



THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

NORMATIVE
FRAMEWORK ON
PARTICIPATION
IN THE CONDUCT
OF PUBLIC AND
POLITICAL
AFFAIRS

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In 2013 the institute established an international expert group on the right to participate. It is composed by members representing national human rights institutions, UN special rapporteurs and experts from international organisations. The mandate of the expert group is to be instrumental in developing international human rights standards protecting public participation and to enhance the national implementation.

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RECOGNITION

THE NORMATIVE FRAMEWORK IS GROUNDED IN RECOGNITION OF THE FOLLOWING:

- (a) All human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated¹ and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms;²
- (b) [The fact that] the will of the people shall be the basis for the authority of government;³
- (c) Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives;⁴
- (d) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;⁵
- (e) The role of National Human Rights Institutions performing specialized functions, in accordance with the Paris Principles, related to the promotion and protection of human rights and fundamental freedoms;
- (f) Everyone has the right to take part in the conduct of public affairs directly or through freely chosen representatives;⁶
- (g) Everyone should have the opportunity to be heard and to shape the decisions that affect their community⁷ at the international, national and local levels;
- (h) Everyone should have the opportunity to free, active and meaningful participation in both economic and political affairs;⁸
- (i) The human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms;⁹
- (j) The international community should devise ways and means to remove the current obstacles and meet the challenges to the full realization of human rights and to prevent the continuation of human rights violations resulting therefrom throughout the world;¹⁰

Nothing in this Normative Framework should be read or understood as creating new international law obligations, or as limiting or undermining any legal

obligations a State may have undertaken or be subject to under international law with regard to human rights.¹¹

Nothing in the present Normative Framework should be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations, or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants of Human Rights and other international instruments and commitments applicable in this field.¹²

This Normative Framework should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups and communities that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.¹³

CHAPTER 1

1 PRINCIPLES

1.1 Respect for dignity, autonomy and agency

Respect for the inherent dignity of persons must inform all participatory processes and strategies, and each person's expertise, experience and input must be valued. Participation must be premised on the recognition of each person as a valid speaking partner with a unique and valuable knowledge to contribute.¹⁴

1.2 NON-DISCRIMINATION AND EQUALITY (ALSO: AVAILABILITY, ACCESSIBILITY, ADAPTABILITY, ACCEPTABILITY)

All human beings must be able to enjoy and exercise their human rights on the basis of equality, free from discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁵

No distinctions are permitted among citizens in the enjoyment of the right to participate in the conduct of political and public affairs on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, or on the basis of disability.¹⁶

Everyone should have equal and effective opportunities for making their views known to other members of society, and to be part of decision-making processes.¹⁷ States are obliged to take all appropriate measures to ensure that every citizen has an effective right and opportunity to participate in political and public affairs on an equal basis.¹⁸ In order to achieve substantive equality, affirmative action is required to ensure that everyone has equal opportunities to participate.¹⁹

States should undertake an audit of barriers to participation and identify those communities and groups who face the most obstacles in enjoying their right to participation.²⁰

States should ensure that no one's right to participate in political and public affairs of his or her country is suspended or conditioned, except on

objective and reasonable grounds which are duly established by law and in conformity with international law.²¹

Participatory processes should actively seek to enable the most disadvantaged and excluded members of the community to participate as a matter of priority.

States should also ensure that conditions for participation do not unfairly exclude certain categories of people, for example those without identity documents or with mobility restrictions.²²

In addition to refraining from discriminatory actions, States parties should take concrete, deliberate and targeted measures to ensure that discrimination in the exercise of Covenant [ICESCR] rights is eliminated. Individuals and groups of individuals, who may be distinguished by one or more of the prohibited grounds, should be ensured the right to participate in decision-making processes over the selection of such measures. States parties should regularly assess whether the measures chosen are effective in practice.²³

The principles of non-discrimination and equality also require that participatory processes and mechanisms meet the standards of availability, accessibility, adaptability and acceptability.

Availability: channels of participation, access to information and accountability mechanisms must be made available in sufficient quantity, and must be of sufficient quality, to meet the needs of the community in question.

