

Appendices

APPENDIX ONE

Places Where NDI
Has Offered
Commentaries on or
Analysis of the Legal
Framework for
Elections

PLACES WHERE NDI HAS OFFERED COMMENTARIES ON OR ANALYSIS OF THE LEGAL FRAMEWORK FOR ELECTIONS¹

Africa

Burundi
Ethiopia
The Gambia
Mali
Morocco
Mozambique
Nigeria
Senegal
South Africa
Sudan
Zimbabwe

Asia

Afghanistan
Bangladesh
Cambodia
East Timor
Hong Kong
Indonesia
Nepal
Pakistan
Singapore

Central Eastern Europe

Albania
Bosnia and Herzegovina
Macedonia
Montenegro
Romania
Serbia
Slovakia

Eurasia

Azerbaijan
Georgia
Kazakhstan
Kyrgyzstan
Russian Federation
Ukraine

Latin America and the Caribbean

Dominican Republic
Guyana
Haiti
Mexico
Paraguay
Peru
Venezuela

Middle East

Jordan
Palestinian Territories
Yemen

¹ There are a significant number of additional countries where NDI included analysis of the legal framework for elections and corresponding recommendations as part of the Institute's international election monitoring statements and reports. For copies of such statements, see www.ndi.org "Access Democracy" and "Electoral Programs."

APPENDIX TWO

Places Where NDI Has Supported Efforts of Partner Organizations to Address the Legal Framework for Democratic Elections

PLACES WHERE NDI HAS SUPPORTED EFFORTS OF PARTNER ORGANIZATIONS TO ADDRESS THE LEGAL FRAMEWORK FOR DEMOCRATIC ELECTIONS

Armenia	It's Your Choice (IYC) Website: www.iyc.am Email: iyc@arminco.com
Afghanistan	Free and Fair Elections Foundation of Afghanistan (FEFA) Email: fefa@fefa.org.af
Azerbaijan	For the Sake of Civil Society (FSCS) Election Monitoring Center (EMC) Website: www.smm-az.org/ Email: emcaz2001@gmail.com
Bangladesh	Fair Election Monitoring Alliance (FEMA) Email: fema@hol-online.com
Bosnia and Herzegovina	Centers for Civic Initiative (CCI) Website: www.ccibh.org
Bulgaria	Bulgarian Association for Fair Elections and Civil Rights (BAFECR)
Cambodia	Committee for Free and Fair Elections (COMFREL) Website: www.comfrel.org Email: comfrel@comfrel.org Coalition for Free and Fair Elections (COFFEL) Neutral and Independent Committee for Fair Elections in Cambodia (NICFEC) Email: nicfec@wicam.com.kh
Croatia	GONG Website: www.gong.hr Email: gong@gong.hr
Dominican Republic	Participación Ciudadana (Citizen Participation) Website: www.pciudadana.com/index.html
Egypt	Egyptian Organization for Human Rights (OEHR) Website: www.eohr.org.eg/ The Independent Commission for Electoral Review (ICER) Ibn Khaldun Center for Development Studies (ICDS)

Ethiopia	Ab-Bu-Gi-Da
Georgia	International Society for Fair Elections and Democracy (ISFED) Website: www.isfed.ge Email: info@isfed.ge
Guyana	Electoral Assistance Bureau (EAB) Website: www.eabguyana.org.gy
Indonesia	The Center for Electoral Reform (CETRO) Website: www.cetro.or.id LP3ES Website: www.lp3es.or.id The Indonesian Parliamentary Center Jurdil Aceh
Iraq	Election Information Network (EIN) Website: www.iraqiein.org
Jordan	The National Center for Human Rights Al Urdon Al Jedid Research Center Al Hayat Center for Civil Society Development Website: www.hayatcenter.org Email: info@hayatcenter.org
Kosovo	Reforma
Lebanon	Lebanese Association for Democratic Elections (LADE) Civil Campaign for Electoral Reform (CCER) Website: www.ccerlebanon.org
Madagascar	Education des Citoyens (KMF/CNOE) Email: cnoe@moov.mg
Mexico	Alianza Civica (Civic Alliance) Website: www.alianzacivica.org.mx
Montenegro	Association of Young Journalists of Montenegro (AMN) Center for Democratic Transitions (CDT) Website: www.cdtmn.org Email: cdtmn@t-com.me
Nepal	National Election Observation Committee (NEOC) Website: www.neocnepal.org

Nigeria	Transition Monitoring Group (TMG) Website: www.tmgnigeria.org
	Nigeria Bar Association (NBA) Website: www.nigerianbar.org Email: nba@nigeriabar.org
	Nigeria Labor Congress (NLC) Website: www.nlcng.org
	Trade Union Congress of Nigeria (TUC)
Peru	Transparencia (Transparency) Website: www.transparencia.org.pe
Romania	Asociatia Pro Democratia (Pro-Democracy Association – APD) Website: www.apd.ro
Russian Federation	Voice Coalition (GOLOS) Website: www.golos.org Email: golos@golos.org
Serbia	CeSID (Serbian Center for Free Elections and Democracy) Website: www.cesid.org
Slovakia	Obcianske Oko (Civic Eye) Website: www.obcianskeoko.sk
	MEMO'98 Website: www.memo98.sk Email: memo98@memo98.sk
Sri Lanka	Movement for Free and Fair Elections (MFFE)
	People's Action for Free and Fair Elections (PAFFREL) Website: www.paffrel.lk
	Centre for the Monitoring of Election Violence (CMEV) Website: www.cpalanka.org/election_monitoring.html
Thailand	PollWatch
	People's Network for Elections in Thailand (PNET)
Ukraine	Committee of Voters of Ukraine (CVU) Website: www.cvu.org.ua Email: cvu@cvu.kiev.ua

