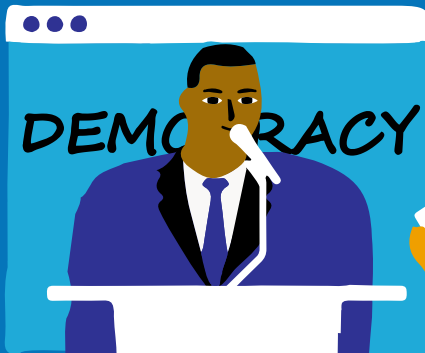


VOTE



**GUIDELINES ON  
THE RIGHTS  
TO FREEDOM OF  
PEACEFUL  
ASSEMBLY AND  
OF ASSOCIATION  
IN THE CONTEXT  
OF ELECTIONS  
AND THE  
COVID-19 CRISIS**





## Clément Nyaletsossi VOULE

### Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association

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Special Rapporteur on the rights to freedom of peaceful assembly and of association- Win Clément Nyaletsossi VOULE, a national of Togo, was appointed as United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and took up his functions in April 2018.

Prior to his appointment, he led the International Service for Human Rights (ISHR) to support human rights defenders from States in transition and coordinated the organization's work in Africa as the Advocacy Director.

Mr. Voule also worked as Secretary-General of the Togolese Coalition of Human Rights Defenders, as a campaigner for the Togolese Coalition for the International Criminal Court and as Secretary-General of the Amnesty International section in Togo.

From 2011-2020, he was an Expert Member of the Working Group on Extractive Industries, Environment and Human Rights Violations of the African Commission on Human and Peoples' Rights.

As a founding member and Vice-Chair of the West African Human Rights Defenders Network, he has coordinated and participated in the elaboration of several studies and guidelines, including two studies on freedom of association and the situation of women Human Rights Defenders in Africa and the guidelines on the rights of Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights.

A long-time activist and jurist, Mr. Voule has supported State and civil society efforts to develop and adopt specific laws for the protection of human right defenders and contributed to the publication of the Model law for the recognition and protection of human rights defenders and a human rights defenders guide to the African Commission on Human and Peoples' Rights.

Mr. Voule has a degree in Fundamental Rights from Nantes University and a Masters Diploma in International Law in Armed Conflict from the Graduate Institute of International and Development Studies, University of Geneva.

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# INTRODUCTION

The rights to freedom of peaceful assembly and of association apply at all times. Both rights are commonly understood as enabling rights—fundamental to the democratic process, and to allowing individuals to take part in governance and policy-setting within their communities. As the Human Rights Council has put it, they are rights which enable individuals to “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable.”<sup>1</sup> These rights are essential to electoral processes as well—as the Human Rights Committee has observed, “Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.”<sup>2</sup>

The right to freedom of association encompasses the right to form political parties. It also encompasses the right to form civil society organizations and to participate through such organizations in public life, including during and in relation to elections and other political processes. The right to freedom of peaceful assembly encompasses the right to come together into assemblies for a variety of purposes, including election rallies and political education events, as well as to express a collective opinion in relationship to a particular party, candidate, or electoral outcome. The right “enables candidates to such elections to mobilize their supporters and give resonance and visibility to their political messages,” and allows persons “from all parts of society to express their views and aspirations, either for status quo or for change, that is to say, to voice support for the Government and ruling party, or dissent.”<sup>3</sup> For these reasons, in addition to their everyday function in ensuring individuals are able to participate in political life and decision-making, both rights are closely connected to the democratic political process.<sup>4</sup>

Given their fundamental importance as enabling rights, the rights to freedom of peaceful assembly and of association must be protected throughout the electoral process. In addition, ensuring that individuals’, associations’ and political parties’ ability to exercise their rights to freedom of peaceful assembly and of association is fully respected requires that the electoral process itself be free, genuine and transparent. The absence of such characteristics undermines the meaningful exercise of the rights, for instance by depriving political rallies, voter education efforts, policy campaigns and political party membership of their intended effects.

Ensuring the rights to freedom of peaceful assembly and of association are respected throughout electoral processes is also essential to the existence of a healthy civil society. Recent years have seen attacks on civil society and the restriction of civil society space in numerous countries. In response, it is important that states take measures to protect and enable civil society, including not only refraining from direct attacks but also removing barriers that have been placed in civil society’s path, including barriers to entry, barriers to operational activity, barriers to speech and advocacy, barriers to communication and coop-

eration, barriers to assembly and barriers to resources. The rights to freedom of peaceful assembly and of association require that civil society be able to participate in a wide range of activities and contribute to public life, throughout the broader electoral process as at other times.

The COVID-19 pandemic poses serious public health challenges to every polity across the world. Restrictions on rights are permissible under international human rights law where they comply with the principle of legality, where they are in support of a legitimate aim, where they are necessary to achieve that aim, and where they are proportionate. The need to ensure public health constitutes a legitimate aim; scientifically-informed measures that enhance public health outcomes in the context of COVID-19 hence pass the legitimate aim test.