Accessibility: participatory mechanisms, processes and opportunities must be [legally], physically and economically accessible to all, without any discrimination and without disproportionate cost or risk.

Adaptability: mechanisms, processes and channels should be adaptable to the local context, taking into account the specific needs of communities and individuals in different social and cultural settings, and also adaptable to the changing local, national and international contexts and standards.

Acceptability: processes and channels of participation, information and accountability mechanisms must be designed and implemented in a form that respects the cultural values, norms and practices of the groups that request and use them.²⁴

1.3 TRANSPARENCY AND ACCESS TO INFORMATION

In order to exercise the right to participation to its full extent, access should be provided to complete, up-to-date, appropriately designed and comprehensible information well in advance [of any participatory

process], in order to enable individuals [and communities] to make informed choices at all stages of the participatory process. Information should not only be made available, but should also conform to the principles of accessibility, acceptability and adaptability. In this spirit, information should be free of charge, relevant, up-to-date, understandable, free of technical language or jargon, and provided in local languages.²⁵

1.4 ACCOUNTABILITY (REDRESS AND REMEDY)

States should ensure that participatory mechanisms have built-in complaint and grievance procedures, which establish clear lines of responsibility at the national, regional and local levels. Mechanisms must be confidential, accessible even in remote rural areas and provide diverse and cost-free means of access in all relevant languages.²⁶

Adequate and effective complaint mechanisms should be put in place in advance of the start of the participatory process. Responsibilities and the relevant chain of accountability for the decision-making and the process itself should be made clear from the outset, and participants should be made aware of their rights and responsibilities. The participatory process should be periodically evaluated by the participants, and monitored by appropriate, independent advisers.

Effective access to grievance mechanisms should be provided in order to hold decision-makers accountable. Additionally, there should be accessible accountability mechanisms in place to protest policies or programmes implemented with a lack of participation. Such accountability mechanisms must be accessible and adaptable. Complaint and grievance mechanisms should be adequately resourced, culturally appropriate and designed to facilitate the broadest participation possible by vulnerable and disadvantaged groups.

The right to participation must be enforceable and the lack of participation must be challengeable through the courts.²⁷

States should institute effective systems of monitoring and evaluation of participatory processes.

1.5 EMPOWERMENT

Participation must be premised on empowerment as the ultimate goal. Participatory processes should [not merely be extractive or instrumental, but] aim at building the capacity, social capital, confidence, rights awareness and knowledge of the people concerned.²⁸ Participation should occur early enough in a process to set priorities and influence

deliberation, drafting and outcome. Participation should not be limited to marginal or peripheral issues, but meaningful decisions must be on the table for consideration and discussion, including budgets and resource allocation. Evaluation and follow-up processed should also be collaborative.

In order to enhance the capacity of marginalized and disadvantaged communities to participate in public life, States should improve the accessibility and quality of education services provided to the poorest and most marginalized sectors of society; ensure that education programmes transmit the necessary knowledge, including human rights education, to enable everyone to participate fully and on an equal footing at the local and national levels.²⁹

Participation goes beyond mere consultation; it also implies active involvement and empowerment of defenders and building their capacity to interact effectively with other stakeholders.³⁰ On the other hand, lack of information and transparency and opaque decision-making can also lead to the disempowerment and vulnerability of defenders and affected communities, and seriously undermine the credibility and legitimacy of both State and non-State actors involved in the projects.³¹

Empowerment requires simultaneous efforts to promote a range of other human rights. For example, if people are to participate meaningfully in the conduct of public affairs, they must be free to organize without restriction (right of association), to meet without impediment (right of assembly), to say what they want to without intimidation (freedom of expression) and to know the relevant facts (right to information).

Furthermore, they must be allowed to receive support from civil society organizations (including the media) that might be able to champion their cause. For this to be possible, the State must create the necessary legal and institutional framework in which an independent civil society can flourish.³²

CHAPTER 2

2 CLASSIC PARTICIPATION RIGHTS

UDHR Art 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.

ICCPR Art 25

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.