Venezuela	<p>Escuela de Vecinos de Venezuela (School of Neighbors – EVV)</p> <p>Queremos Elegir (We Want to Choose) Website: www.queremoselegir.org/</p>
Yemen	<p>Arab Democratic Institute (ADI)</p>
Zambia	<p>Committee for a Clean Campaign/Foundation for Democratic Process (FODEP) Website: www.fodep.org.zm Email: fodep@coppernet.zm</p>
Zimbabwe	<p>Zimbabwe Election Support Network (ZESN) Website: www.zesn.org Email: zesn@africaonline.co.zw</p> <p>Zimbabwe Lawyers for Human Rights Website: www.zlhr.org.zw Email: zlhr@icon.co.zw</p>

APPENDIX THREE

International Human Rights Provisions on Democratic Elections

Universal Declaration of Human Rights*Article 2*

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3

Everyone has the right to life, liberty and security of person.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 19

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

Article 20

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

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

International Covenant on Civil and Political Rights*Article 2*

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- a. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- c. To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Article 19

1. Everyone should have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- a. For respect of the rights or reputations of others;
- b. For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

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

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Article 25¹

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

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

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹ Please see below, General Comment 25 of the United Nations Human Rights Committee on Article 25 of the International Covenant on Civil and Political Rights.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

....

- c. Political rights, in particular the rights to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- d. Other civil rights, in particular:
 -
 - viii. The right to freedom of opinion and expression....

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Convention on the Elimination of All Forms of Discrimination Against Women

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- a. To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- b. To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- c. To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Convention on the Political Rights of Women

Article I

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

Article II

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

Article III

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

African Charter on Human and Peoples' Rights

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law.

2. Every individual shall be entitled to equal protection of the law.

Article 9

1. Every individual shall have the right to receive information.

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

Article 10

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

2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

Article 11

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

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

Article 13

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

American Convention on Human Rights

Article 13. Freedom of Thought and Expression

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

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

Article 14. Right of Reply

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

Article 15. Right of Assembly

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

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

Article 22. Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

Article 23. Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:

- a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
- b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
- c. to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

American Declaration of the Rights and Duties of Man

Article IV.

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

Article XX.

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

Article XXI.

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

Article XXII.

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

Inter-American Democratic Charter*Article 1*

The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.

....

Article 3

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

European Convention for the Protection of Human Rights and Fundamental Freedoms*Article 10*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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

Article 11. Freedom of Assembly and Association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

Article 13. Right to an Effective Remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14. Prohibition of Discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol (No. 1) to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms

Article 3. Right to Free Elections

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

Protocol (No. 4) to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms

Article 2. Freedom of Movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

European Charter of Local Self-Government

Article 3 – Concept of local self-government

Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension (the 1990 Copenhagen Document)

....

[The participating States] recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.

....

In order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following:

....

(3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

....

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.1) - free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

....

(5.10) - everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes.

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) - hold free elections at reasonable intervals, as established by law;

....

(7.5) - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

....

(7.8) - provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE [now OSCE] participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

(9) The participating States reaffirm that

(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright... .

(10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to

(10.1) - respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;

...

(10.3) - ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;

(10.4) - allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.

(24) The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to 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 their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

General Comment 25 of the United Nations Human Rights Committee on Article 25 of the International Covenant on Civil and Political Rights

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

2. The rights under article 25 are related to, but distinct from, the right of peoples to self determination. By virtue of the rights covered by article 1 (1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol.

3. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State) article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.

4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

5. The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.

6. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. This right of direct participation is supported by paragraph (b). Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government. Where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1, and no unreasonable restrictions should be imposed.

7. Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws which are in accordance with paragraph (b).

8. Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.

9. Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

10. The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

11. States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.

12. Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

13. State reports should describe the rules governing the right to vote, and the application of those rules in the period covered by the report. State reports should also describe factors which impede citizens from exercising the right to vote and the positive measures which have been adopted to overcome these factors.

14. In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.

15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.

16. Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions, (e.g., the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b). The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.

17. The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.

18. State reports should describe the legal provisions which establish the conditions for holding elective public office, and any limitations and qualifications which apply to particular offices. Reports should describe conditions for nomination, e.g., age limits, and any other qualifications or restrictions. State reports should indicate whether there are restrictions which preclude persons in public-service positions (including positions in the police or armed services) from being elected to particular public offices. The legal grounds and procedures for the removal of elected office holders should be described.

19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.

20. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant. The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.

21. Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

22. State reports should indicate what measures they have adopted to guarantee genuine, free and periodic elections and how their electoral system or systems guarantee and give effect to the free expression of the will of the electors. Reports should describe the electoral system and explain how the different political views in the community are represented in elected bodies. Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law. The practical implementation of these guarantees in the period covered by the report should be explained.

23. Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensure that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

24. States reports should describe the conditions for access to public service positions, any restrictions which apply and the processes for appointment, promotion, suspension and dismissal or removal from office as well as the judicial or other review mechanisms which apply to these processes. Reports should also indicate how the requirement for equal access is met, and whether affirmative measures have been introduced and, if so, to what extent.

25. In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.

26. The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.

27. Having regard to the provision of article 5, paragraph 1, of the Covenant, any rights recognized and protected by article 25 may not be interpreted as implying a right to act or as validating any act aimed at the destruction or limitation of the rights and freedoms protected by the Covenant to a greater extent than what is provided for in the present Covenant.