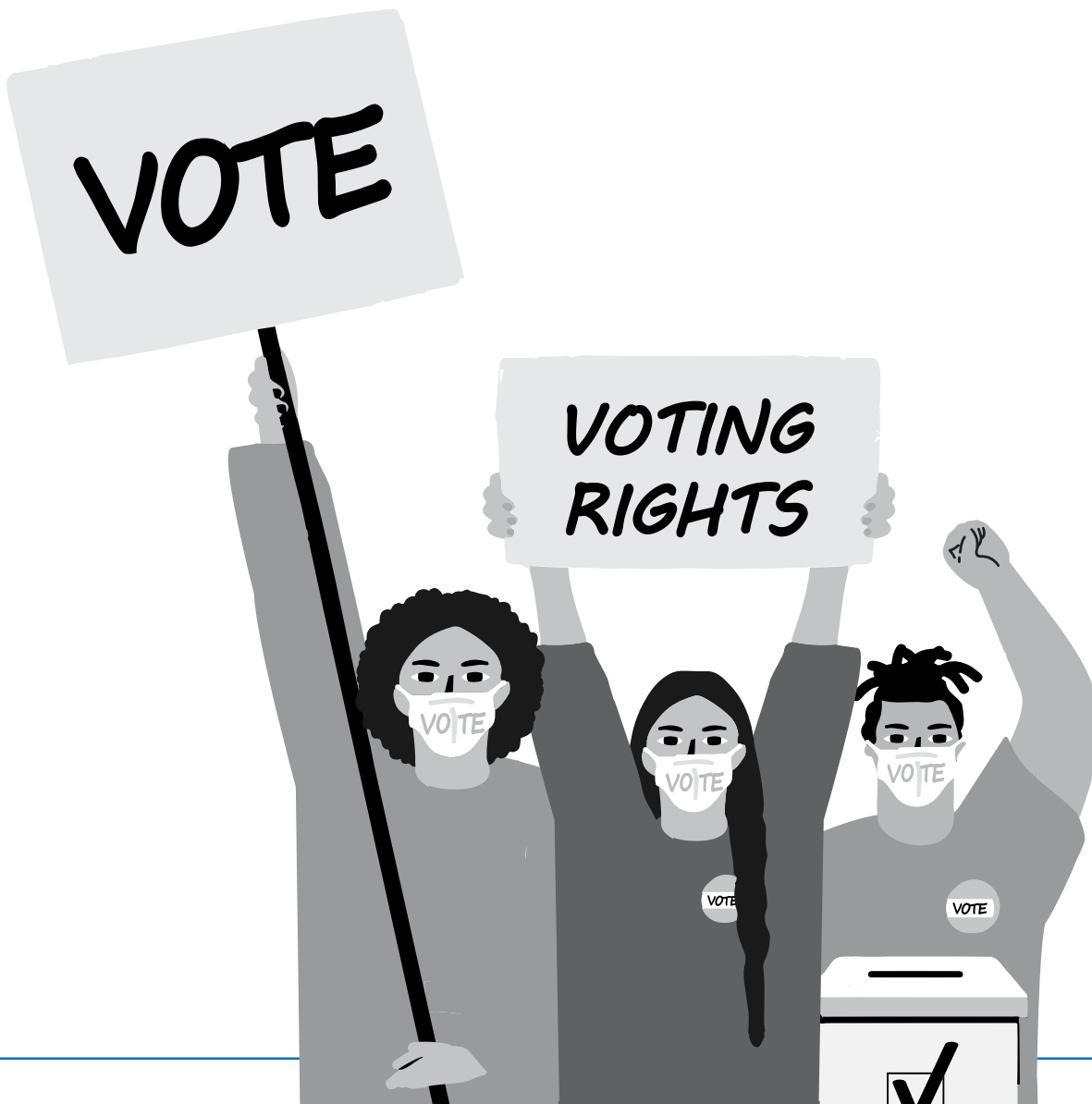
In addition to that test, any restrictions imposed must be necessary, meaning that less-restrictive alternatives through which the same outcomes may be achieved are not available, and proportionate, meaning that the public health gains in question are carefully weighed against the limitations on rights imposed, and are on balance merited taking those limitations into account. Any decisions in the context of COVID-19 should be made in coordination with national health authorities, and in light of the latest scientific information as to the nature and extent of the virus and optimal forms of management and treatment. All such information should be clearly and transparently conveyed to the public. Coordination with health authorities, and clear, transparent communication of the results of such coordination to the public, will help to ensure public health, by providing clear and concise information. In addition, such coordination will help to ensure maximally free, genuine and equitable elections, by increasing public trust in the process. To assist States, the Special Rapporteur has enumerated principles States should take into account when devising COVID-19 response measures.<sup>5</sup>

The term ‘elections’ in these guidelines is used to refer to the processes through which presidential, legislative and local representatives are chosen.<sup>6</sup> Elections are complex and multi-faceted affairs, requiring careful attention and regulation in compliance with numerous rights. As previously observed, “The electoral period does not always fit into a neat temporal delineation ... Some events in the election process may be capable of a definite time allocation, for example ... campaign period, voting day(s) and vote counting. However, other activities that are relevant to the process may be ongoing, continuing long after voting has been done, such as legislative reform and institution strengthening ... States have an obligation to respect and facilitate the rights to freedom of peaceful assembly and of association throughout the entire process.”<sup>7</sup>

These guidelines do not aim to be comprehensive, nor to delve into every aspect of the manner in which the rights to freedom of peaceful assembly and of association apply in the context of elections. While these guidelines cover some aspects of the manner in which the right to freedom of association pertains to political party participation in electoral processes, for example, they do not cover all issues relating to political parties, a matter which has been dealt with in more detail in other contexts.<sup>8</sup> Instead, these guidelines provide a subset of key principles, guidelines, and explanatory notes laying out steps that must be taken in order to comply with the obligation to respect, protect and fulfill the rights to freedom of peaceful assembly and of association in the context of elections in general, and of elections conducted during the COVID-19 pandemic in particular.

These guidelines were produced following consultations with civil society organizations, including numerous organizations with expertise in the field of electoral processes and standards. The following text is organized into general principles, substantive guidelines that fall underneath those principles, and explanatory notes, providing further explication to the guidelines.

The Special Rapporteur would like to thank the Ford Foundation and the Swiss Government for their support to the mandate, including for the development of this publication.



# GENERAL PRINCIPLES

- 1** Declarations of states of emergency must be strictly limited, in accordance with international human rights law.
- 2** States must ensure the right to freedom of peaceful assembly is respected throughout the electoral process; any limitations must comply with the requirements of legality, legitimate objectives, necessity and proportionality, in accordance with international human rights law.
- 3** States must ensure the right to freedom of association is respected throughout the electoral process; any limitations must comply with the requirements of legality, legitimate objectives, necessity and proportionality, in accordance with international human rights law.
- 4** In order to ensure that the rights to freedom of peaceful assembly and of association are fully enjoyed throughout the electoral process, states must ensure the equitable and non-discriminatory participation of all throughout the electoral process.
- 5** States must ensure that all individuals, associations and political parties are protected from violence, harassment and intimidation.
- 6** In order to ensure that the rights to freedom of peaceful assembly and of association are fully enjoyed throughout the electoral process, states must ensure that all electoral processes are free, genuine and transparent.
- 7** States must ensure that associations, political parties, and regional and international organizations are able to conduct independent election observation.
- 8** States must ensure the ability of all to enjoy their rights to freedom of peaceful assembly and association online, throughout the electoral process as at all other times.
- 9** States must ensure accountability and the right to effective remedies whenever the rights to freedom of peaceful assembly and of association are violated, during electoral processes as at all other times.

