principle of inclusiveness, has a multidimensional role in ensuring that elections are genuinely democratic. This is another example of the inseparability of the right to genuine elections from the exercise of other internationally recognized civil and political rights.

DEMOCRATIC ELECTIONS REQUIRE ACCOUNTABILITY

Elections are a principal mechanism through which citizens hold accountable those who occupy elected office. The requirement that elections be periodic is at the heart of creating governmental accountability to the citizenry.⁷⁰ All international human rights instruments that address electoral matters require that elections be periodic.⁷¹

While elections create an accountability mechanism, there must also be accountability within election processes, if elections are to be genuine. The accountability principle helps to realize electoral inclusiveness required by the rights to universal and equal suffrage for prospective voters and electoral contestants. The accountability principle is also linked to the principle of transparency, which is needed to understand how officials are conducting public affairs and thereby hold them answerable for their actions or inactions.

The principle of accountability in election processes includes several facets. Among them are: the need to provide effective remedies to citizens for violations of electoral related rights; the need to create administrative accountability for those organizing elections and those conducting governmental activities related to elections; and the need to bring to account those who conduct criminal acts that affect electoral related rights.⁷²

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Effective Redress for Violation of Electoral Rights:

The legal framework for elections must establish effective means of redress for those whose claim that their electoral related rights have been abridged.⁷³ This includes mechanisms that provide appropriate remedies in an administrative context and through judicial processes. Such procedures must provide for a fair hearing by a competent tribunal and access to an appeals process.⁷⁴

Electoral complaint mechanisms and legal challenges concerning electoral outcomes receive considerable public attention, particularly when the remedy applied is a recount or reelection.⁷⁵ Nonetheless, effective redress procedures are required for all elements of electoral processes, from delimiting electoral districts, to legal recognition as a political party, to party or candidate qualification for the ballot, to ballot design, to inclusion on voter registries and other matters.⁷⁶

To be effective, any remedy must address the harm created by the violation of electoral rights and cure the harm in a timely manner. Moreover, to be effective, remedies granted by administrative processes and judicial procedures must be enforced by competent authorities or else they are simply hollow gestures.⁷⁷

While even technical issues take on a sensitive nature in the electoral context, redress concerning them can be pursued properly through administrative procedures, while judicial review (either in the first instance or by appeal) must be available for redress concerning violations of fundamental rights and freedoms. The distinction can best be illustrated by example. If a political party or candidate is assigned an improper place on a ballot (depending on the applicable system of allocating ballot positions, such as alphabetical order or lottery assignment), an administrative process should be able to provide an effective remedy. If the party or candidate is denied a place on the ballot by the governmental authorities, then a judicial review would be required to ensure protection of the right to be elected. If a person's name is misspelled or other information is inaccurate on the voter registry or the person's voter identification card, an administrative procedure should be sufficient to remedy the problem. However, if the person's name is omitted from the voter registry or the error would likely result in disenfranchisement on election day, then a judicial process should be available to protect the right to vote.

A critical element in providing effective remedies in the electoral context is timeliness. In many instances accountability requires that time be of the essence. For example, if a party or candidate does not receive legal recognition or is denied a place on the ballot, every day that passes could cause irreparable harm to the opportunity to be elected. If news media carry a defamatory story or advertisement concerning an electoral contestant, a correction or right of reply may only be effective if it is provided immediately, even if it is given the same prominence as the offending coverage. These examples demonstrate that a variety of mechanisms, some with expedited procedures, are needed if an electoral process is to protect electoral related rights and be accountable for abuses and deficiencies.⁷⁸

It is often difficult to separate the accountability principle from the principle of transparency in the electoral context. The needs for timeliness and for transparency are clearly illustrated, for example, in the case of providing effective remedies where electronic voting technologies are employed.

Where votes are recorded solely on an electronic device, with no paper record, and circumstances seem to justify a recount, it may be impossible to determine whether the technology performed properly without extensive computer forensic examinations. Such examinations may take extended periods and may not satisfy standards for reliability of evidence in judicial or administrative proceedings. In such an instance, a reelection could be the only remedy, though holding another election is not likely to replicate the conditions of the first, and the outcome could differ from the will of those who voted in the original election. In this case, the lack of transparency into the voting process negates the possibility for timeliness and effective remedies.

If a paper record is available, a question may arise as to whether the paper or the electronic recording is the actual (or more acceptable) expression of the voters' will.⁷⁹ Should computer forensic examinations be required of the electronic record, they may not provide a timely or sufficiently reliable basis upon which to determine who should be declared the winner. In that case the paper record would be the best evidence, even if the electronic record technically was the first imprint of the voters' choices. This illustrates the interrelationship among transparency, timeliness and accountability.

Administrative Accountability Measures for Government Bodies and Officials:

There must also be administrative accountability measures through which election management bodies (EMBs) and other governmental agencies concerned with electoral processes account for their performance. These measures should address ensuring integrity in electoral processes, which includes administrative actions to provide universal and equal suffrage and to accurately record and honor the electors' will. The measures should include addressing financial responsibilities and discipline of officials who abridge citizens' electoral rights or whose failure to appropriately discharge their duties harms the electoral process.

Such accountability measures take a variety of forms.⁸⁰ Holding regular consultations with electoral contestants and others concerned with electoral integrity provides a means to present information and answer concerns and complaints. Conducting various forms of audits by independent sources and internal reviews by special committees and auditors general also develops accountability, particularly where there are public reports of such activities. Allowing electoral contestants, nonpartisan election monitors and the news media to attend sessions of the national election management body (usually called the Central Election Commission or a similar title) and subsidiary bodies when policies are being formulated provides a means for creating accountability. Personnel disciplinary procedures require measures to protect privacy interests, while reporting on the existence of such procedures, the number of times they are invoked and the numbers of persons penalized or dismissed contribute appreciably to accountability.

Legislative oversight through committee hearings about the efficacy and integrity of administering electoral processes by EMBs and other government entities that affect matters concerning electoral related rights (such as police, prosecutors, media oversight bodies, the military and others that often support electoral authorities) can be critical accountability mechanisms. Such hearings can address whether election administration is performing in an effective and impartial manner, whether state resources and protections are being applied impartially and whether electoral procedures provide effective redress. The work of budget and public accounts committees of the legislature, as well as public accounting and government integrity offices set up by legislatures, also can be vital accountability mechanisms.

Criminal Liability for Violating Electoral Rights:

Accountability in elections requires the application of criminal law and procedures, including providing due legal process and full rights protections, to those who commit electoral fraud or other criminal acts that abridge electoral rights.⁸¹ Criminal liability plays an important role in bringing perpetrators of electoral crimes to account for their actions and in deterring potential wrong doers, whether they might be manipulators of electoral systems through rigging voter lists, stuffing ballots boxes, hacking electronic technologies or conducting politically motivated coercion, from vote-buying to violence. This is particularly important in countries where there has been a culture of impunity for violations of civil and political rights.