ADDITIONAL INTERNATIONAL INSTRUMENTS THAT ARE IMPORTANT FOR DEMOCRATIC ELECTIONS

In addition to the provisions of the international human rights instruments listed, there are a number of other declarations and documents of associations of states and of the associations of the legislative branches of governments that are important for democratic elections. Included among them are the following:

- African Charter on Democracy, Elections and Governance (2007, not yet entered into force);
- African Union (Organization of African Unity) Declaration on the Principles Governing Democratic Elections in Africa (2002);
- Arab Charter on Human Rights (1994, not yet entered into force);
- Declaration of Commonwealth Principles (1971) of the Commonwealth of Nations;
- The Harare Commonwealth Declaration (1991) of the Commonwealth of Nations;
- Millbrook Commonwealth Action Programme on the Harare Declaration (1995) of the Commonwealth of Nations;
- Edinburgh Communiqué (1997) of the Commonwealth of Nations;
- Convention on the Standards of Democratic Elections, Equal Rights and Freedoms of the Member States of the Commonwealth of Independent States (2002);
- Economic Community of West African States (ECOWAS) Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (2001);
- European Commission on Democracy through Law (Venice Commission) Code of Good Practice in Electoral Matters (2002);
- Charter of Fundamental Rights of the European Union (2000);
- Declaration on Criteria for Free and Fair Elections of the Inter-Parliamentary Union (1994);
- Cairo Declaration on Human Rights in Islam, Nineteenth Islamic Conference of Foreign Ministers (1990);
- Organization for Security and Cooperation in Europe (OSCE) Charter of Paris for a New Europe (1990);
- Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections (2004); and
- Norms and Standards for Elections in the SADC Region adopted by the Southern Africa Development Community Parliamentary Forum (2001).

In addition to international instruments, decisions of international human rights tribunals are important resources when developing legal frameworks for democratic elections. Appendix Four to this Guide provides briefly annotated citations to a number of cases decided by those tribunals that are relevant to democratic elections.

Resolutions of the United Nations General Assembly, reports to the General Assembly by the UN Secretary-General, protocols and resolutions of the OAS General Assembly and staff reports, handbooks and manuals of various international organizations are also relevant to developing legal frameworks for democratic elections. Selected resources from international organizations and scholars in the field that are relevant to democratic elections are listed for the reader's convenience in Appendix Five to this Guide.

APPENDIX FOUR

Annotated
International Case
Law Concerning
Democratic Elections

ANNOTATED INTERNATIONAL CASE LAW CONCERNING EMOCRATIC ELECTIONS

UNITED NATIONS SYSTEM

United Nations Human Rights Committee

The United Nations Human Rights Committee is established under the International Covenant on Civil and Political Rights (ICCPR or Covenant) to monitor implementation of the Covenant and the Protocols of the Covenant by the State parties to the ICCPR. The First Optional Protocol to the Covenant allows individuals to submit complaints to the Human Rights Committee against State parties that have ratified the Protocol for violations of rights recognized in the ICCPR. For an overview of the Human Rights Committee and the procedure for filing complaints, please see the websites listed below.

The Human Rights Committee publishes General Comments, which provide its interpretations of the articles of the Covenant. General Comment 25 was issued by the Human Rights Committee to interpret provisions of Article 25, which pertains largely to democratic elections. General Comment 25 is reproduced in Appendix Three of this Guide.

Introduction to the Human Rights Committee

<http://www.unhchr.ch/html/menu2/6/a/introhrc.htm>

Overview of Procedure (for the HRC to consider individual complaints)

<http://www.unhchr.ch/html/menu2/8/overcerd.htm>

UN Human Rights Committee Cases under the First Optional Protocol to the ICCPR that Are Relevant to Democratic Elections

Sinitsin v. Belarus

CCPR/C/88/D/1047/2002, 88th Session (16/01/2007)

http://www.bayefsky.com/doc/belarus_t5_iccpr_1047_2002.doc

This case stands for the propositions that ICCPR Article 25's right to be elected and Article 2's requirement for provision of an effective remedy upon review by a competent authority were violated, when the Belarusian authorities disqualified signatures supporting the complainant's petition for nomination as a presidential candidate, declared the complainant's nomination invalid, and no effective remedy was available to the complainant nor was he able to challenge the rulings before an independent and impartial body.

Gorji-Dinka v. Cameroon

CCPR/C/83/D/1134/2002 (2005), 83rd Session (17/03/2005)

<http://www1.umn.edu/humanrts/undocs/1134-2002.html>

This case stands for the propositions that: the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds established by law, which are objective and reasonable; persons who are deprived of liberty by a government but who have not been convicted should not be excluded from exercising the right to vote; and persons who are otherwise eligible to stand for election should not be excluded by reason of political affiliation; therefore, the removal of the complainant's name from the voter register while he was detained but not convicted, and without other objective and reasonable grounds, violates Article 25 of the ICCPR.

Svetik v. Belarus

CCPR/C/81/D/927/2000, 81st Session (25/08/2004)

<http://www1.umn.edu/humanrts/undocs/html/927-2000.html>

This case stands for the proposition that Article 19 of the ICCPR is violated where person is summoned before a court and subjected to an administrative penalty (a fine) for signing a declaration published in a newspaper that in part appealed to citizens to not participate in the forthcoming local elections.

Matyus v. Slovakia

CCPR/C/75/D/923/2000, (22/07/2002)

http://www.bayefsky.com/pdf/slovakia_t5_iccpr_923_2000.pdf

This case stands for the proposition that where election districts for the same municipal council contain substantial differences between the number of inhabitants per elected representative, despite the election law requiring those districts to be proportional concerning the number of inhabitants and the State's constitution requiring equality of election rights, Article 25 of the ICCPR was violated.

Gillot et al. v. France

CCPR/C/75/D/932/2000, 75th Session (26/07/2000)

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/12769c97c02eee6ac1256c38002e171f?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/12769c97c02eee6ac1256c38002e171f?Opendocument)

This case stands for the propositions that where eligibility to vote pertains to referenda concerning self-determination of peoples, ICCPR Articles 1 and 25 must be considered together, and that a 10 year residency requirement for eligibility to vote in the referenda, which was based on an interest in ensuring that the referenda reflect the will of the population "concerned," is objective, not discriminatory in terms of ethnicity or national extraction and is proportional to the interest to be served. Therefore, no articles of the ICCPR were violated.