## Principle 1

Declarations of states of emergency must be strictly limited, in accordance with international human rights law.

### Guidelines:

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**a. A declaration of a state of emergency must be avoided unless adopted in compliance with clear, preexisting legal procedures and in response to a public emergency that threatens the life of nation. The terms of the state of emergency must be clearly and precisely laid out, and it must be temporary and limited in geographical and material scope.**

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States of emergency constitute fertile grounds for power grabs and rights abuse, and as such their use must be strictly limited. Where states of emergency or other emergency legislation are imposed, they must be in compliance with clear, preexisting and appropriate legal procedures, and must come in response to a public emergency that threatens the life of the nation. The state of emergency itself must have clear terms, and must be sharply limited in terms of substance and geographical and temporal extent. States of emergency must also be subject to oversight by the public and democratic institutions.

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**b. Any measures adopted under a state of emergency which results in a limitation on the exercise of human rights must be in support of legitimate aims, must be necessary and proportionate in light of the situation, and must be non-discriminatory.**

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Where emergencies are declared, states do not thereby obtain free reign to implement whatever measures they please. The ICCPR, for instance, makes clear that certain articles cannot be derogated from.<sup>9</sup> As has been emphasized in the past, moreover, “during a state of emergency, the rights to freedom of peaceful assembly and of association should not be derogated since the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of assembly, is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation.”<sup>10</sup> More broadly, even where a state of emergency is accompanied by derogation from rights obligations, states may only derogate from their obligations in support of legitimate aims, where the derogation in question is necessary and proportionate in light of the exigencies of the situation, and where the derogation in question is non-discriminatory.<sup>11</sup>



## Principle 2

States must ensure the right to freedom of peaceful assembly is respected throughout the electoral process; any limitations must comply with the requirements of legality, legitimate objectives, necessity and proportionality, in accordance with international human rights law.

### Guidelines:

**a. Certain restrictive measures impacting on public assemblies may be justified in light of the COVID-19 pandemic. Such measures must be carefully delimited, however, in accordance with the limitations test laid out by international human rights law, and taking into account the fundamental importance of the right to freedom of peaceful assembly for any democratic system. Contextual factors as well the availability of less restrictive measures must be borne in mind in the context of determining the appropriateness of any measures adopted.**

The COVID-19 pandemic poses grave risks to public health. In light of these risks, states have an obligation to implement measures that limit the effects of the virus. Any measures states implement must take fully into account impacts on human rights, in accordance with the balancing test required by international human rights law. Determining what restrictive measures are reasonable depends on a number of context-specific factors. In all cases, both the broader context and the availability of less restrictive measures must be borne in mind. In the context of the COVID-19 pandemic, for instance, the severity of the outbreak and the availability of personal protective equipment—which states should make sure is available—constitute two important factors to take into account when considering measures impacting on assemblies.

**b. Organizers of protests must not bear responsibility for the unlawful behavior of others, during the electoral period and in relation to politically-oriented assemblies as in other times and contexts.**

All too often, authorities attempt to deter assemblies by punishing assembly organizers for actions taken by assembly participants without their intention, authorization, control or knowledge.<sup>12</sup> This constitutes a form of collective punishment, in violation of the fundamental principle of individual responsibility. Such punishments are all the more egregious in that those responsible for the underlying actions may include agents provocateurs, who aim to disrupt and undermine assemblies. The principle of individual responsibility must be respected at all times, including in the context of measures adopted in response to the COVID-19 pandemic in particular.

**c. The authorities must implement measures to ensure the health of any individuals detained.**

State authorities are responsible for the safety, health and well-being of persons in their custody. In the context of the COVID-19 crisis, this means, inter alia, they must implement measures to ensure the health of all those detained, whether temporarily or permanently, by ensuring the provision of personal protective equipment, and by ensuring adequate social distancing.

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**d. In no circumstances may measures adopted to combat the COVID-19 pandemic that impact on assemblies be applied in a discriminatory or partisan manner, or relied upon as a pretext in order to suppress oppositional political activities.**

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Certain measures negatively impacting on assemblies may be permissible and appropriate in the context of broader steps taken to fight the spread and impact of the COVID-19 pandemic. The implementation of new laws and regulations on such a basis may also, however, provide a convenient pretext some authorities seek to rely upon in order to disperse rallies or target particular groups or individuals on the basis of their political affiliation, rather than on impartial, fact-based public health-oriented grounds. Such discriminatory action is always forbidden.

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**e. The right to freedom of peaceful assembly protects the ability of individuals to protest election results to which they object, including on the grounds that those results appear to be fraudulent, and including when such protests occur spontaneously.**

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The Special Rapporteur has previously emphasized the importance of allowing spontaneous assemblies to protest election results.<sup>13</sup> Expressing dissatisfaction with election results through demonstrations constitutes a core component of the rights to freedom of expression, peaceful assembly and political participation. While the context of the COVID-19 pandemic allows and at times requires that certain measures be taken to protect public health, any measures taken must be proportionate, bearing in mind the fundamental importance of the right to freedom of peaceful assembly in such a context. In no cases may states rely on the COVID-19 pandemic as a pretext to suppress such protests purely on the basis of their political orientation, nor may they employ restrictions in a selective or discriminatory manner.

## Principle 3

States must ensure the right to freedom of association is respected throughout the electoral process; any limitations must comply with the requirements of legality, legitimate objectives, necessity and proportionality, in accordance with international human rights law.

### Guidelines:

**a. Individuals and political parties must be able to contest elections freely. Individuals must be free to join and leave political parties, and political parties must be free to engage in a broad range of election-related activities.**

Elections are meaningful to the extent they present a real political and policy choice to populations. Inter alia, electoral processes have been restricted in the past through illegitimate limitations on who may run for office, on the franchise, on the freedom to form and join political parties, and on the ability of individuals, associations and political parties to participate in the political process throughout the broader electoral period. All such restrictions must be removed.<sup>14</sup> While the COVID-19 pandemic may require the imposition of social distancing measures, and for the timeline of some elections to be adjusted, it does not justify limitations on who may run for office, the franchise, the freedom to form and join political parties, nor for limitations on the ability of individuals, associations and political parties to participate in the political process more broadly.