UN Declaration on Human Rights Defenders Art 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, inter alia, the right, individually or in association with others, to submit to government bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human

rights and fundamental freedoms.

States should not make any distinction 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.³³ Genuine periodic elections are essential to ensure the accountability of representatives for the exercise of the legislative and executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of the government continues to be based on the free expression of the will of electors.³⁴ Elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. The results of genuine elections should be respected and implemented.³⁵ States should establish an independent electoral authority to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with the established laws.³⁶ An electoral process, in which widespread barriers are systematically placed on the exercise of the rights to freedom of peaceful assembly and of association, cannot be said to be either free or fair and, as such, the outcome should not be considered to be the result of “genuine” elections, as required under international law.³⁷ States must take effective measures to ensure that all persons entitled to vote are able to exercise that right, including by taking positive measures to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movements which prevent persons entitled to vote from exercising their rights effectively.³⁸ With regard to public service positions, States should provide access to citizens on the basis of equality, including that 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.³⁹ Citizens have the right to participate in the conduct of public affairs, particularly by general consultations through referenda on issues, not merely by voting for individuals whose loyalties are not always with their electorates.⁴⁰

CHAPTER 3

3 RELATED RIGHTS (THE OBLIGATION OF STATES TO CREATE AN ENABLING ENVIRONMENT)

The International Covenant on Civil and Political Rights 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.⁴¹

The exercise of public freedoms is essential in any democratic society but even more so when it comes to claiming and defending rights. This is why the importance of defenders being able to exercise their rights to freedom of opinion and expression, freedom of association and peaceful assembly without undue restrictions in law or practice has been repeatedly underlined.⁴²

FREEDOM OF OPINION AND EXPRESSION

UDHR Art 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 regardless of frontiers.

ICCPR Art 19

1. Everyone shall 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:
 - (I) 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.

UN Declaration on Human Rights Defenders⁴³ Art 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Art 9 (3) (b) [...] Everyone has the right, individually and in association with others, to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments.

This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in Art 19 (3) and Art 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse.⁴⁴

The reference to the right to 'seek' and 'receive' 'information' as contained in article 19, paragraph 2, of the Covenant, includes the right of individuals to receive State-held information, with the exceptions permitted by the restrictions established in the Covenant. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.⁴⁵

A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights and constitutes one of the cornerstones of a democratic society.⁴⁶

Media actors have the right to have access to information on public affairs⁴⁷ and the right of the general public to receive media output.⁴⁸

Among the functions of the press and media are the creation of forums for public debate and the forming of public or, for that matter, individual opinions on matters of legitimate public concern, such as the use of the death penalty.⁴⁹

The right of access to information includes the right of the media to have access to information on public affairs⁵⁰ and the right of the general public to receive media output.⁵¹ The realization of these functions is not limited to the media or professional journalists, they can also be exercised by public associations or private individuals.⁵²

3.1 RIGHT TO PEACEFUL ASSEMBLY

UDHR Art 20.1

Everyone has the right to freedom of peaceful assembly and association.

ICCPR Art 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 interest 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.

UN Declaration on Human Rights Defenders Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully.

The rights to freedom of peaceful assembly and of association are essential components of democracy, providing individuals with invaluable opportunities to, inter alia, express their political opinions [...] and elect leaders to represent their interests and hold them accountable.⁵³ States should respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.⁵⁴

3.2 FREEDOM OF ASSOCIATION

UDHR Art 20.1

Everyone has the right to freedom of peaceful assembly and association.

ICCPR Art 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.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by 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. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

UN Declaration on Human Rights Defenders Art 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:
(b) To form, join and participate in non-governmental organizations, associations or groups.