Ignatane v. Latvia

CCPR/C/72/D/884/1999, 72nd Session (31/07/01)

<http://www.unhcr.org/refworld/country,,HRC,,RUS,,3f588ef83,0.html>

This case stands for the proposition that a person struck from the list of candidates for election to city council on the basis of insufficient proficiency in the official state language suffered a violation of rights under Article 25 and Article 2 of the ICCPR.

Paraga v. Croatia

CCPR/C/71/D/727/1996, 71st Session (14/05/01)
<http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/43ca3525ebaeac5c1256a6c00282bd1?OpenDocument&Highlight=0,CCPR%2FC%2F71%2FD%2F727%2F1996>

This case stands for the proposition that a State party to the Optional Protocol to the ICCPR must provide effective remedies to a complainant who was denied timely trial and therefore the opportunity to stand as candidate for election.

Debreczeny v. The Netherlands

CCPR/C/53/D/500/1992, 53rd Session (04/04/95)
<http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/2dcdf9e50eb93c14802566e2003b534b?OpenDocument&Highlight=0,CCPR%2FC%2F53%2FD%2F500%2F1992>

This case stands for the proposition that Article 25 of the ICCPR is not an absolute right and restrictions of this right are allowed so long as they are not discriminatory or unreasonable.

Altesor v. Uruguay

CCPR/C/15/D/10/1977, 15th Session (29/03/82)
<http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/cad5b64ef38b37dfc1256ab5002970bb?OpenDocument&Highlight=0,CCPR%2FC%2F15%2FD%2F10%2F1977>

This case stands for the proposition that the Uruguayan Acta Institucional No. 4 of 1976 is incompatible with Article 25 of the ICCPR in that it maintains an unreasonable restriction on political rights (i.e., imprisonment of up to 15 years for "subversive association").

Silva v. Uruguay

CCPR/C/12/D/34/1978, 12th Session (08/04/81)
<http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/f10e81351f2b8152c1256ab20044fb61?OpenDocument&Highlight=0,CCPR%2FC%2F12%2FD%2F34%2F1978>

This case stands for the proposition that barring political groups from any political activity, including voting, for up to 15 years is an unreasonable restriction of rights enumerated under Article 25 of the ICCPR.

THE AFRICAN SYSTEM***The African Commission on Human and Peoples' Rights***

The African Commission on Human and Peoples' Rights is established under the African Charter on Human and Peoples' Rights (ACHPR or Banjul Charter) to protect and to promote human and peoples' rights and to interpret the ACHPR. Among the various responsibilities of the Commission is to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation. For an overview of the Commission and its procedures, please see the websites listed below.

Introduction to the African Commission on Human and Peoples' Rights

http://www.achpr.org/english/_info/mandate_en.html

Overview of Procedure

http://www.achpr.org/english/_info/rules_en.html

The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights was established under the "Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights," which entered into force in 2004. The African Commission on Human and Peoples' Rights, a State party to the ACHPR that is lodging a complaint or a State party to the ACHPR against which a complaint has been lodged and African intergovernmental organizations may submit cases to the Court. For an overview of the Court and its procedures, please see the websites listed below.

Introduction to the African Court on Human and Peoples' Rights

http://www.aict-ctia.org/courts_conti/achpr/achpr_home.html

Overview of Procedure

http://www.achpr.org/english/_info/court_en.html

African Commission on Human and Peoples' Rights Cases that Are Relevant to Democratic Elections***Modise v. Botswana, Case No. 97/03 (2000)***

<http://www1.umn.edu/humanrts/africa/comcases/97-93c.html>

This case stands for the proposition that ACHPR Article 13 (concerning the right to participate in government) is violated where a government denied citizenship to a person who was of that country's ancestry. The Commission noted that the complainant had founded an opposition political party and suffered a pattern of actions that appeared designed to hamper his political activity.

THE EUROPEAN SYSTEM***European Court of Human Rights***

The European Court of Human Rights (ECHR) is established under the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention or Convention) to monitor implementation of the Convention by the Contracting States. All 47 member countries of the Council of Europe are signatories to the Convention (Contracting States). Any individual may file an application with the ECHR, claiming that a Contracting State violated his or her rights recognized under the Convention. For an overview of the ECHR and procedures for filing applications to the Court, please see the websites listed below.

Overview of the ECHR

<http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/History+of+the+Court/>

Instructions for Applications to the Court and Application

<http://www.echr.coe.int/Notesfor%20guidanceApplicants/NoticeENG.pdf>

ECHR Cases that Are Relevant to Democratic Elections**Georgia Labor Party v. Georgia (8/7/08)**, (App. No. 9103/04)

<http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=71576&sessionId=4507150&skin=hudoc-en&attachment=true>

This case stands for the propositions that: a party, as well as an individual, may validly claim that its right to a free election under Article 3 of Protocol 1 of the ECHR was violated by state action; on balance, in the circumstances of Georgia's February 2004 "repeat" parliamentary elections, the introduction of a new voter registration system did not violate Article 3 of Protocol 1 of the ECHR; though election commissions at all levels lacked sufficient independence from outside political power, given the absence of any proof of acts of abuse or fraud committed by the commissions, no breach of the right to stand for election was established; the decision of the Central Election Commission to annul the election results in Georgia's Khulo and Kobuleti electoral districts was not made in a transparent and consistent manner, was done without any valid justification and resulted in de facto disenfranchisement of a significant section of the population, which violated the complainant party's right to stand for election under Article 3 of Protocol 1 of the ECHR.