**b. Associations must remain free to carry out a range of election-related activities, and to determine the nature of their engagement.**

As previously observed, among other election-related activities, associations must be ensured the freedom “to advocate for electoral and broader policy reforms; to discuss issues of public concern and contribute to public debate; to observe election processes; to report on human rights violations and electoral fraud; to initiate polls and surveys, such as those conducted during the voting process; to freely access the media, including new media, such as the Internet; to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or online; to build coalitions and networks with other organizations, including from abroad; to engage in fundraising activities; to engage in election observation, voter education and the inspection of voters’ rolls; to interact with international and regional human rights bodies; and to provide any forms of technical assistance and international cooperation.”<sup>15</sup> In addition to being engaged in such activities generally, as previously noted, “the election period provides a prime opportunity for a broader range of civil society organizations to engage with would-be elected representatives, highlight their concerns and interests, with a view to getting policy responses, and in general exercise their rights to participate in public affairs.”<sup>16</sup>

While the COVID-19 pandemic may provide grounds for the imposition of certain measures impacting on associations, there is no reason why the pandemic should justify the imposition of limitations on the forms of engagement civil society organizations may engage in. For example, while civil society organizations may traditionally conduct voter education through group meetings, restrictions on gatherings may impact on such activities; associations should remain free, however, to conduct voter education online.<sup>17</sup> In addition, whereas some states may be tempted to dictate that civil society organizations follow a certain pre-set program of engagement, civil society organizations must as a general rule be free to determine their own activities, provided these are in line with human rights of all those detained, whether temporarily or permanently, by ensuring the provision of personal protective equipment, and by ensuring adequate social distancing.

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**c. In no circumstances may measures adopted to combat the COVID-19 pandemic that impact on associations be applied in a discriminatory or partisan manner, or relied upon as a pretext in order to suppress activities disfavored by the authorities.**

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Certain measures impacting on associations may be permissible and appropriate in the context of broader steps taken to fight the spread and impact of the COVID-19 pandemic. The implementation of new laws and regulations on such a basis may also, however, provide a convenient pretext some authorities seek to rely upon in order to target particular groups or individuals on the basis of the content of their speech or activities, rather than on impartial, public health-oriented grounds. Such discriminatory action is always forbidden.



## Principle 4

In order to ensure that the rights to freedom of peaceful assembly and of association are fully enjoyed throughout the electoral process, states must ensure the equitable and non-discriminatory participation of all throughout the electoral process.

### Guidelines:

**a. The rights to freedom of peaceful assembly and of association require that the equal participation of all throughout the electoral process be ensured. States must refrain from measures that disadvantage particular individuals or communities. States should implement measures that enhance equal participation.**

The rights to freedom of peaceful assembly and association in the context of elections constitute a means through which individuals, associations and political parties can engage in the broader democratic process. In order for this engagement to be fully and meaningfully enjoyed, that process itself must be free, fair, and equitable. Among other things, this requires that all individuals have equal access to participate throughout the electoral process. This requires that all individuals', groups' and communities' rights to participate are respected throughout the process leading up to elections as well as in the context of voting itself, including for instance through an adequate and appropriate distribution of polling places, through extended voting periods, and through the use of alternative voting procedures, such as early voting, postal voting and mobile voting.

The COVID-19 crisis poses challenges in terms of access to resources; it is vital that additional funding be allocated to electoral processes, however, in order to address the challenges posed by the pandemic. States may seek to reduce polling locations in light of the COVID-19 pandemic; in contrast, additional polling places should be made available, in order to ensure accessibility and to allow voting to take place in a manner that respects social distancing. In no cases should a reduction or redistribution of polling places take place in a partisan way, or in a way that disadvantages certain individuals' ability to vote in relation to others. Alternative voting procedures provide a complement to traditional, in person forms of voting, allowing those who might not be able to turn up on polling day to cast their votes.<sup>18</sup> Such alternative measures may provide one means of enhancing safe participation in the context of COVID-19. Care must be taken to ensure any such measures are implemented in a manner that enhances equal suffrage, non-discrimination and political participation, and that the integrity of such procedures is ensured. In no cases may such measures be implemented by and for partisan purposes or in a partisan manner.

**b. Measures must be taken to ensure inclusive participation, including the participation of discriminated-against and marginalized communities in particular. Such communities should be involved in assessing, planning and implementing electoral processes.**

Even without the challenges posed by COVID-19, discriminated-against and marginalized communities have often faced limitations on their access to the ballot and on their ability to participate throughout democratic and electoral processes, whether through organizing rallies, creating and obtaining support for associations oriented towards policy reform, or having their voices and perspectives fully reflected in the broader media.<sup>19</sup> The COVID-19 pandemic has only exacerbated such underlying inequalities; at times, it has also been linked to enhanced targeting and scapegoating of such communities. In recognition of both these general and particular conditions, States must find ways to enhance the participation of such communities.<sup>20</sup> Relevant steps

include printing ballot papers in local languages, and ensuring adequate access to polling stations and postal voting in such communities,<sup>21</sup> as well as ensuring that such communities are able to fully enjoy their rights to freedom of peaceful assembly and of association, throughout the electoral processes as at other times.

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**c. Measures must be taken to ensure the full and equal participation of women throughout the electoral process.**

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International human rights law is clear on the equal entitlement to rights, and on the need for States to take measures to ensure an end to discrimination against women in public and political life, including in relation to women's ability to vote, to stand for office, and to engage freely and equitably in all other aspects of the political process.<sup>22</sup> Pre-existing barriers and inequalities are likely to be enhanced by the COVID-19 pandemic. As the Special Rapporteur has emphasized, it is important to ensure that COVID-19 budgets do not divert resources away from women-led programmes, including with regard to participation in electoral processes.<sup>23</sup> Linked to the particular challenges faced by women in the context of elections is the fact that women and girls, and women's networks and rights organizations, have not been equally represented in local, national and global COVID-19 policy spaces and decision-making. In past health emergencies, gaps in participation of women in such spaces have led to corresponding gaps in responses to their specific experiences, situations, challenges and requirements.<sup>24</sup> Ensuring the full and equitable participation of women in light of the COVID-19 pandemic requires recognizing and taking measures to counteract the various ways in which the pandemic has been gendered in its impact, including through attention to issues around voter registration, voter education, campaigning, and electoral operations.<sup>25</sup> More broadly, States must ensure the ability of women and women's rights organizations to participate throughout the electoral process.