The rights to freedom of peaceful assembly and of association are a critical means for individuals and groups of individuals to participate in public affairs. The exercise of such rights provides avenues through which people can aggregate and voice their concerns and interests and endeavour to fashion governance that responds to their issues. For example, such rights are essential in order to campaign and participate in public rallies, form political parties, participate in voter education activities, cast votes, observe and monitor elections and hold candidates and elected officials accountable.⁵⁵

Children should be supported and encouraged to form their own child-led organizations and initiatives, which will create space for meaningful participation and representation. In addition, children can contribute their perspectives, for example, on the design of schools, playgrounds, parks, leisure and cultural facilities, public libraries, health facilities and local transport systems in order to ensure more appropriate services. In community development plans that call for public consultation, children's views should be explicitly included.⁵⁶

3.3 RULE OF LAW, GOOD GOVERNANCE

Equal political participation is critically important for democracy, the rule of law, social inclusion and economic development, and advancing gender equality, as well as for the realization of all human rights and fundamental freedoms.⁵⁷

States should adopt a legal framework that includes the explicit right of individuals and groups to participate in the design, implementation and evaluation of any policy, programme or strategy that affects their rights, at the local, national and international levels.⁵⁸

States should take all necessary measures to eliminate laws, regulations and practices that, directly or indirectly, discriminate against citizens in their right to political participation on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, or on the basis of disability.⁵⁹

States should take proactive measures to eliminate all barriers in law and in practice that prevent or hinder citizens, in particular women, persons belonging to marginalized groups or minorities, and persons in vulnerable situations, from fully and effectively participating in political and public affairs.⁶⁰

3.4 RIGHT TO A FAIR TRIAL



UDHR Art 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ICCPR Art 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. [...]


UN Declaration on Human Rights Defenders Art 9⁶¹

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;


The right to a fair trial implies access to a predetermined, independent and impartial court, the decisions of which are based on law, following proceedings that observe procedural guarantees.⁶²

The right to a fair trial is of particularly complex nature, combining various guarantees with different scopes of application: (a) equality before the courts; (b) right to a fair and public hearing by a competent, independent and impartial

tribunal established by law; (c) procedural guarantees; (d) right to compensation in cases of miscarriage of justice in criminal cases; and (e) right not to be tried or punished again for an offence that has already been tried (ne bis in idem).⁶³

A hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons. It should be noted that, even in cases in which the public is excluded from the trial, the judgment must, with certain strictly defined exceptions, be made public.⁶⁴

3.5 ACCESS TO JUSTICE

Article 14 [of ICCPR] also encompasses the right of access to the courts in cases of determination of criminal charges and rights and obligations in a suit at law. Access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice. This guarantee also prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. The guarantee is violated if certain persons [...] are barred from bringing suit against any other persons such as by reason of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁶⁵

In addition to free legal aid for criminal proceedings, the Basic Principles on the Role of Lawyers require Governments to ensure the provision of sufficient funding and other resources (for example legal services) to the poor and other disadvantaged persons.⁶⁶

The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way. While article 14 explicitly addresses the guarantee of legal assistance in criminal proceedings in paragraph 3 (d), States are encouraged to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it.⁶⁷

States should ensure the full and effective participation of all citizens in political and public affairs on an equal basis, including by providing full and effective access to justice and redress mechanisms to those citizens whose right to participate in political and public affairs has been violated.⁶⁸

3.6 RIGHT TO EDUCATION

ICESCR Art 13.1

Education shall enable all persons to participate effectively in a free society.

UN Declaration on Human Rights Defenders Art 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Educational programmes should transmit the necessary knowledge to enable full participation, on an equal footing, in local and national communities.⁶⁹ States should improve the accessibility and quality of education services provided to the poorest and most disadvantaged sectors of the population.⁷⁰

The process of drafting an inclusive education law can be enriching, especially when it is participatory. It is advisable to create partnerships between all relevant actors to formulate the design, and facilitate the implementation of, an inclusive education system. To ensure the participation of those who have little information on the human rights approach to education, capacity-building should be undertaken.⁷¹

CHAPTER 4

4 DELIBERATIVE PARTICIPATION

4.1 RIGHT TO PARTICIPATION

Participation in political and public life is not only an objective in itself, but also a prerequisite for the effective enjoyment of other rights. Political participation derives from the freedom to speak out, assemble and associate; the ability to take part in the conduct of public affairs; and the opportunity to register as a candidate, to campaign, to be elected and to hold office at all levels of government.⁷²