The accountability principle applies to the role of the police in investigating criminal acts that violate electoral related rights.⁸² Whether the police pursue impartially and effectively their duty to enforce the law is a matter of particular concern. The antidiscrimination norm requires that political opinion not be a factor in whether someone is subjected to investigation or arrest, as well as to whether persons are overlooked because they support those holding political power or attacked those holding unpopular political positions. Internal review commissions, civilian review panels, government sponsored human rights institutions (such as ombudsmen offices and human rights commissions) and legislative oversight can help ensure impartial and effective police action in the electoral context.

The accountability principle also applies to prosecutorial action and inaction.⁸³ Bringing to trial those who commit election related crimes is the duty of prosecutors. Criminal laws, including provisions of the electoral law that address criminal matters, should clearly define crimes and the standards to be used by prosecutors in bringing criminal proceedings, particularly delineating the conditions for prosecutorial discretion. This is important for establishing political impartiality and efficacy in prosecution of election related crimes. Prosecutors should be required to report on the number of election related cases being pursued, their progress and how many are brought to trial. This can have an important impact on accountability.

Court proceedings for criminal cases concerning electoral related rights must be open to public. In addition to ensuring protections for those accused of crimes, open proceedings assure the public that courts are holding accountable those who commit such crimes. Open

proceedings also provide a means for assessing the manner in which electoral related cases are handled, which can enhance judicial accountability. The attention needed in order to provide proper and expedited judicial procedures in electoral related cases can also contribute to developing capacities that are more broadly helpful to judicial functioning.

PUBLIC CONFIDENCE IS ESSENTIAL TO DEMOCRATIC ELECTIONS

Public confidence in an election process is – in essence – the degree of trust that citizens deem is warranted in governmental authorities' capacity to ensure that electoral rights are respected and the will of the electors is accurately determined and honored.

In this light, the inclusiveness principle, the transparency principle and the accountability principle come together to illuminate the indispensable role of public confidence in democratic elections. Each of these principles feeds public confidence in elections, and, to the degree that these principles are deficient, public confidence in elections – and in the government that results from elections – diminishes.

Assent of the Electoral Competitors:

Public confidence, like universal and equal suffrage, relates to those who seek to be elected as well as to the electors. Should those who seek to occupy governmental office and to wield the powers of government concerning people, national wealth and resources lose confidence in elections as the best means to attain their goal, they could turn to non-democratic ways of gaining power.

An essential role of elections in any society is to settle peacefully the competition for political power.⁸⁴ Election processes therefore must be inclusive, be transparent and provide effective redress, thus guaranteeing a real opportunity to exercise the right to be elected. These elements are necessary to win and maintain the confidence of the electoral competitors as a basis for their assent to compete within the legal framework and respect the electoral rights of others. This helps to reinforce elections as a means of mitigating potentials for violence and managing political conflict.⁸⁵

While it is essential to gain the confidence of those seeking to be elected, it would be mistaken to assume that it is sufficient to gain the buy-in of electoral competitors and to proceed to the polls as if elections were principally to serve their interests. Those who seek to be elected lack authority unless it is based on the free expression of the electors' will, and the strength of that authority depends significantly upon whether citizens have confidence in the electoral process. In order to gain the benefits of public confidence, electoral competitors should take measures to convince the public that, while competing vigorously, the competitors will take effective steps to ensure electoral integrity.

Demonstrating capacities to monitor election processes and to seek redress through complaint mechanisms is an element of showing the public that the competitors are acting to reinforce electoral integrity and thus to build public confidence in elections. Parties and candidate

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support organizations also can do much to build public confidence in the electoral process by agreeing publicly to abide by the laws and a code of conduct.⁸⁶

Codes of electoral conduct that are negotiated among the electoral competitors, sometimes done with the participation or facilitation by EMBs and/or civil society organizations, that include a public ceremony announcing the agreement and that contain a procedure to convene signatories to air grievances about breaches of the code's provisions can play important confidence building roles in election processes.⁸⁷ Electoral competitors should include instruction about the provisions of the code of conduct in training programs for their activists and institute internal accountability procedures that address the code of conduct and relevant laws. Publication of such actions can enhance public confidence building.

Citizen Confidence in Election Processes:

Elections are the vehicle through which citizens express their will, but citizens may decline to participate in election processes unless they are confident that they can exercise their right to vote free from coercion and retribution for their political choices. Secrecy of the ballot therefore is fundamental to public confidence, because it ensures protection against retribution and thus encourages free expression of the electors' will.⁸⁸

Electoral authorities, governmental leaders, electoral contestants, the news media and citizen groups all play important roles in establishing or diminishing public confidence in elections, because their actions and their messages contribute, among other things, to trust or distrust in ballot secrecy. Voting and counting procedures must meticulously safeguard secrecy of the vote, including addressing concerns that may result from introduction of electronic technologies that could link electronic voter registries and electronic recording of votes (either literally or by comparison of time stamps in registries and on voting machines).⁸⁹ Voter education by electoral authorities and various other sources is central to reinforcing that the ballot will be secret. Voter education on this point should be sophisticated enough to address popular concerns about the type of voting and counting processes that are being used and should make clear that anyone who attempts to violate secret balloting will be held criminally liable.

The public also must have confidence that the election process will be impartially and effectively implemented in order for citizens to develop the trust required to participate in – and legitimize – an election. Steps therefore must be taken not only to correctly administer election processes but to ensure that they are free from the perception of partisanship.⁹⁰

A critical element in establishing and maintaining public confidence concerns perceptions of the ability of electoral authorities to perform their duties impartially and effectively. The composition of EMBs and the leadership of EMBs are at the core of this matter. While there are several methods of composing EMBs that have proven to be successful in organizing democratic elections, the trust of the electoral competitors and confidence of the public depends largely upon whether there is a sufficient participation and buy-in (respecting the principles of inclu-

siveness and transparency) in choosing EMB members and EMB leadership.⁹¹ If the electoral contestants are satisfied at the outset that the EMB is composed in a manner that ensures impartiality and effectiveness, there is a significant advantage in establishing public confidence in the election process. Evaluation of EMB performance as the process unfolds will then be a matter of maintaining or losing confidence, rather than working to establish it.⁹²

Authorities must realize that elections are more than technical matters and that electoral processes are part of a compact between citizens and the government that represents them. Elections demonstrate how a government treats and respects citizens through a wide range of institutions and processes, as demonstrated above in this Section. Actions by governmental authorities concerned with electoral matters at national and local levels that reach out to and include constituencies with interests in electoral integrity – such as organizing public meetings, consultations, liaison committees, press conferences and similar actions – build public confidence. The degree of transparency in election administration will also have a large impact on how impartiality is perceived.

One of the most important ways that electoral authorities can establish and maintain public confidence is through welcoming and accrediting representatives of the electoral competitors, nonpartisan election monitoring organizations, news media and even international election observers. Inclusiveness, transparency and accountability can all be reinforced by the activities of these electoral actors, and their reports on the election process, if credible, contribute to building the appropriate degree of public trust in elections.⁹³ At the same time, this factor presents a major responsibility for these actors to conduct their activities impartially and professionally.