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**d. Measures must be taken to ensure all those who face enhanced health risks, including on the basis of the COVID-19 pandemic, are able to participate throughout the electoral process.**

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Steps to ensure all individuals can participate in electoral processes include special measures to ensure that those with serious health conditions, or facing serious health risks, can participate. Such risks are magnified by the COVID-19 pandemic; as such, the need for appropriate measures to be taken in response is correspondingly more serious. Relevant measures include measures designed to support voting, including for instance the use of early voting, postal voting procedures, and mobile voting stations.<sup>26</sup> In the context of postal voting in particular, steps should be taken to ensure the postal service has the revenue it needs to ensure effective and expeditious handling of the mail in a manner that minimizes risks to public health while addressing the enhanced burdens imposed by greater reliance on postal voting procedures. In no cases should members of the government attack, defund or undermine the postal services in such a context. Measures should also be taken to enhance the ability of individuals who face health risks to participate and make their voices and perspectives known through other forms, including through the exercise of their rights to freedom of peaceful assembly and of association. In this context, the rights to freedom of peaceful assembly and of association online, discussed further below, are particularly important, insofar as exercising the rights online will be more accessible for those facing serious health risks.

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**e. Measures must be taken to ensure persons with disabilities are able to participate throughout the electoral process.**

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Persons with disabilities may face limitations on their ability to participate in political processes at all times, that may often be enhanced by the COVID-19 pandemic. Authorities should take measures to enable their full participation, including removing legal obstacles to the ability of such persons to vote provided for by law, allowing for assistance where requested, providing training for election officials, ensuring that electoral and voting materials are appropriate and accessible, including by providing information in braille and sign language, and ensuring public spaces are fully accessible.<sup>27</sup>

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**f. Measures must be taken to ensure displaced persons can participate throughout the electoral process.**

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Displacement constitutes an ongoing problem in some countries. In addition to displacement stemming from other sources, including more permanent forms of displacement linked to violent conflict and other forms of crisis, the COVID-19 pandemic has led to additional displacement, including due to “reduced access to health care and increased economic hardship brought on by” the virus.<sup>28</sup> State authorities should always take measures to ensure displaced populations can vote,<sup>29</sup> including by “remov[ing] unreasonable barriers to voter registration, including onerous or burdensome administrative requirements for accessing the necessary documentation to exercise the right to vote, particularly for women, minorities, indigenous peoples, those living in remote areas and internally displaced persons.”<sup>30</sup> In addition, authorities must implement measures to ensure such populations are able to fully exercise their rights to freedom of peaceful assembly and of association. In this context, it is important to note that refugee and migrant populations also enjoy access to the rights to freedom of peaceful assembly and of association.<sup>31</sup>

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**g. All actors involved in the electoral process should work to promote respect, tolerance and inclusion, and to combat hate speech.**

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Every individual has the right to equality and freedom from discrimination; states, meanwhile, have an obligation to prohibit “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”<sup>32</sup> Electoral campaigns are important moments in which a culture of respect, tolerance and inclusion can be promoted; in practice, they often unfortunately see various actors capitalizing on and exploiting divisions in society. It is important that all actors involved in electoral processes take the former rather than the latter path, with due awareness of the increased reach and significance of speech that takes place in the course of electoral campaigns, and while ensuring that appropriate protection is given to the right to freedom of expression.<sup>33</sup>

## **Principle 5** States must ensure that all individuals, associations and political parties are protected from violence, harassment and intimidation.

### **Guidelines:**

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#### **a. In order to ensure individuals' right to participate, individuals, associations and political parties must not be intimidated, harassed or attacked by the authorities, and the authorities must protect them from attacks by others.**

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All too often, oppositional figures and parties, or simply the citizenry at large, have come under attack due to their work contesting, observing, or sharing information pertaining to elections, or campaign for more representative, democratic, rights-respecting systems.<sup>34</sup> The COVID-19 pandemic provides both a pretext under which attacks may be advanced and a broader means through which attention may be diverted from attacks, and as such provides a fertile context in which attacks may take place. Such attacks constitute violations of the right to freedom of association, and must not take place.

Attacks and intimidation directed at certain groups and communities do not originate solely from the authorities; they also come from private parties. Such attacks are frequently targeted at or otherwise minimize the ability of individuals, associations and political parties to exercise their rights to freedom of peaceful assembly and of association. As such, states must take measures to protect individuals, associations and political parties, especially members of and those representing marginalized and discriminated-against communities, from such attacks. At the same time, in no circumstances may states rely on this obligation as a pretext on the basis of which to deploy security forces with the aim or effect of discouraging particular individuals and communities from participating in elections.

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#### **b. Individuals must not be intimidated from entering nor while at polling places, and the secrecy of the vote must be maintained, in the context of the COVID-19 pandemic as at other times.**

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While the presence of police forces at polling places may be reasonable, police, security or intelligence services may not be deployed to polling places with the purpose or effect of deterring votes or influencing on whose behalf they are cast. This is particularly important to bear in mind in the context of the COVID-19 pandemic, which some authorities may rely upon as a pretext in order to justify the presence of enhanced security force presence at polling stations. In this context, the secrecy of the ballot—a long-established principle, protected inter alia by the ICCPR<sup>35</sup>—further serves, inter alia, to protect individuals from intimidation based on their voting choices. In the context of the COVID-19 pandemic as generally, the secrecy of the ballot remains of great importance, and it is important to ensure that the secrecy of the ballot remains protected to the greatest extent possible. In addition to violating the right to vote, measures of interference with voting in such a context violate the right to freedom of association by frustrating the ability of citizens to join and support political parties freely with the aim of influencing particular electoral and policy outcomes.