Yumak & Sadak v. Turkey (8/7/08), (App. No. 10226/03)

<http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=71601&sessionId=4507150&skin=hudoc-en&attachment=true>

This case stands for the proposition that Turkey's requirement that political parties receive at least 10 percent of the national vote in order to qualify for the distribution of any parliamentary seats (a 10 percent "threshold"), in the national circumstances does not violate Article 3 of Protocol 1 of the HCHR, though as a matter of policy the Court concurred with other organs of the Council of Europe that the threshold appears excessive and should be lowered.

Russian Conservative Party of Entrepreneurs and Others v. Russia (11/1/07), (App. No. 55066/00, 55638/00)

<http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/233813e697620022c1256864005232b7771e3d4a4233cbc2c1257264003cd73b?OpenDocument>

This case stands for the proposition that where a party's entire list of candidates is refused registration because certain people on the list provided incorrect information on their application, and the subsequent involuntary "withdrawal" of such candidates was used as a basis for the lists' disqualification, and where a domestic court order to reinstate the list was reversed by supervisory review proceedings of a higher court, there is a departure from legal certainty and a disproportionate action in violation of Article 3 of Protocol 1 of the ECHR.

Py v. France (11/01/05), (App. No. 66289/01)
<http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/1d4d0dd240bfee7ec12568490035df05/855a8b88c60b23bfc1256f8500305d8f?OpenDocument>

This case stands for the proposition that a 10 year residency requirement imposed on voting eligibility in New Caledonia in advance of a self-determination referendum does not violate a resident's right to vote under Article 3 of Protocol 1 of the ECHR, even if the person is rendered ineligible to vote, because of the stated government interests in the particular circumstances.

Hirst v. United Kingdom (6/10/05), (App. No. 74025/01)
<http://www.echr.coe.int/Eng/Press/2005/Oct/GrandChamberJudgmentHirstvUK061005.htm>

This case stands for the proposition that a general, automatic and indiscriminate restriction stripping convicted prisoners of their right to vote, including a wide range of offenders and imposed sentences, is not proportionate to governmental interests and violates Article 3 of Protocol 1 of the ECHR.

Melnichenko v. Ukraine (19/10/04), (App. 17707/02)
<http://www.echr.coe.int/Eng/Press/2004/Oct/ChamberJudgmentMelnichenkovUkraine191004.htm>

This case stands for the proposition that denial of registration of a candidate for parliament, who had lived for five years outside the country and filed for candidacy on the basis of submitting his temporary "propiska" address in Ukraine, was a violation of Article 3 of Protocol 1 of the ECHR, when the law did not require habitual residence inside Ukraine and the candidate registration documents allowed use of temporary propiska addresses.

Aziz v. Cyprus (22/6/04), (App. No. 69949/01)
<http://www.echr.coe.int/eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm>

This case stands for the proposition that denial of inclusion on a Greek-Cypriot electoral roll of a Turkish-Cypriot living in Nicosia, a Greek-Cypriot territory, deprived him of any opportunity to express his opinion in the choice of members of the legislature in the place where he always lived. This violated Article 3 of Protocol 1 of the ECHR and did so on a discriminatory basis that violated Article 14 of the ECHR.

Zadanoka v. Latvia (17/6/04), (App. No. 58278/00)

<http://www.echr.coe.int/Eng/Press/2004/June/ChamberJudgmentZadanokavLatvia.htm>

This case stands for the proposition that a permanent ban on standing for elected office placed by law on the complainant because of her prior activity with the Community Party of Latvia, which had been declared unconstitutional, was not proportional to the legitimate governmental aims presented, therefore the ban violated Article 3 of Protocol 1 of the ECHR.

Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia (decision pending), (App. No. 11721/04)

In this case an Armenian nongovernmental election monitoring organization claims violations of its rights under the European Convention on Human Rights (ECHR) concerning the right to receive and impart information (Article 10), right to a fair trial (Article 6, section 1) and genuine elections (Protocol 1, article 3), because the Armenian Central Election Commission (CEC) refused its requests for copies of CEC decisions, minutes of CEC meetings and information concerning campaign contributions to electoral contestants.

Podkolzina v. Latvia (5/8/02), (App. No. 46726/99)(In French)

<http://www.legislationline.org/legislation.php?tid=57&lid=1156&less=false>
English digest of the case available at:
<http://www.echr.coe.int/eng/Press/2002/apr/PR%20Podkolzina%2009042002E.htm>

This case stands for the proposition that Article 3 of Protocol 1 of the ECHR was violated where a prospective candidate for election to parliament, who had received a valid proficiency certificate in his use of the national language, was subjected to further examination before one individual with excessive discretionary authority, and was then ruled ineligible to stand for election. This was done in the absence of objective guarantees in the procedure lacked fairness and legal certainty.

Labita v. Italy (6/4/00), (App. No. 26772/95)

<http://hudoc.echr.coe.int>

This case stands for the proposition that the subsequent disenfranchisement of political/voting rights of a complainant acquitted of charges of collusion with the Mafia violated Article 3 of Protocol 1 of the ECHR, though the court noted that the rights under the Convention are not absolute, and there is room for limitations on their application.

Gaulieder v. The Slovak Republic (10/9/99), (App. No. 36909/97)

(Settled, stricken from list) <http://hudoc.echr.coe.int>

This case stands for the proposition that the elected member of the National Council of The Slovak Republic who resigned from the party on whose list he was elected and was subsequently barred from fulfilling his term in office, was barred in violation of Article 3, Protocol 1 of the ECHR, which guarantees the right to exercise office through the period for which one is elected.

Rekvényi v. Hungary (20/5/99), (App. No. 25390/94)
<http://hudoc.echr.coe.int>

This case stands for the proposition that an amendment to the Hungarian constitution that barred members of the military, police and security forces from joining political parties was not a violation of Article 10 of the ECHR. Given that the amendment did not amount to a total ban on political participation and freedom of expression, it was not held to be a disproportionate interference with these rights.