Citizen organizations, the news media, EMBs and others also play broad roles in voter education and mobilization of citizen participation in election processes. Beyond informing citizens about where, when and how to exercise their right to vote through voter registration and going to the polls on election day, activities that address why it is important to vote and civic education about the nature of representative, democratic governance contribute to public confidence levels. Such activities need not require that citizens simply listen passively. Community forums, debates, broadcast media, call-in shows and interactive on-line programs, whether organized by citizen groups, media outlets, EMBs or others, provide information needed for electors to make informed voting decisions. These activities also help to create an environment in which electors and those seeking to be elected will likely gain increased confidence in the integrity of the election process.

Perceptions of fairness in electoral competition also have significant effects on public confidence. Maintaining state impartiality is an important element in perceptions of electoral fairness. This concerns actions of state institutions far beyond EMBs. Fairness in media coverage of electoral contestants not only affects how electors might exercise their choices at the ballot box, but public perceptions of unfairness undermine confidence in the electoral process. The roles of campaign and political party finance also are important, not just in determining the

resources that electoral competitors may be able to expend, but also in perceptions concerning fairness of the electoral system.

The subject of public confidence is multifaceted. Some elements are relatively nebulous, but specific obligations of governmental authorities and of the electoral competitors can be identified and placed into the principles of inclusiveness, transparency and accountability that are central to electoral integrity. Actions can be planned and carried out to address public expectations for performance and thereby establish and maintain public confidence that an election process is genuine.

CONCLUSION

The right to genuine democratic elections includes an important collective element and involves a wide range of internationally recognized human rights and fundamental freedoms. State practice demonstrates a developing normative process concerning electoral related rights. The anti-discrimination norm that emerges from the combination of the general prohibition against discrimination found in international human rights instruments and the instruments' provisions recognizing universal and equal suffrage, equality before the law, equal protection of the law and the right to effective remedies underpins electoral related rights. These rights interrelate through the principles of inclusiveness, transparency and accountability in the electoral context. The degree that these principles are upheld through the legal framework and in practice, by a broad array of governmental institutions and electoral actors, provides the basis for public confidence in elections and in the governments that result from them.

These points are captured in Article 21 of the Universal Declaration, which states that "the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections...." The provisions of the ICCPR make clear that governments have affirmative obligations in "guaranteeing the free expression of the will of the electors." Normative development concerning elections, hopefully, will continue and further ensure that typical practice respects and promotes electoral related rights. The consequences of that further development should provide authority and legitimacy for those who will seek office through elections and should enhance possibilities for democratic governance that honors the people's right to pursue their economic, social and cultural development through participation in government and public affairs, directly and through freely chosen representatives.

ENDNOTES

¹ See, e.g., Universal Declaration of Human Rights art. 21, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter Universal Declaration]; International Covenant on Civil and Political Rights art. 25, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Convention on the Elimination of All Forms of Racial Discrimination art. 5, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter Convention on Elimination of Racial Discrimination]; Convention on the Elimination of All Forms of Discrimination Against Women art. 7, G.A. Res. 34/180, (Dec. 18, 1979), U.N. GOAR Supp. (No. 46) at 193, U.N. Doc. a/RES/34/180, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter Convention on Elimination of Discrimination Against Women]; African Charter on Human and Peoples' Rights art. 13(1), June 26, 1981, Organization of African Unity (OAU) Doc. CAB/LEG/67/3/Rev. 5, 21 I.L.M. 59 [hereinafter ACHPR]; American Convention on Human Rights art. 23, November 22, 1969, 1144 U.N.T.S. 123 (entered into force July 18, 1978) [hereinafter ACHR]; First Protocol to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, March 20, 1952, 213 U.N.T.S. 262 [hereinafter ECHR]; Conference on Security and Co-operation in Europe (OSCE), Document of the Copenhagen Meeting of the Conference on the Human Dimension art. 6, June 29, 1990, 29 I.L.M. 1305 (1990) [hereinafter Copenhagen Document]; Arab Charter on Human Rights (1994) art. 19; Southern African Development Community (SADC) Guidelines Governing Democratic Elections (2004); Inter-American Democratic Charter, adopted by the OAS General Assembly on Sept. 11, 2001, Lima Peru.

The Universal Declaration, as a UN General Assembly resolution does not create legal obligations *per se*, though it is applicable to all UN member states and has become a normative instrument that *de facto* obliges states to respect the rights it recognizes. It may be seen as an authoritative explanation of human rights obligations provided by UN Charter arts. 55 and 56 and in some respects as customary law, though electoral provisions in art. 21 of the Universal Declaration thus far have not been considered as customary law. The ICCPR creates legal obligations between and among the 160 countries that are states parties to the treaty. Another 5 countries have signed the ICCPR but have not completed ratification. The only non-signatory countries to the ICCPR that are frequently discussed in the electoral context are Burma (Myanmar), Cuba, Fiji, Oman, Pakistan (which has recently signed but not yet ratified), Qatar, Saudi Arabia, Singapore and United Arab Emirates. A list of states parties and signatories to the ICCPR is available at <http://www.unhchr.ch/html/menu3/b/treaty5.asp.htm>; a list of non-states parties is available at "International Covenant on Civil and Political Rights," Wikipedia (11/27/07) http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights.

² Art. 21(2), Universal Declaration, *supra* note 1; see para. 6, Copenhagen Document, *supra* note 1 ("The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis for the authority and legitimacy of government. ...").

³ Art. 25, ICCPR, *supra* note 1. The conduct of public affairs, referred to in art. 25(a) of the ICCPR, as interpreted by the UN Human Rights Committee in its role of providing guidance to states parties to the ICCPR, is a broad concept relating to the exercise of political power through legislative, executive and administrative processes, including the formulation and implementation of policy. Paras. 5 & 8, General Comment No. 25: *The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25)*: . 12/07/96; CCPR/C/21/Rev.1/Add.7 (General Comments) [herein after General Comment 25], available at <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?OpenDocument>.

⁴ There is an interrelationship between the collective character of the right to genuine elections and individual electoral related rights. Art. 1(1) of the ICCPR states: "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 1 constitutes Part I of the ICCPR and concerns a right that belongs to "peoples." Part II of the ICCPR, beginning with article 2, concerns individual rights. The right to self-determination recognized in art. 1(1) is often exercised through an independence plebiscite or referendum, which is a type of election, and the individual rights of article 25 and other electoral related rights come into play. In addition, art. 25's right to participate, directly or indirectly through freely chosen representatives, in the public affairs of a country is informed by the content of article 1. That participation is, among other things, to allow citizens to pursue economic, social and cultural development. This helps to define the content of democratic governance that results from the exercise of electoral related rights. Appreciating the relationship should not lead to confusing collective and individual rights. For discussion of the emergence of the rights to democratic governance and role of participatory rights see Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992) [hereinafter *Emerging Right to Democratic Governance*]; Gregory Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L. 537 (1992) [hereinafter *Right to Political Participation in International Law*].