## Principle 6

States must ensure that all electoral processes are free, genuine and transparent, in order to ensure that the rights to freedom of peaceful assembly and of association are fully enjoyed throughout the electoral process.

### Guidelines:

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#### **a. Electoral rules must be clear, unambiguous, readily available, and adopted sufficiently in advance of elections.**

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These are fundamental principles underlying free and genuine electoral processes. Compliance with this guideline is essential to ensuring a process in which the rules are known by all participants and observers.<sup>36</sup> The suggestion that rules be adopted sufficiently in advance of elections in particular must be borne in mind, and carefully balanced with the potential need for additional measures in light of the COVID-19 pandemic and concerns pertaining to electoral delays. Compliance with this guideline is important in order to ensure that the rights to freedom of peaceful assembly and of association are fully respected throughout the electoral process, in that the absence of a transparent electoral framework will sharply limit individuals', associations' and political parties' ability to meaningfully advance their political and policy preferences through the exercise of their rights to freedom of peaceful assembly and of association. In addition, limitations on the transparency of the process will limit the ability of concerned associations to observe the process and to engage in voter education efforts.

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#### **b. Voter registration should be easy, straightforward, and designed with the need to ensure all are able to vote in mind.**

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The COVID-19 pandemic may pose challenges relative to registration, given that individuals may be forced to change their residence in light of the virus, or may have their ability to obtain and submit the documents necessary in order to register to vote restricted. Authorities must bear this in mind when developing registration rules. Voter registers should be readily available; there should not be unreasonable restrictions on changes; decisions made on such issues should be expeditious, and subject to appeal; and preliminary registers should be released sufficiently in advance of election day for them to be checked for accuracy, and a simple, clear process for changes and corrections made available.<sup>37</sup> Compliance with such rules is necessary in order to ensure that individuals', associations' and political parties' rights to freedom of peaceful assembly and of association are fully respected throughout the electoral process, in that interference with registration will sharply limit the meaningful exercise of those rights, when their exercise is oriented towards impacting upon the political process.

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#### **c. Elections must be held at reasonable intervals. Delays are only reasonable where undertaken through clear and authorized legal channels, with legitimate objectives, and where necessary and proportionate in light of such objectives. Delays should only be implemented after broad popular consultation in which representatives of all parties are included, and both their rationales and scope must be clearly communicated to the public, in a sufficiently timely manner for voters to clearly understand the process. Where delays do occur, they must be for the shortest amount of time possible.**

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Where an election is conducted against the backdrop of a severe pandemic, individuals' ability to impact on the process may be severely infringed. Many states have already delayed elections in light of the COVID-19 pandemic.<sup>38</sup> The necessity of periodic elections is inherent in the idea of democracy, and guaranteed by the ICCPR.<sup>39</sup> Overly lengthy delays between elections diminish the accountability, legitimacy and representativeness of public officials. Delays to elections are hence justifiable only in exceptional circumstances, where they are implemented with the goal of accomplishing a legitimate aim, and where they constitute necessary and proportionate limitations in light of that aim. Preventing additional COVID-19 infections is one such legitimate aim, as is the need to ensure as equitable and accessible an election process as possible; as such, delaying elections for a limited time period, in accordance with the above considerations, is not only permissible but may be preferable in certain cases. Any decision made in this context must take fully into account the availability of alternative measures, including personal protective equipment and social distancing measures, as well as alternative voting mechanisms.<sup>40</sup>

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**d. In no circumstances should COVID-19-related aid and support be distributed in a partisan manner, neither in the context of elections nor at other times.**

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Given the importance of government aid in the context of the broader effects of the COVID-19 pandemic, some authorities may be tempted to distribute that aid in a partisan manner, for instance through politically-aligned groups, or predominantly to supportive portions of the population. Such practices must be avoided, both due to their inherently discriminatory nature and due to their distorting impacts on the democratic process.

## Principle 7

States must ensure that associations, political parties, and regional and international organizations are able to conduct independent election observation.

### Guidelines:

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**a. Associations, political parties, and regional and international organizations must be able to engage in election observation, including the observation of protests, rallies, the lead-up to the election, the electoral process itself, and its aftermath.**

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Many associations, political parties, and regional and international organizations work to observe elections. Such observation can cover the planning and lead up to elections, the conduct of elections, and the process of tabulating and declaring the results. Associations' ability to observe elections is protected by the right to freedom of association. In addition, effective and meaningful election observation contributes to the free and genuine nature of electoral processes and the meaningfulness of electoral results, preventing the various exercises of the rights to freedom of peaceful assembly and of association engaged in throughout the process from being rendered futile. In order to ensure election observation can be effectively engaged in, the law should provide clear and objective criteria pertaining to the obtaining of observer status, should make clear all elections, including local elections and referenda, may be observed, and should provide an expedited process of appeal when observer rights are denied. Observers must receive credentials in a timely manner, sufficiently in advance of elections. Observers should have access to all levels of election administration at all times, and should be able to inspect documents, attend meetings, and observe election activities at all levels, throughout the election processes.<sup>41</sup> International election observation should be enabled and conducted in compliance with the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers.<sup>42</sup>

The COVID-19 pandemic provides grounds for the imposition of some limitations on gatherings, with the aim of ensuring public health. Given the availability of protective equipment and the potential to utilize social distancing measures, however, COVID-19 provides no justification for imposing blanket restrictions on the ability of civil society and other to engage in important election observation functions. Both national and international civil society should be able to engage in election observation. The COVID-19 pandemic also poses several practical challenges to observation, including to the ability of international observers to travel in order to conduct election observations in particular. The practical challenges imposed by the pandemic, and by the adoption of reasonable rules limiting travel, must not be augmented by additional rules designed to prevent national and international election observation. Moreover, measures must be taken to facilitate observation, to the extent practically feasible, in light of the challenges that will be faced conducting observations during the pandemic.

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**b. Associations, political parties, and regional and international organizations must be able to meet freely with all parties, including civil society, opposition politicians and members of opposition political parties, as part of their election observation efforts.**

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In many states, the authorities attempt to prevent, hinder and limit access to civil society and oppositional political figures. Such individuals, however, often have access to the most comprehensive and detailed information relative to challenges and obstacles to the democratic process. As such, it is vital that election

observers be able to meet with such figures. Obstacles placed in the way of such interactions generally constitute serious warning signs relative to the willingness of the government to organize free and genuine elections, as well as violations of the rights to freedom of association and assembly.