Matthews v. The United Kingdom (18/2/99), (App. No. 24833/94)
<http://hudoc.echr.coe.int>

This case stands for the proposition that the rights of a citizen who applied to vote in Gibraltar for European Parliament elections and who was subsequently denied the right to vote in those elections was the subject of a violation of Article 3 of Protocol 1 of the ECHR. Article 3 of Protocol 1 of ECHR applies to European Parliament just as it does to domestic representative bodies.

Ahmed and Others v. The United Kingdom (2/9/98), (App. No. 22954/93) <http://hudoc.echr.coe.int>

This case stands for the proposition that statutes that limit involvement of certain categories of public officials in political activities were not in violation of Article 3 of Protocol 1 of the ECHR, because the statutes only applied to certain politically restricted posts from which officials were free to resign in order to stand as candidates.

Bowman v. The United Kingdom (19/2/98), (App. No. 24839/94)
<http://hudoc.echr.coe.int>

This case stands for the proposition that a domestic ruling against a citizen, who spent money distributing flyers on behalf of certain candidates in violation of the Election Act, was a violation of that citizen's right to freedom of expression under Article 10 of the ECHR. The Court ruled that the Election Act's provisions were an illegitimate attempt to 'level the playing field' and were disproportionate to the aim pursued.

Gifonas and Others v. Greece (1/7/97), (App. Nos. 18747/91, 19376/92, 19379/92, 28208/95, 27755/95)
<http://hudoc.echr.coe.int>

This case stands for the proposition that states are free to regulate candidate eligibility in certain circumstances and legislation that barred certain public officials (i.e., those with nationwide responsibilities) from candidacy was both coherent and non-arbitrary and therefore not a violation of Article 3 of Protocol 1 of the ECHR. The Court reiterated that the right to stand for election is not absolute and can and should be balanced against the interest of equality for all citizens.

Mathieu-Mohin and Clerfayt v. Belgium (28/1/87), (App. No. 9267/81)
<http://hudoc.echr.coe.int>

This case stands for the proposition that the division of Belgium into “language regions” and the subsequent assignment of different Members of Parliament into “language groups” is not in violation of Article 3 of Protocol 1 of the ECHR. The Court held that the system in question was not unreasonable in light of the Belgian political context and the effort to give voice to linguistic minorities.

THE INTER-AMERICAN SYSTEM

The Inter-American Court of Human Rights

The Inter-American Court of Human Rights is established under the American Convention on Human Rights (ACHR) and receives human rights cases submitted to it by States Parties to the ACHR and the Inter-American Human Rights Commission concerning alleged violations of rights recognized in the ACHR. Individuals do not have standing to lodge petitions before the Court. For an overview of the Court and its procedures, please see the websites listed below.

Overview of the Inter-American Court of Human Rights

<http://www.corteidh.or.cr/index.cfm?CFID=387936&CFTOKEN=66752465>

Procedures of the Inter-American Court of Human Rights

<http://www.cidh.oas.org/basicos/basic18.htm>

Inter-American Court of Human Rights Cases that Are Relevant to Democratic Elections

Case Castaneda Gutman v. Mexico (6/8/08)

http://www.corteidh.or.cr/docs/casos/articulos/seriec_184_esp.doc

This case stands for the proposition that the affirmative obligation created by Article 23 of the ACHR for states to ensure the right to be elected is not violated by a failure of the law to allow independent candidates, where individuals may exercise their right to be elected through political parties, as long as parties do not employ undue restrictions in candidate selection.

Marcel Claude Reyes, et al. v. Chile (09/19/06)

http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc

This case stands for the proposition that Article 13 protects citizens' fundamental right to access information. The Court further noted that State parties possess a positive obligation to disclose government held information, when disclosing such information benefits the public interest, and the burden of proof rests on the State party to show that any restrictions conform with the Inter-American standards of free expression.

López Álvarez v. Honduras (1/2/06)

http://www.corteidh.or.cr/docs/casos/articulos/seriec_141_ing.doc

This case stands for the proposition that the expression and dissemination of thoughts and ideas "are indivisible." Therefore, when a State party restricts the possibilities of spreading information, it in fact limits the right to express oneself freely and violates Article 13.

Yatama V. Nicaragua (23/06/2005)

http://www.corteidh.or.cr/docs/casos/articulos/seriec_127_ing.doc

This case stands for the propositions that: ACHR Article 23 (concerning electoral rights) and Article 24 (concerning equality before the law and equal protection of the law) were abridged by the state's Supreme Electoral Council (SEC) decisions not to approve the request to register candidates of an indigenous political party YATAMA, based on undue restrictions contained in the electoral law and discriminatory application of restrictions; and that decisions of the SEC concerning exclusion of the candidates were adopted in violation of Article 8 (concerning the right to a hearing before a competent, independent and impartial tribunal).

Carpio-Nicolle et al. v. Guatemala (22/11/2004)

http://www.corteidh.or.cr/docs/casos/articulos/seriec_117_ing.doc

This case stands for the proposition that a state incurs international responsibility under the ACHR, including Article 23 (concerning the right to participate in government), where the extrajudicial execution of a journalist, who also was a politician, was politically motivated, state agents obstructed the investigation and the state failed to pursue the investigation with diligence, thus signifying total impunity for the crimes. The state is obliged therefore to provide damages to the survivors and take effective actions to investigate and punish the masterminds and perpetrators and publicize the actions that bring them to account.

Ricardo Canese v. Paraguay (08/31/04)

http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_ing.doc

This case stands for the proposition that State parties must take extra efforts to protect the exercise of freedom of expression in the political debate that precedes elections. The Court further noted that the expression of different opinions presented throughout the campaign nourishes the formation of the collective will of the people in that the free exchange of ideas and information is necessary in a democratic society.