⁵ See *supra* note 4. Art. 1(1), ICCPR, *supra* note 4, pertains directly to independence initiatives of non-self-governing and trust territories, such as the independence referenda held in Montenegro in 2006 and Timor-Leste in 1999. See *Right to Democratic Governance*, *supra* note 4, at 58-59.

⁶ See, e.g., the international human rights instruments, *supra* note 1.

⁷ See, e.g., United Nations Human Rights Committee views in *Altesor v. Uruguay*, Communication No. R.2/10 (10 March 1977), U.N. Doc. Supp. No. 40 (A/37/40) at 122 (1982) (meeting of 29 Mar. 1982) (*inter alia*, art. 25 electoral related rights violated because of 15 year ban from voting or being elected under domestic law), available at <http://www.law.wits.ac.za/humanrts/undocs/session37/2-10.htm>; European Court of Human Rights decision in *Labita v. Italy*, E.H.R.L.R. 2000, 6, 666-669 (26772/94) E.C.H.R. (Art. 3 of Protocol 1 electoral related rights violated because of removal from voter registry under accusation of collusion with the Mafia and person was acquitted of charges) available at <http://www.echr.coe.int/Eng/Press/2000/Apr/Labita%20jud%20epress%20.htm>; Inter-American Court of Human Rights decision in the *Case of Yatama v. Nicaragua*, Judgement of June 23, 2005 (*inter alia*, art. 23 electoral related rights violated by undue restriction in electoral law, regulated in a discriminatory manner, prevented candidates from an indigenous political party from appearance on the ballot; court noted close relationship to voters rights by depriving them of options in the election) [hereinafter *Yatama v. Nicaragua*], available at http://www.cortei-dh.or.cr/docs/casos/articulos/seriec_127_ing.doc.

⁸ See *Declaration of Principles for International Election Observation*, Commemorated October 27, 2005, at the United Nations, and endorsed by 32 intergovernmental and nongovernmental organizations, available at www.access-democracy.org/library/1923_declaration_102705.pdf [hereinafter *Declaration of Principles*].

⁹ See, e.g., COMPENDIUM OF INTERNATIONAL STANDARDS FOR ELECTIONS (NEEDS, European Commission 2007) [hereinafter *Compendium*] (providing an authoritative description of the elements of electoral standards, matrices of countries' international obligations concerning elections and a comprehensive collection of international

instruments) available at <http://www.needs-network.org/publications.html>); Southern African Development Community Parliamentary Forum, *Norms and Standards for Elections in the SADC Region* (2001), available at http://aceproject.org/ero-en/regions/africa/regional-resources-africa/sadcpf_electionnormsstandards.pdf/view; The European Commission on Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report* (2002), available at [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf); *Existing Commitments for Democratic Elections in OSCE Participating States*, OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2003) [hereinafter Existing OSCE Commitments], available at http://www.osce.org/documents/odhr/2003/10/772_en.pdf; Office of the United Nations High Commissioner for Human Rights, *Human Rights and Elections*, UN Professional Training Series No. 2, available at <http://www.ohchr.org/english/about/publications/docs/hrelections.pdf>; Organization of American States, *A Manual for OAS Electoral Observation Missions* (October 2007), available from OAS Department for Cooperation and Electoral Missions; Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections* (1994), available at <http://www.ipu.org/english/structure/cnldocs/154-free.htm>.

¹⁰ See, e.g., GUY S. GOODWIN-GILL, *FREE AND FAIR ELECTIONS: INTERNATIONAL LAW AND PRACTICE* 160-67 (Inter-Parliamentary Union 2006); Emerging Right to Democratic Governance, *supra* note 3; Right to Political Participation in International Law, *supra* note 3; Gregory Fox, *Election Monitoring: The International Legal Setting*, 19 *Wis. Int'l L.J.* 295 (2001); Elizabeth F. DeFeis, *Elections – A Global Right?*, 19 *Wis. Int'l L.J.* 321 (2001); Jørgen Elklit & Andrew Reynolds, *A Framework for Systematic Study of Election Quality*, 12:2 *DEMOCRATIZATION* 147 (2005). The author of this Guide addressed many of these concepts in Patrick Merloe, *Democratic Elections: Human Rights, Public Confidence and Fair Competition* (a compilation of two papers presented in *African Election Administrators Colloquium*, published by United Nations, African American Institute, IFES and NDI 1994), available at http://www.accessdemocracy.org/library/005_ww_demelections.pdf.

¹¹ The sources described *supra* notes 6-10, are somewhat analogous to the sources of international law set forth in Article 38 of the Statute of the International Court of Justice: "1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." In each of the areas discussed *supra* there is evidence of the development of a normative process concerning electoral related rights.

¹² While principles for democratic elections have not reached the level of international custom, the factors described above evidence an ongoing normative process. For a discussion of state participation in processes of normative development, see Ellen Hey, *State Consent to a Process of Normative Development and Ensuing Problems*, in *TEACHING INTERNATIONAL LAW* (Martinus Nijhoff Publishers; Leiden 2003).

¹³ The Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF. 39/27 (1969) 63 *A.L.I.J.* 875 (1969) (entered into force, Jan. 27, 1980), provides at article 26 that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Article 27 of that treaty states that: "A party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty." Article 25 of the ICCPR, *supra* note 1, requires that the rights set forth may

not be subjected to "unreasonable restrictions," and the UN Human Rights Committee has interpreted this to mean that any restrictions must be based on objective and reasonable criteria that protect the franchise. See General Comment 25, *supra* note 3, at paras. 4, 10-11, & 13-16. The Copenhagen Document, *supra* note 1, at paragraph 24 creates a commitment of the OSCE participating States to ensure that any restrictions on rights "are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights [recognized in the Document] are ensured." Paragraph 24 commits OSCE participating States to not impose any restrictions "except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with other commitments, in particular the Universal Declaration of Human Rights..." While the Copenhagen Document is not a treaty, para. 24 creates a good faith commitment for the 56 OSCE participating states.

¹⁴ E.g., arts. 7 & 8, Universal Declaration, *supra* note 1; arts. 2 & 26 ICCPR, *supra* note 1.

¹⁵ See, e.g., art. 20, Universal Declaration and art. 22, ICCPR, *supra* note 1; paras. 8, 12 & 26, General Comment 25, *supra* note 3; paras. 7.5 & 7.6, Copenhagen Document, *supra* note 1.

¹⁶ E.g., art. 20, Universal Declaration and art. 21, ICCPR, *supra* note 1; paras. 8 & 12, General Comment 25, *supra* note 3; para. 7.7, Copenhagen Document, *supra* note 1.

¹⁷ E.g., art. 13, Universal Declaration and art. 12, ICCPR, *supra* note 1; para. 12, General Comment 25, *supra* note 3; para. 7.7 Copenhagen Document, *supra* note 1.