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**c. The media must be able to report on all aspects of elections, including through attending and reporting on protests, rallies, the lead-up to the election, the electoral process itself, and its aftermath.**

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The media plays a key role in ensuring that the public is informed, and that rights violations are brought to light. Unfortunately, states have frequently taken measures designed to limit the media's ability to report in the context of elections, including through penalizing reporters.<sup>43</sup> A free and independent media's role is all the more crucial in the context of the COVID-19 pandemic, which may limit individuals' ability to attend gatherings and to access information. In this context, it is particularly important that the space for a free and independent media to operate be ensured.

## Principle 8

States must ensure the ability of all to enjoy their rights to freedom of peaceful assembly and association online, throughout the electoral process as at all other times.

### Guidelines:

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#### **a. Access to free and open internet and communications technology must be ensured to all.**

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The internet has become an essential part of modern societies and political life. The rights to freedom of peaceful assembly and of association apply online as they do offline; as such, open internet access must be ensured for all. This requires not only that illegitimate restrictions not be imposed, but also that states work to enhance access to internet and communications technologies, in order to ensure that such access is enjoyed by the entirety of the population.<sup>44</sup> Access to such media is particularly important in the context of elections, where the internet provides a key site for the acquisition of information, campaigning, and discussion. It is also particularly important in the context of COVID-19, when offline interactions are comparatively limited.<sup>45</sup>

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#### **b. Internet shutdowns and blanket restrictions on access are absolutely impermissible.**

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The internet plays a key role in terms of allowing individuals, associations and political parties to exercise their rights to freedom of peaceful assembly and of association, to engage in the political process and in mobilization, and thereby to participate and enhance participation elections. Unfortunately, numerous states have in the past shut down access to the internet and communications technology for impermissible, political reasons.<sup>46</sup> This is always unacceptable,<sup>47</sup> and violates international human rights law. This principle applies and is important in all contexts. It is particularly important in the context of COVID-19, when access to the internet is even more essential to all components of life, including political participation.

## Principle 9

States must ensure accountability whenever the rights to freedom of peaceful assembly and of association are violated, during electoral processes as at all other times.

### Guidelines:

**a. State authorities must comply with their legal obligations and must be held accountable for any failures to do so.**

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Rights are only effective in practice where there is accountability. Where authorities violate the rights to freedom of peaceful assembly and of association, during elections as at other times, they must be held accountable. The COVID-19 pandemic provides no grounds for derogating from this fundamental principle.

**b. Individuals, associations and political parties must have clear and effective avenues to bring legal action against the authorities when their rights to freedom of peaceful assembly and of association have been infringed. All those whose rights are violated in the context of assemblies must be provided comprehensive and effective remedies for the harm they have suffered, including through restitution, compensation, satisfaction and guarantees of non-repetition.**

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Ensuring maximal accountability for rights violations requires ensuring that individuals whose rights have been violated have access to legal redress. Inter alia, ensuring that the avenues in question are clear and effective requires providing support as and where necessary. In addition to ensuring the accountability of rights violators, those whose rights have been violated must be provided appropriate remedies. Guarantees of non-repetition, including in the form of changes to law and policy, are particularly important in this context, insofar as it is of fundamental importance that the rights to freedom of peaceful assembly and of association are respected throughout electoral processes, and deployment of appropriate legal frameworks is essential to ensuring full enjoyment of the rights.

# ENDNOTES

<sup>1</sup> Human Rights Council resolution 15/21, preamble.

<sup>2</sup> Human Rights Committee General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) (1996), 12.

<sup>3</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 16.

<sup>4</sup> In fact, the rights are particularly important in the context of democratic electoral processes, such that any potential restrictions imposed must be subject to an extra degree of scrutiny in that context. As the Special Rapporteur has put it, “given the importance of the rights to freedom of peaceful assembly and of association in the context of elections, the threshold for imposing such restrictions should be higher than usual: the criteria of ‘necessity in a democratic society’ and ‘proportionality’ should be more difficult to meet during election time.” Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 25.

<sup>5</sup> *See* “States responses to COVID 19 threat should not halt freedoms of assembly and association” – UN Expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule (2020).

<sup>6</sup> Similar rules may be taken to apply in the context of plebiscites and referendums. *See* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 11.

<sup>7</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 11.

<sup>8</sup> *See* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 30-41.

<sup>9</sup> *See* International Covenant on Civil and Political Rights, Art. 4(2). *See also* Human Rights Committee General Comment No. 37 on the right of peaceful assembly (Art. 21) (2000), 96; Human Rights Committee, Statement on derogations from the Convention in connection with the COVID-19 pandemic, UN Doc CCPR/C/128/2 (2020), 2(d-e).

<sup>10</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 26). *See also* Human Rights Committee General Comment No. 37 on the right of peaceful assembly (Art. 21) (2000), 96; Human Rights Committee, Statement on derogations from the Convention in connection with the COVID-19 pandemic, UN Doc CCPR/C/128/2 (2020), 2(c).

<sup>11</sup> For a similar point, *see* International Covenant on Civil and Political Rights, Art. 4(1); Hu-

man Rights Committee, Statement on derogations from the Convention in connection with the COVID-19 pandemic, UN Doc CCPR/C/128/2 (2020), 2(b, d).

<sup>12</sup> *See, e.g.*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 27.

<sup>13</sup> *See* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 24.

<sup>14</sup> Proportionate measures designed with legitimate outcomes in mind, however, such as measures aimed at ensuring a clear, transparent and orderly process or leveling the playing field, should not be understood as rendering the contestation of elections ‘unfree’. Reasonable measures might include, for example, reasonable limits on minimum numbers of supporters, deadlines set by the electoral calendar, spending limits and guarantees of equitable access to the media.

<sup>15</sup> *See* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 43.

<sup>16</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 10.

<sup>17</sup> For further insights into productive content of voter education initiatives in the context of COVID-19, *see* UNDP & DPPA, Electoral Operations During the COVID-19 Pandemic: A Practical Guide for UN Electoral Advisers (May 2020), Section 5.