Baruch Ivcher Bronstein v. Peru (02/06/01)

http://www.corteidh.or.cr/docs/casos/articulos/seriec_84_ing.doc

This case stands for the proposition that by separating Mr. Ivcher from the control of Channel 2 and excluding the journalists from reporting, the Peruvian government not only restricted their right to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, thus limiting their freedom to exercise political options and develop fully in a democratic society.

The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights (Inter-American Commission) is established under the American Convention on Human Rights (ACHR). Among its responsibilities are reviewing complaints of violations of rights recognized in the ACHR lodged by any person or group of persons or nongovernmental entity legally recognized by one or more member states of the Organization of American States (OAS). For an overview of the Commission and procedures for filing petitions before the Commission, please see the following websites.

Overview of the Inter-American Commission on Human Rights

<http://www.cidh.org/what.htm>

Presenting Petitions on Human Rights Violations

https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=E

Inter-American Commission Cases that Are Relevant to Democratic Elections

Walter Humberto Vásquez Vejarano v. Peru (4/13/00), Case 11.166, Report No. 48/00.

<http://www.cidh.oas.org/annualrep/99span/de%20fondo/peru11166.htm>

This case stands for the proposition that the removal of justices and magistrates in order to address supposed "national emergency of corruption" was in violation of Article 1 (respect and guarantee of rights of citizens), Article 8 (right to due process), Article 9 (right to legality and freedom from ex post facto laws), Article 23 (political rights), Article 24 (right to equality before the law) and Article 25 (right to judicial protection) of the ACHR.

Andres Aylwin Azocar et al. v. Chile (12/27/99), Case 11.863, Report No. 137/99.

<http://www.cidh.oas.org/annualrep/99eng/Merits/Chile11.863.htm>

This case stands for the proposition that provisions guaranteeing a "senator for life" position thwart the expression of popular sovereignty and violate the essence of representative democracy in violation of Articles 23 and 24 of the ACHR, which guarantee the right to vote and to be elected under general conditions of equality.

Clemente Ayala Torres et al. v. Mexico (4/13/99), Case 10.545, Report No. 48/99.

<http://www.cidh.org/annualrep/98eng/Merits/Mexico%2010545.htm>

This case stands for the proposition that kidnappings and murders of members of a political party in the State of Guerrero relating to elections there and the subsequent response of the state government were in violation of Article 8 (right to judicial guarantees) and Article 25 (right to judicial protection) of the ACHR.

Efraín Ríos Montt v. Guatemala (10/12/93), Case 10.804, Report No. 30/93
<http://www1.umn.edu/humanrts/cases/30%5E93gua.pdf>

This case stands for the proposition that declaring candidacy inadmissible of the leader and chief of any coup d'etat, armed revolution or similar movement that changes the constitutional order, and others who become head of government as a result of such actions does not constitute a violation of the rights recognized by the ACHR.

Luis Felipe Bravo Mena v. Mexico (10/7/93), Case 10.956, Report No. 14/93.
<http://www.cidh.oas.org/annualrep/93english/eng93ch3.htm>

This case stands for the proposition that the Inter-American Commission is competent to rule in any case in which the rights of individuals, political or otherwise, are being infringed. The case in question related to various allegations of electoral irregularities which the government of Mexico argued were solely within the purview of domestic remedial organs.

National Action Party v. Mexico (2/22/91), Case 10.180, Resolution No. 8/91.
<http://www.cidh.org/annualrep/90.91eng/mexico10.180.htm>

This case stands for the proposition that an electoral statute passed in Mexico that left the functioning of the election mechanism in the hands of the ruling party was in violation of Article 23 (right to exercise political rights), Article 25 (right to effective recourse) and Article 8 (right of access to independent tribunals) of the ACHR and that the government of Mexico must fulfill the obligation under the ACHR to correct the domestic law of the country to effectively guarantee the exercise of these rights.

Mexico Election Decision (5/17/90), Cases 9768, 9780 and 9828, Resolution No. 01/90.
<http://www.cidh.org/annualrep/89.90eng/mexico9768.htm>

These cases stand for the proposition that the Commission is competent to consider issues concerning elections of State parties to the ACHR and that the government of Mexico must fulfill the obligation under the ACHR to correct the domestic law of the country to effectively guarantee the exercise of the individual rights enumerated therein.

Challenge to Election Law (Argentina, 9/13/88) Case 10.109, Resolution No. 26/88.
<http://www.cidh.org/annualrep/87.88eng/argentina10109.htm>

This case stands for the proposition that an electoral law that denied an independent candidate placement on the ballot was not in violation of Article 16 (right of association), Article 23 (political rights) or Article 24 (right of equality before the law) of the ACHR because the law did not specifically require party membership as a prerequisite for nomination as a party candidate. The Court held that all citizens therefore have the potential to be nominated, and no violations could be ascertained.

Nicolas Estiverne v. Haiti (3/24/88), Case 9855, Resolution No. 20/88.
<http://www.cidh.org/annualrep/87.88eng/haiti9855.htm>

This case stands for the proposition that the declaration of the complainant as persona non grata by the ruling government and the subsequent barring of his candidacy was in violation of Article 13 (freedom of thought and expression), Article 20 (right to nationality), Article 22 (freedom of movement and residence), Article 23 (right to participate in government) and Article 25 (right to judicial protection) of the ACHR.

APPENDIX FIVE

Selected Resources on Promoting Legal Frameworks for Democratic Elections

SELECTED RESOURCES ON PROMOTING LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS

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SELECTED NDI PUBLICATIONS ON ELECTION MONITORING

Monitoring Electronic Technologies in Electoral Processes: An NDI Guide for Political Parties and Civic Organizations, by Vladimir Pran and Patrick Merloe (2008). This guide aims to help political parties, civic organizations, election officials and others to better understand electoral technologies-including electronic voting and results tabulation, electronic voter registration and other applications. The guide explores potential challenges technologies may pose to electoral integrity, issues regarding whether to introduce electronic technologies and the need for electoral transparency and public confidence. It highlights practical steps in advocating for access to decision making, as well as monitoring the design, development, certification and testing, training, maintenance, security and other issues. It covers the types of expertise that are needed to monitor the use of electronic applications, and explores questions that cannot be adequately addressed in verifying the integrity of certain technologies under the current state of the art.