¹⁸ E.g., arts. 3, 7 & 21(1) Universal Declaration and arts. 9, 17 & 25, ICCPR, *supra* note 1; paras. 11 & 19, General Comment 25, *supra* note 3; para. 7.7, Copenhagen Document, *supra* note 1.

¹⁹ E.g., art. 19, Universal Declaration and art. 19 ICCPR, *supra* note 1; paras. 8, 12, 19 & 25 General Comment 25, *supra* note 3; para. 9.1 Copenhagen Document, *supra* note 1.

²⁰ E.g., arts. 19 & 21, Universal Declaration and arts. 19 & 25, ICCPR, *supra* note 1; paras. 8, 12 & 25 General Comment 25, *supra* note 3; para. 9.1 Copenhagen Document, *supra* note 1.

²¹ The rights to association, peaceful assembly, movement, holding opinions, expression and freedom from violence and coercion play important roles in the exercise of the rights to participate in government and public affairs within and beyond the electoral context. Those who act to promote and protect human rights, including electoral related rights, through peaceful and non-violent means, are often referred to as human rights defenders. These people uncover rights violations, subject them to public scrutiny and press for those responsible to be accountable. The United Nations has taken a number of actions to protect the rights of such persons, which highlights the importance for governments to ensure the rights of those who act to protect and promote electoral related rights. See, e.g., 56/163. *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, General Assembly Res. A/RES/56/163 (20 Feb. 2002) available at <http://www.unhcr.ch/huridocda/huridoca.nsf/FramePage/SRHRdefenders%20En?OpenDocument&Start=1&Count=15&Expand=1>.

²² The anti-discrimination norm is evidenced by provisions of numerous international human rights documents. E.g., the human rights instruments *supra* note 1: arts. 2 (general non-discrimination provision), 7 (equality before the law and equal protection of the law) & 8 (effective remedies) of the Universal Declaration; arts. 2 (general non-discrimination provision and effective remedies), 3 (equal right of men and women to enjoyment of human rights), 26 (equality before the law, equal protection of the law, requirement of states to prohibit discrimination and provide equal protection against discrimination) ICCPR; Convention on Elimination of Racial Discrimination; Convention on Elimination of Discrimination Against Women; arts. 2 (general non-discrimination provision), art. 3 (equality before the law and equal protection of the law) ACHPR; arts. 1 (general non-discrimination provision), 24 (equal protection of the law), 25 (judicial recourse and remedies) ACHR; arts. 13 (effective remedy), 14 (general non-discrimination provision) ECHR. There also is a general United Nations Charter obligation to promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Articles 55 & 56, Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. No. 993 (entered into force Oct. 24, 1945). The UN Human Rights Committee, in its capacity of interpreting provisions of the ICCPR as guidance to states parties, issues General Comments on the ICCPR. In General Comment 18, para. 1, the Committee states: "Non-discrimination, together with equality before the law and equal protection of the law without and discrimination, constitute a basic and general principle relating to the protection of human rights." *General Comment 18, Non-discrimination*:. 10/11/89 [hereinafter General Comment 18], available at <http://www.unhchr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e?Opendocument>.

²³ The choice of an electoral system should be a central focus for respecting the right to participate in government and public affairs, through including in deliberations about this vital issue those who associate in order to regularly seek elected office (political parties) as well as including citizen input to such deliberations, and ultimately by citizens making the decision about their electoral system through referendum. The discussion of this issue, however, is more germane to discourse about democratic governance, which is beyond the purview of this Guide.

²⁴ See ELECTORAL SYSTEMS AND DEMOCRACY (Larry Diamond & Marc Plattner, eds.; Johns Hopkins Univ. Press; Baltimore 2006); THE INTERNATIONAL IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN (Stockholm 1997) [hereinafter Electoral System Design]; ELECTORAL SYSTEMS IN COMPARATIVE PERSPECTIVE: THEIR IMPACT ON WOMEN AND MINORITIES (Wilma Rule & Joseph Zimmerman, eds.; Greenwood Press; Westport, CT 1994). When an absolute monarchy (e.g., Swaziland) or a military government (e.g., Pakistan) holds elections for a legislative body to which the monarch or military grants limited powers, the electoral exercise would only create limited legitimacy, depending in part on the degree to which the election process respects the principles discussed in this Section and depending on the nature of the powers granted to the legislature, while the authority for those elected would derive from the degree of public confidence earned through the election process. The governmental system would still not be democratic nor would the elections qualify as genuinely democratic elections, though they could be meaningful to some extent in the country's context, depending on a variety of factors. Consideration of such issues is beyond the purview of this Guide.

²⁵ For a general review of issues to consider and types of laws concerning the legal framework for elections, see OSCE ODIHR, GUIDELINES FOR REVIEWING LEGAL FRAMEWORKS FOR ELECTIONS (WARSAW 2002); INTERNATIONAL IDEA, INTERNATIONAL ELECTORAL STANDARDS: GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK OF ELECTIONS, (Stockholm 2003); Patrick Merloe, PROMOTING LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS: AN NDI GUIDE

(Forthcoming 2008) [hereinafter Promoting Legal Frameworks]. While requirements for democratic legislative processes is beyond the purview of this Guide, involving the public, including electoral competitors, prospective voters and other elements of civil society, in development of legal frameworks for elections is consistent with respecting the right to participate in government and public affairs. See *supra* note 8; para. 5, General Comment 25, *supra* note 3.

²⁶ See para. 20, General Comment 25, *supra* note 3; para. 7.4 Copenhagen Document, *supra* note 1; ELECTORAL MANAGEMENT DESIGN: THE INTERNATIONAL IDEA HANDBOOK (Stockholm 2006) [hereinafter Electoral Management Design]. Rafael Lopez-Pintor, *Electoral Management Bodies as Institutions of Governance* (UNDP; New York 2000) [hereinafter EMBs as Institutions of Governance]. Impartiality and effectiveness of electoral management bodies (EMBs) is a threshold matter for democratic elections; accomplishing these essential elements is a complex task. Involving the public and political competitors in a policy making process concerning EMBs is consistent with respect for the right to participate in public affairs. See para. 5, General Comment 25, *supra* note 3.

²⁷ Article 2(1) of the ICCPR provides that: "Every State Party to the present Covenant undertakes to respect and to ensure that all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant..." Article 25 confines its recognition of electoral related rights to citizens. Art. 2(2) provides that: "Where not already provided for by existing legislative or other measures. Each State Party to the present Covenant undertakes to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant." The UN Human Rights Committee has interpreted these provisions to create immediate obligations to refrain from violating recognized rights (i.e., negative obligations) and to take steps to ensure respect for and exercise of the rights (i.e. positive obligations). The positive obligations include protection against acts by private persons and entities (as well as governmental actors) and that states adopt legislative, judicial, administrative, educative and other measures to ensure enjoyment of the rights and freedoms recognized in the ICCPR. The Committee has also stated that the obligations created by the ICCPR are binding on all branches of government of the states parties (executive, legislative and judicial), as well as public, governmental authorities at all levels of government (national, regional and local), which would apply to electoral authorities and all governmental bodies that play a role in respecting and ensuring electoral related rights. See, UN Human Rights Committee paras. 3-7, *General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant*: . 26/05/2004. CCPR/23/C/21/Rev.1/Add.12 (General Comments) [hereinafter General Comment 31], available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.21.Rev.1.Add.13.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.21.Rev.1.Add.13.En?Opendocument).