<sup>18</sup> For more on alternative voting measures in the context of COVID-19, *See* OSCE ODIHR Guidelines for Reviewing a Legal Framework for Elections, 2nd ed. (2013), § 13.4-13.6; International IDEA, Elections and COVID-19, available at: <https://www.idea.int/sites/default/files/publications/elections-and-covid-19.pdf>; International IDEA, Managing Elections during the COVID-19 Pandemic, available at: <https://www.idea.int/sites/default/files/publications/managing-elections-during-covid-19-pandemic.pdf>; International IDEA, Elections need to be accessible for the ill during COVID-19 to avoid disenfranchisement, available at: <https://www.idea.int/news-media/news/elections-need-be-accessible-ill-during-covid-19-avoid-disenfranchisement>.

<sup>19</sup> On this point *see also* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 21.

<sup>20</sup> *See* UN Declaration on the Rights of National or Ethnic, Religious and Linguistic Minorities (1992); Human Rights Committee, General Comment No. 23: Article 27 (Rights of minorities) (Apr. 8, 1994); UN Declaration on the Rights of Indigenous Peoples (2007); OSCE ODIHR Guidelines for Reviewing a Legal Framework for Elections, 2nd ed. (2013), § 6.7.

<sup>21</sup> For a similar point, *see* Human Rights Committee General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) (1996), 12.



<sup>22</sup> For more, *see* CEDAW Committee, General Recommendation No. 23 on political and public life (1997); Report of the Working Group on the issue of discrimination against women in law and in practice, UN Doc A/HRC/23/50 (Apr. 19, 2013).

<sup>23</sup> *See* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/75/184 (2020), 87.

<sup>24</sup> *See* [https://www.ohchr.org/Documents/Issues/Women/COVID-19\\_and\\_Womens\\_Human\\_Rights.pdf](https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf).

<sup>25</sup> *See* IFES, How to Protect Gender Equality in Elections During COVID-19 (Apr. 28, 2020).

<sup>26</sup> For further guidance on remote voting in the context of COVID-19, *see* UNDP & DPPA, Electoral Operations During the COVID-19 Pandemic: A Practical Guide for UN Electoral Advisers (May 2020), Section 10.

<sup>27</sup> For more, *see* Human Rights Committee, *Antonina Ignatane v. Latvia*, Comm. No. 884/1999 (July 25, 2001); CRPD, *Zsolt Bujdosó and al. v. Hungary* (Oct. 16, 2013); CRPD Committee, General Comment No. 1 on equal recognition before the law (Apr. 11, 2014) 48; Report of the Special Rapporteur on the rights of persons with disabilities, UN Doc A/HRC/31/62 (Jan. 12, 2016) 19; Report of the Special Rapporteur on the rights of persons with disabilities, UN Doc A/HRC/37/56 (Dec. 12, 2017) 25; OHCHR, Guidelines for States on the effective implementation of the right to participate in public affairs (2018), Guidelines 38 & 39.

<sup>28</sup> *See* OSCE ODIHR Guidelines for Reviewing a Legal Framework for Elections, 2nd ed. (2013), § 13.2; Report of the Special Rapporteur on the human rights of internally displaced persons on enhancing the participation of IDPs, UN Doc A/72/202 (July 24, 2017) 17.

<sup>29</sup> <https://www.devex.com/news/update-internal-displacement-surges-in-first-half-of-2020-98197>.

<sup>30</sup> *See* OHCHR, Guidelines for States on the effective implementation of the right to participate in public affairs (2018), Guideline 36.

<sup>31</sup> On migrants' right to freedom of association in particular, *see* Report of the Special Rapporteur on the human rights of migrants, UN Doc A/HRC/44/42 (2020).

<sup>32</sup> ICCPR, Art. 20(2).

<sup>33</sup> For more on steps that may be taken to combat hate speech, and on the balance between freedom of expression and measures to combat hate speech, *see* Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, UN Doc A/HRC/22/17/Add.4 (Jan. 11, 2013); IFES, Countering Hate Speech in Elections: Strategies for Electoral Management Bodies (Jan. 8, 2018); United Nations Strategy and Plan of Action on Hate Speech (2020).

<sup>34</sup> *See*, e.g., Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 51-2, 54-5.

<sup>35</sup> *See* International Covenant on Civil and Political Rights, Art. 25(b).

<sup>36</sup> For further discussion on this point, *see* International IDEA, Electoral Justice System Assessment Guide (2019) p. 33, 35.

<sup>37</sup> For further guidance on voter registration in the context of COVID-19, *see* UNDP & DPPA, Electoral Operations During the COVID-19 Pandemic: A Practical Guide for UN Electoral Advisers (May 2020), Section 6.

<sup>38</sup> *See* IFES, Elections Postponed Due to COVID-19, available at: [https://www.ifes.org/sites/default/files/elections\\_postponed\\_due\\_to\\_covid-19.pdf](https://www.ifes.org/sites/default/files/elections_postponed_due_to_covid-19.pdf); IDEA, Global Overview of COVID-19 Impact on Elections, available at: <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>.

<sup>39</sup> *See* International Covenant on Civil and Political Rights, Art. 25(b).

<sup>40</sup> Overarchingly, decisions made in this context should take care, as the Kofi Annan Foundation has put it, to ensure that “Democracy ... not become the silent victim of the coronavirus pandemic.” Kofi Annan Foundation, Open Letter: Democracy must not become the silent victim of the coronavirus pandemic (2020).

<sup>41</sup> *See* OSCE ODIHR Guidelines for Reviewing a Legal Framework for Elections, 2nd ed. (2013), § 12; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 53.

<sup>42</sup> *See* Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers (Oct. 27, 2005).

<sup>43</sup> *See*, e.g., Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/68/299 (2013), 29.

<sup>44</sup> *See* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/41/41 (2019).

<sup>45</sup> *See* International IDEA, Adapting to the New Normal: Political Parties During Lockdown and Social Distancing (2020), available at: <https://www.idea.int/sites/default/files/publications/adapting-to-the-new-normal-political-parties-during-lockdown-and-social-distancing.pdf>.

<sup>46</sup> *See* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/41/41 (2019), 29, 51.

<sup>47</sup> *See* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/41/41 (2019), 52.