The Quick Count and Election Observation: An NDI Handbook for Civic Organizations and Political Parties, by Melissa Estok, Neil Nevitte and Glenn Cowan (2002). This handbook addresses the importance of developing systematic observation of vital election day processes, including the quality of voting, ballot counting and tabulation of election results, as well as the projection of electoral results with extremely narrow margins of error and high degrees of statistical confidence. It covers planning and organizational issues, recruiting and training, communications systems, developing a random statistical sample of polling stations for rapid and exacting analysis, analytical techniques and the considerations for the release of quick count findings. The handbook is designed for civic organizations but can easily be used by political parties. It also is designed for use by civic organizations that decide not to undertake projection of electoral results. As an organizer's guide, it reviews many of the issues covered by NDI's 1995 "A to Z" handbook.

Media Monitoring to Promote Democratic Elections: An NDI Handbook for Citizen Organizations, by Robert Norris and Patrick Merloe (2002). This handbook takes a step-by-step approach to media monitoring. It covers: the importance of determining who controls the media and the difference between state-controlled versus private and broadcast versus print media; issues to address in deciding what media and what subjects to monitor; planning and organization of a media monitoring project; monitoring methodology, including specific instructions for monitoring different types of media; and considerations for the presentation of findings and recommendations.

Building Confidence in the Voter Registration Process: An NDI Monitoring Guide for Political Parties and Civic Organizations, by Richard L. Klein and Patrick Merloe (2001). This voter registration monitoring guide addresses: the role of voter registration and the principle

types of voter registration systems; why it is important for political parties and civic organizations to monitor these systems; and specific techniques for monitoring processes for collecting names, creating a voter registry and polling station voter lists, correcting errors in the lists and use of the lists on election day.

NDI Handbook on How Domestic Organizations Monitor Elections: An A to Z Guide (1995). This handbook provides a comprehensive overview of how to organize a nonpartisan domestic election monitoring effort. It covers: planning and organizational issues; recruiting, training and logistical issues in building a communications network for reporting; various subjects to monitor in the pre-election, election day and post-election periods; and considerations for how the organization and skills developed through monitoring efforts can be applied to non-election activities. The guide is designed for election monitoring by civic organizations but can be used by political parties in designing their efforts to ensure electoral integrity and protect their vote.

In addition to these materials, NDI has produced over 300 reports, papers and statements concerning ways in which to promote democratic elections generally and concerning the election process within specific countries. See NDI's website: www.ndi.org "Access Democracy" and "Global Programs/Elections and Political Processes" for more information about these and other NDI publications.

ABOUT THE AUTHOR

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Pat has produced over a dozen publications on elections, human rights and comparative law. He was one of the initiators and was the principal negotiator of the process that led to the *Declaration of Principles for International Election Observation*, launched at the United Nations in 2005 and now endorsed by 32 international organizations. He has worked with a number of international human rights organizations and, prior to joining NDI, was co-chair of the Bar Association of San Francisco's International Human Rights Law Committee. He practiced with the law firm of Heller Ehrman White & McAuliffe, taught international human rights law at the University of San Francisco School of Law and instructed at the University of Pennsylvania Law School.

Mr. Merloe received his Juris Doctor degree from the University of Pennsylvania, conducted graduate work in public policy analysis at the Institute for Policy Studies in Washington, DC, and completed his undergraduate education at Temple University. He has over 30 years of experience in promoting human rights, citizen empowerment and policy advocacy.

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WHY SHOULD POLITICAL PARTIES, CANDIDATES AND CITIZENS ANALYZE LEGAL FRAMEWORKS FOR ELECTIONS AND ADVOCATE FOR DEMOCRATIC IMPROVEMENTS?

Establishing the “rules of the game” for elections should be a vital concern to political parties, candidates and citizens alike. Rules and how they are implemented can greatly affect electoral outcomes.

To compete effectively, parties and candidates must know the rules for competition, including the avenues for seeking redress if the rules protecting their rights are violated.

HOW CAN INCLUSIVENESS, TRANSPARENCY & ACCOUNTABILITY BE INCORPORATED INTO LEGAL FRAMEWORKS FOR ELECTIONS?

Knowing the rules, however, is not enough. The electoral contestants need to analyze the legal framework to determine whether the rules actually ensure a genuine chance to compete fairly. Political parties and candidates should be prepared to defend elements of the legal framework that they deem essential for fairness, as well as to advocate for modifying the legal framework in order to remove impediments to fairness and to improve their chances of winning office.

WHAT ARE THE KEY CRITERIA FOR ANALYZING LEGAL FRAMEWORKS FOR ELECTIONS?

Citizen groups – including election monitoring organizations, human rights groups, lawyers associations, “think tanks” and others – play particularly important roles in analyzing legal frameworks for elections, offering recommendations for improving them and monitoring the processes surrounding them.

WHAT CONSIDERATIONS ARE NEEDED WHEN DRAFTING LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS?

Citizen groups can advocate impartially for appropriate provisions in the legal framework for elections and its proper implementation. Citizen groups thereby assume the responsibility of articulating fairly the public’s interest and the responsibility for developing the expertise and resolve to protect that interest.

WHAT ARE THE KEY INTERNATIONAL AGREEMENTS AND COURT CASES CONCERNING DEMOCRATIC ELECTIONS?

This Guide presents a number of tools to help political parties, candidates and citizens groups use international principles in determining whether electoral related laws provide a solid foundation for democratic elections, identifying where improvements are needed and advocating for democratic changes.

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