²⁸ See General Comment 25, *supra* note 3, at paras. 11 (voter registration efforts and voter education), 12 (positive measures to overcome specific difficulties to exercise of electoral related rights, such as illiteracy, language barriers, minority languages, poverty and impediments to freedom of movement); General Comment 31, *supra* note 27, at para. 7 (raise levels of public awareness of rights); UN Human Rights Committee, *General Comment 28, Equality of rights between men and women* (article 3), U.N. Doc. CCPR/21/Rev.1/Add.12 (2000) [hereinafter General Comment 28], para. 3 (remove obstacles to equal enjoyment of rights, educate the population, adjust legislation), available at <http://www.unhchr.ch/tbs/doc.nsf/0/13b02776122d4838802568b900360e80?Opendocument>. For discussion of measures that can be taken to enhance national minorities' participation in elections see OSCE ODIHR, *GUIDELINES TO ASSIST NATIONAL MINORITY PARTICIPATION IN THE ELECTORAL PROCESS* (Warsaw 2001) and to enhance women's participation in elections see OSCE ODIHR, *HANDBOOK FOR MONITORING WOMEN'S PARTICIPATION IN ELECTIONS* (Warsaw 2004).

²⁹ See paras. 10 & 11, General Comment 25, *supra* note 3. For a general discussion of the three major voter registration methods (individual initiated, periodic and compulsory registration) and challenges concerning inclusiveness in registration processes, see RICHARD KLEIN AND PATRICK MERLOE, BUILDING CONFIDENCE IN THE VOTER REGISTRATION PROCESS: AN NDI MONITORING GUIDE FOR POLITICAL PARTIES AND CIVIC ORGANIZATIONS (2001) [hereinafter Building Confidence in Voter Registration], at 1-18.

³⁰ See generally, William Kimberling, *A Rational Approach to Evaluating Voter Registration*, REGISTERING VOTERS: COMPARATIVE PERSPECTIVES (John C. Courtney, ed. Center for International Affairs, Harvard University; Cambridge, Massachusetts 1991).

³¹ See, Building Confidence in Voter Registration, *supra* note 29, at 7-18.

³² *Id.*, *supra* note 31; para. 14 General Comment 25, *supra* note 3; para. 6, General Comment 31, *supra* note 27. Voting by citizens living outside a country's territory and voting by non-citizens in sub-national elections are specialized topics beyond the scope of this Section.

³³ Paras. 11-12, General Comment 25, *supra* note 3. While the issue of voter turnout and efforts to promote it are beyond the purview of this Guide, see generally INTERNATIONAL IDEA, ENGAGING THE ELECTORATE: INITIATIVES TO PROMOTE VOTER TURNOUT FROM AROUND THE WORLD (Stockholm 2006).

³⁴ E.g., art. 25 ICCPR; paras. 15-17, General Comment 25, *supra* note 3; paras. 7.5-7.6, Copenhagen Document, *supra* note 1.

³⁵ Paras. 15-16, General Comment 25, *supra* note 3. Seeking or holding certain elected offices may be incompatible with holding other offices (such as, those in the judiciary or military or civil service), because of inherent conflicts of interest. The doctrine of incompatibility of offices, nonetheless, should provide practical means for a person to resolve the real or potential conflicts of interest (e.g., stepping down from office at a reasonable point before an election or upon nomination or qualification as a candidate).

³⁶ Paras. 15-16, General Comment 25, *supra* note 3.

³⁷ See OSCE ODIHR, *Restrictions on Political Parties in the Election Process: OSCE Human Dimension Background Paper 7* (October 1998); see also Yatama v. Nicaragua, *supra* note 7, at para. 229.

³⁸ See para. 15, General Comment 25, *supra* note 3; see also Yatama v. Nicaragua, *supra* note 7, at para. 226.

³⁹ See art. 25, ICCPR, *supra* note 1 ("Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions ... (b) To vote and to be elected...."); paras. 7.5-7.8 Copenhagen Document, *supra* note 1.

⁴⁰ See paras. 7.6-7.8, Copenhagen Document, *supra* note 2 (participating States must provide political parties and candidates "with the legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities..." and must "ensure that the law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence not intimidation bars the parties and the candidates from free presenting their views and qualifications..." and provide that "no legal or administrative obstacle stands in the way of unimpeded access to the media on a nondiscriminatory basis....").

⁴¹ See paras. 25-26, General Comment 25, *supra* note 3.

⁴² See *supra* notes 12-17 & 33.

⁴³ See paras. 19, 20, 25 & 26, General Comment 25, *supra* note 3; paras. 7-9 & 15, General Comment 31, *supra* note 28; paras. 7.5-7.8, Copenhagen Document, *supra* note 1; SANDRA COLIVER AND PATRICK MERLOE, GUIDELINES FOR ELECTION BROADCASTING IN TRANSITIONAL DEMOCRACIES (Article 19; London 1994) [hereinafter Guidelines for Election Broadcasting], at 69-70, 77-90; ORGANIZATION OF AMERICAN STATES & INTERNATIONAL IDEA, FUNDING POLITICAL PARTIES AND ELECTION CAMPAIGNS IN THE AMERICAS (Steve Griner and Daniel Zavatto, Eds.; Stockholm 2005); IFES, *Program on Money and Politics*, available at <http://www.moneyandpolitics.net>.

⁴⁴ E.g., "Transparency is the term for a clear and open process, which is understandable and accountable to the electorate.... Transparency is essential to the electoral process because it eliminates the appearance of impropriety and limits the possibility of electoral fraud...." in Association of Central and Eastern European Election Officials, International Foundation for Election Systems, Central Election Commission of the Russian Federation, *Transparency in Election Administration* (undated) [hereinafter Transparency in Electoral Administration], at 2, available at aceproject.org/ero-en/topics/voter-registration/vrx_o005.pdf; "[E]lection management is founded on basic, but fundamental, guiding principles; independence, impartiality, integrity, transparency, efficiency, and service orientation." *Guiding Principles of Electoral Management*, in ACE Project (undated) [hereinafter Guiding Principles], available at <http://aceproject.org/ace-en/topics/em/em20>; Electoral System Design, *supra* note 26, at 24.

"Transparent: (1a): having the property of transmitting light without appreciable scattering so that bodies lying beyond are entirely visible... (2a) free from pretense or deceit...." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (1986). "Transparency, as used in the humanities implies openness, communication, and accountability. It is a metaphorical extension of the meaning used in the physical sciences: a "transparent" object is one that can be seen through. Transparency is introduced as a means of holding public officials accountable and fighting corruption. ..." Transparency (humanities), Wikipedia (11/29/07) available at [http://en.wikipedia.org/wiki/Transparency_\(humanities\)](http://en.wikipedia.org/wiki/Transparency_(humanities)).