The right to participation in the conduct of public affairs covers all aspects of public administration, including the formulation and implementation of policy at international, national, regional and local levels.⁷³

Participation goes beyond mere consultation. It requires investment from the State through providing information, building community capacity and creating public mobilization and awareness.⁷⁴

International human rights standards require the free, active and meaningful participation of people in decisions that affect their lives. This includes granting people equal access to relevant information and including those who are most affected in the decision-making processes. For indigenous peoples, in decision making affecting their traditional lands, the standard is “free, prior and informed consent.” Participation by relevant stakeholders helps in developing more effective and sustainable programmes, reduces exclusion and enhances accountability. States are obliged to provide transparent processes and adequate information in accessible formats to enable people to participate fully in the refocusing of public policies, underwritten by legally binding and effective guarantees for a free press, freedom of expression and association, and the right to participate in public affairs.⁷⁵

4.2 RIGHT TO CONSULTATION

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.⁷⁶

It remains to be determined what is the scope of the right of every citizen, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives. It cannot be the meaning of article 25(a) of the Covenant that every citizen may determine either to take part directly in the conduct of public affairs or to leave it to freely chosen representatives. It is for the legal and constitutional system of the State party to provide for the modalities of such participation,⁷⁷ based on genuine consensus through meaningful consultations.

4.3 RIGHT TO ACCESS TO INFORMATION



UDHR Art 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.

ICCPR Art 19 (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.



States should enact a comprehensive right to information law, ensuring that the department designated to deal with requests is properly resourced.⁷⁸

To give effect to the right to access to information, States should proactively put in the public domain Government information of public interest. States should make every effort to ensure easy, prompt, effective and practical access to such information.⁷⁹

States should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.⁸⁰ The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant on Civil and Political Rights. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.⁸¹

States should publish and disseminate regular information related to budgets (at local and national levels) and the quality of public services, including disaggregated data, in a non-technical and simplified form.⁸²

States should communicate information through accessible channels and in appropriate forms, taking into account the technical understanding, literacy levels and languages of the individuals and communities concerned.⁸³

4.4 THE RIGHT TO THE TRUTH

Historically the right to the truth was initially linked to the missing and disappeared and the content was focused on knowing the fate and whereabouts of disappeared persons. However, as international law on the right to the truth has evolved to apply in all situations of serious violations of human rights, the material scope of the right to the truth has also expanded to include other elements. These include the entitlement to seek and obtain information on: the causes leading to the person's victimization; the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law; the progress and results of the investigation; the circumstances and reasons for the perpetration of crimes under international law and gross human rights violations; the circumstances in which violations took place; in the event of death, missing or enforced disappearance, the fate and whereabouts of the victims; and the identity of perpetrators.⁸⁴

CHAPTER 5

5 GROUPS REQUIRING SPECIAL PROTECTION

Wide and informed public participation in the development and implementation of social policies is an essential feature of policies grounded in human rights standards. Participation of the intended beneficiaries is not simply desirable in terms of ownership and sustainability, but is also part of their right to take part in public life which is a core component of human rights instruments. Owing to the asymmetry of power between the beneficiaries and the authorities that administer the programme, beneficiaries are often unable to realize their rights. Promoting meaningful public participation must thus be an essential feature of the design, implementation and evaluation of such policies and programmes.⁸⁵

5.1 WOMEN

CEDAW

ART 7

States Parties should 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.

ART 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.

ART 13

States shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

c. The right to participate in recreational activities, sports and all aspects of cultural life.

ART 14.2

States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(f) To participate in all community activities.