⁴⁵ While it is difficult to demonstrate the non-discussion of a subject, a review of documents relating to electoral standards makes this point readily apparent. See, e.g., *supra* note 9, Compendium; Existing OSCE Commitments and other documents cited.

⁴⁶ Article 2(1) of the ICCPR, *supra* note 1, provides that: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant...." This creates an immediate and affirmative obligation for governments. Article 25 of the ICCPR speaks specifically to "citizens" regarding countries' affirmative obligation to respect and ensure rights. See *supra* note 27 & accompanying text.

⁴⁷ E.g., art. 10, Universal Declaration, art. 19 ICCPR, art. 9, ACHPR, art. 13, ACHR, art. 10 ECHR para. 10.1 Copenhagen Document, *supra* note 1.

⁴⁸ This formulation is an immediate juxtaposition of language from art. 21(3) of the Universal Declaration and art. 25(b) of the ICCPR, *supra* note 1. See para. 6, Copenhagen Document, *supra* note 1.

⁴⁹ Art. 25 of the ICCPR, *supra* Note 1, provides every citizen with 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... To vote and to be elected at genuine periodic elections... guaranteeing the free expression of the will of the electors..."

⁵⁰ See para. 7.8, Copenhagen Document, *supra* note 1. para. 25, General Comment 25, *supra* note 3; Guidelines for Election Broadcasting, *supra* note 43, at 69.

⁵¹ *E.g.*, *supra* note 1; art. 19, Universal Declaration, art. 19 ICCPR, art. 13 ADHR and art. 10 ECHR.

⁵² See para. 7.8, Copenhagen Document, *supra* note 1. para. 25, General Comment 25, *supra* note 3; Guidelines for Election Broadcasting, *supra* note 43, at 69.

⁵³ Guidelines for Election Broadcasting, *supra* note 43, at 69-70, (duty of government media to inform the public about matters relevant to elections, duty of balance and impartiality), 77 (replies and corrections), 78-90 (news coverage and direct access for electoral contestants), 94-97 (complaint mechanisms and judicial review; referenda); Existing OSCE Commitments, *supra* note 9, at 19-20.

⁵⁴ See para. 11, General Comment 25, *supra* note 3 ("Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.").

⁵⁵ See Electoral Management Design, *supra* note 26, at 67; Guidelines for Election Broadcasting, *supra* note 43, at 91-92.

⁵⁶ See, *e.g.*, Transparency in Electoral Administration, *supra* note 44.

⁵⁷ *E.g.*, provisions of international instruments *supra* note 1, including art. 21, Universal Declaration and art 25, ICCPR.

⁵⁸ Transparency applies to a range of electoral activities, including, among others: drafting or modifying electoral laws and regulations; selecting electoral administrators, from the highest bodies down to the polling sites; delimiting election districts; qualifying of parties and candidates for the ballot; establishing the mechanism for voter qualification, such as a voter registry; training election officials; setting up and running information technology systems; designing, producing and distributing ballots and other sensitive electoral materials; establishing polling sites; conducting voting, counting and results tabulation procedures; conducting electoral complaint mechanisms and judicial reviews of electoral challenges; announcing official election results; and certifying winning contestants.

⁵⁹ Article 13, ADHR, *supra* note 1. All 35 independent countries of the Western Hemisphere are members of the OAS; Cuba's membership is in suspension, but the remaining 34 participate actively in the Organization. The OAS member states have taken specific actions to affirm their positive obligations concerning the right to seek, receive and impart information. See, *e.g.*, OAS General Assembly Resolutions AG/RES. 2252 (XXXVI-O/06) of June 6, 2006, on "Access to Public Information: Strengthening Democracy," second operative paragraph; AG/RES. 2288 (XXXVII-O/07) of June 5, 2007, on "Access to Public Information: Strengthening Democracy;" Inter-American Commission on Human Rights Declaration of Principles on Freedom of Expression, para. 4, states that:

"Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Available at <http://www.iachr.org/declaration.htm>.

⁶⁰ *Marcel Claude Reyes, et al. v Chile*, Case No. 12.108 (09/19/06), Inter-American Court of Human Rights [hereinafter Marcel Claude Reyes], available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc.

⁶¹ *Id.*, at para. 86.

⁶² See *supra* note 1. The ECHR has as High Contracting Parties 47 countries spanning Europe that make up the Council of Europe (CoE); the status of one CoE applicant country, Belarus, is suspended "due to its lack of respect to human rights and democratic principles," while the 47 participate actively in the CoE. See About the Council of Europe, available at http://www.coe.int/T/e/Com/about_coe.

⁶³ *Sdruzeni Jijoceske Matky v. Czech Republic* (07/10/06), (App. No. 19101/03) European Court of Human Rights, available at <http://hudoc.echr.coe.int>.

⁶⁴ *Geraguyun Khorhurd Patgamavorakan Akumb v. Armenia* (decision pending), (App. No. 11721/04) European Court of Human Rights. The Council of Europe is presently considering the first international instrument on access to government held documents, the Draft European Convention on Access to Official Documents (state of progress of the work at the end of the 15th meeting of the DH-S-AC, 3 - 6 July 2007), available at <http://www.access-info.org/data/File/Draft%20Convention%20as%20at%206%20July%202007.doc>. The text of the Convention, upon final adoption and should it enter into force, would have a significant impact on state obligations in the area and consequently on the jurisprudence of the European Court of Human Rights. Access to information about electoral processes also is reinforced by article 42 of the European Union's Charter of Fundamental Rights (Dec. 7, 2000), which provides a right of access to documents held by EU institutions to citizens of EU states; though not legally binding it can be invoked by courts in EU member states.

⁶⁵ See VLADIMIR PRAN AND PATRICK MERLOE, MONITORING ELECTRONIC TECHNOLOGIES IN ELECTORAL PROCESSES (NDI 2007) [hereinafter Monitoring Electronic Technologies].

⁶⁶ See Transparency in Electoral Administration, *supra* note 44.

⁶⁷ Paragraph 8 of the Copenhagen Document, *supra* note 1, recognizes the importance of domestic election observers, as well as international election observers, and OSCE participating states commit to invite such observers to witness their national elections, as well as "facilitate similar access for election proceedings held below the national level." Paragraph 20 of General Comment 25, *supra* note 3, provides that security of ballot boxes (more broadly speaking, the vote) "must be guaranteed" and the "vote should be counted in the presence of candidates or their agents." It further provides that: "There should be independent scrutiny of the voting process ... so that electors have confidence...." Nonpartisan domestic election monitors fulfill this independent role, as do international election observers, who typically deploy fewer observers than domestic monitors. For a listing of over 65 countries where nonpartisan domestic election observation takes place, see Appendix 1B, MELISSA ESTOK, NEIL NEVITTE & GLENN COWAN, THE QUICK COUNT AND ELECTION OBSERVATION (NDI 2002) [hereinafter The Quick Count and Election Observation].

⁶⁸ See ERIC BJORN LUND, BEYOND FREE AND FAIR: MONITORING ELECTIONS AND BUILDING DEMOCRACY (Woodrow Wilson Center Press 2004) at Appendix, pp. 311-26 (approximately 100 countries appear in a partial list of those that allow international election observation).

⁶⁹ See Declaration of Principles for International Election Observation, *supra* note 8.

⁷⁰ See paras. 7&9, General Comment 25, *supra* note 3. "Account: [3] to furnish a justifying analysis or a detailed explanation of ones financial credits and debits or of the discharge of any of one's responsibilities...." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (1986). "Accountability is a concept in ethics with several meanings. It is often used synonymously with such concepts as answerability, enforcement, responsibility, blameworthiness, liability and other terms associated with the expectation of account-giving. As an aspect of governance, it has been central to discussions related to problems in both the public and private (corporation) worlds. ... In leadership roles, accountability is the acknowledgment and assumption of responsibility for actions... encompassing the obligation to report, explain and be answerable for resulting consequences." Accountability, Wikipedia (11/29/07), available at a. <http://en.wikipedia.org/wiki/Accountability>; citing Sterling Harwood, "Accountability," in John K. Roth, ed., *Ethics: Ready Reference* (Salem Press, 1994), reprinted in Sterling Harwood, ed., *Business as Ethical and Business as Usual* (Wadsworth Publishing Co., 1996).

⁷¹ See *supra* note 1. Non-periodic accountability mechanism applicable to those holding elected office, such as recall and impeachment, are beyond the scope of this Guide.

⁷² This Section considers domestic remedies, however, redress concerning electoral related rights may also be pursued in international legal fora, such as the European Commission of Human Rights and European Court of Human Rights (for those from countries that are parties to the ECHR), Inter-American Commission on Human Rights and Inter-American Court of Human Rights (for persons from countries that are parties to the ACHR) and the UN Human Rights Committee (for persons from countries that recognizes the competence of the Committee to receive individual communications the First Optional Protocol to the ICCPR). See, e.g., *supra* notes 7, 60 & 63-64. Promoting Legal Frameworks, *supra* note 25, will present an annotated set of citations of cases before these international fora that concern electoral related rights.

⁷³ E.g., art. 2(3) of the ICCPR provides: "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have and effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his [or her] right thereto determined by competent judicial, administrative or legislative authorities, or by any other authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that competent authorities shall enforce such remedies when granted."

⁷⁴ *Id.*, art 2(3)(c); see BARRY WEINBERG, RESOLUTION OF ELECTION DISPUTES: LEGAL PRINCIPLES THAT CONTROL ELECTION CHALLENGES (IFES 2006) [hereinafter Resolution of Electoral Disputes]; *Resolving Election Disputes in the OSCE Arena: Towards a Standard Election Dispute Monitoring System* (OSCE ODIHR 2000) [hereinafter Resolving Electoral Disputes].

⁷⁵ See *infra* Chapters 9 & 10; *Symposium: Evolving International Standards Pertaining to the Resolution of Election Disputes, Panel II*, 57 ADMIN. L. R. 3 (2005), at 869-901.

⁷⁶ See Resolution of Election Disputes, *supra* note 74; Resolving Election Disputes, *supra* note 74.

⁷⁷ See art. 2(3)(c), *supra* note 63, paras. 8, 15-19, General Comment 31, *supra* note 27.

⁷⁸ See Resolution of Election Disputes, *supra* note 74.

⁷⁹ With Direct Recording Electronic (DRE) systems, a voter uses a touch screen or keyboard to electronically record a choice, while a paper record (sometimes called a voter verified paper audit trail) can be produced as evidence of the choice. The electronic impression technically comes first, and the paper record may or may not present an accurate representation of that choice. At the present time, the problems associated with the electronic record so outnumber the potential problems with creating an accurate paper record of the voter's choice that a paper trail is a prerequisite though not a magic solution, to integrity and accountability in the voting process where DREs are used. Optical Mark Recognition (OMR) systems scan choices recorded on paper ballots, and the paper remains as evidence of the voter's choice. Digital pens create an electronic record, with a ball reading microscopic dots on specialized paper, while leaving ink on the paper, thus simultaneously creating an electronic and paper record of the voter's choice. The basic question to ask when approaching electronic technologies in election processes is whether there is sufficient transparency to identify problems and provide effective remedies. For a general description of electronic technologies employed in voter registration and voting processes and issues presented for monitoring and accountability, see *Monitoring Electronic Technologies in Election Processes*, *supra* note 65.

⁸⁰ See *Electoral Management Design*, at Chapter 9, *supra* note 26; EMB as *Institutions of Governance*, *supra* note 26.

⁸¹ See Paragraph 8, General Comment 31, *supra* note 27.

⁸² See para. 15, General Comment 31, *supra* note 27.

⁸³ See *id.*

⁸⁴ See Declaration of Principles, *supra* note 8.

⁸⁵ See *POSTCONFLICT ELECTIONS, DEMOCRATIZATION & INTERNATIONAL ASSISTANCE* (Krishna Kumar, ed., Lynne Rienner Publishers, London 1998); William Maley, *Democratic Governance and Post-Conflict Transitions*, 6 *CHI. J. INT'L L.* 683, 689-91 (2006).

⁸⁶ See GUY GOODWIN-GILL, *CODES OF CONDUCT FOR ELECTIONS* (Inter-Parliamentary Union, Geneva 1998).

⁸⁷ See International IDEA, *Code of Conduct for Political Parties Campaigning in Democratic Elections* (Stockholm 1999), at 8-13.

⁸⁸ See para. 20, General Comment 25, *supra* note 3.

⁸⁹ See para. 20, General Comment 25, *supra* note 3; *Monitoring Electronic Technologies*, *supra* note 65, at 59-60.

⁹⁰ Existing OSCE Commitments, *supra* note 9, at 57.

⁹¹ See *Electoral Management Design*, *supra* note 26, at Chapter 4 - Composition, Roles and Functioning of an EMB.

⁹² See *supra* "Administrative Accountability Measures for Government Bodies and Officials," at pp. 11-12.

⁹³ The roles of agents of the electoral competitors are addressed *supra* in this Section at "Assent of the Electoral Competitors." Issues related to the activities of the news media are discussed in *Guidelines for Election Broadcasting*, *supra* note 43. The role of nonpartisan domestic election monitors is addressed in *HOW DOMESTIC ORGANIZATIONS MONITOR ELECTIONS: AN A TO Z GUIDE* (NDI 1995); *The Quick Count and Election Observation*, *supra* note 67; *Handbook for Domestic Election Observers* (OSCE ODIHR 2003); *The Work of Domestic Election Observation Groups Around the World* (ERIS, London Undated), available at <http://www.needs-network.org/pdfs/Promoting-and-Defending-Democracy.pdf>. International election observation is described in *Principles for International Election Observation*, *supra* note 8.