The active participation of women, on equal terms with men, at all levels of decision-making, is essential to the achievement of equality, sustainable development, peace and democracy.⁸⁶

The obligation specified in article 7 of CEDAW extends to all areas of public and political life and is not limited to those areas specified in subparagraphs (a), (b) and (c). The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.⁸⁷

States should formally remove barriers and introduce temporary special measures to encourage the equal participation of both men and women in the public life of their societies, as there are essential prerequisites to true equality in political life. States have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens.⁸⁸

The enjoyment of the right to vote by women should not be subject to restrictions or conditions that do not apply to men or that have a disproportionate impact on women.⁸⁹

States have a responsibility, where it is within their control, both to appoint women to senior decision-making roles and, as a matter of course, to consult and incorporate the advice of groups which are broadly representative of women's views and interests.⁹⁰

States have a further obligation to ensure that barriers to women's full participation in the formulation of government policy are identified and overcome. These barriers include complacency when token women are appointed, and traditional and customary attitudes that discourage women's participation. When women are not broadly represented in the senior levels of government or are inadequately or not consulted at all, government policy will not be comprehensive and effective.⁹¹

States should also endeavour to ensure that women are appointed to government advisory bodies on an equal basis with men and that these bodies take into account, as appropriate, the views of representative women's groups.⁹²

The full and effective participation of minority women must be seen as an essential component of government and civil society efforts to address their issues.⁹³

Women have an important role in the prevention and resolution of conflicts and in peace-building, therefore States should recognize the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.⁹⁴

States should ensure the increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.⁹⁵

Women need to receive early support and training in order to facilitate their active participation in the negotiation of peace agreements.⁹⁶

5.2 PERSONS WITH DISABILITIES

CRPD

ART 3 – GENERAL PRINCIPLES

The principles of the present Convention shall be:

c. Full and effective participation and inclusion in society;

Art 4 – General obligations

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

ART 7 – CHILDREN WITH DISABILITIES

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

ART 21 – FREEDOM OF EXPRESSION AND OPINION, AND ACCESS TO INFORMATION

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention [...].

ART 29 – PARTICIPATION IN POLITICAL AND PUBLIC LIFE

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

a. Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

- i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- b. Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
- i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
 - ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.
- 33.3 Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.



Under article 29 of the CRPD, persons with disabilities have not only the right, but also the “opportunity” to vote and be elected. This sets up a duty on States parties to guarantee, through the adoption of positive measures, that all eligible persons have the actual opportunity to exercise their voting rights.

Consequently, it is not enough to extend formal voting rights to persons with disabilities; States are also required to ensure that persons with disabilities are truly able to make use of their right to vote, for example by making polling stations accessible to wheelchair users, facilitating the use of assistive voting devices to enable persons with visual impairments to vote independently, or allowing persons with disabilities to be assisted in voting by a person of their choice.⁹⁷

States are required to closely consult with and actively involve persons with disabilities and their representative organizations in the development and implementation of legislation and policies, and in other decision-making

processes concerning issues related to them. This applies also to work and employment. States should also consult with persons with disabilities and their representative organizations in the development of national policies on vocational rehabilitation and employment.⁹⁸ While such consultations often take place on an ad hoc basis, good practices also point toward institutionalized participation.⁹⁹

5.3 CHILDREN



CRC

ART 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

ART 13

1. The child 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 the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and necessary:

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

ART 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights 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.

CRC (CONTINUED)

ART 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

CRPD

ART 7 – CHILDREN WITH DISABILITIES

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.



States parties to the CRC are encouraged to consult with children in the development and implementation of legislative, policy, educational and other measures to address all forms of violence. Particular attention needs to be paid to ensuring that marginalized and disadvantaged children, such as exploited children, street children or refugee children, are not excluded from consultative processes designed to elicit views on relevant legislation and policy processes.¹⁰⁰ To be functional and effective, national strategies on children should integrate children's views and experiences, through effective child participation and inclusion.¹⁰¹

States should actively engage with children and respect their views in all aspects of prevention, response and monitoring of violence against them, taking into account article 12 of the Convention on the Rights of the Child.¹⁰²

The voices of children have increasingly become a powerful force in the prevention of child rights violations. Good practice examples are available, inter alia, in the fields of violence prevention in schools, combating child exploitation through hazardous and extensive labour, providing health services and education to street children, and in the juvenile justice system. Children should be consulted in the formulation of legislation and policy related to these and other

problem areas and involved in the drafting, development and implementation of related plans and programmes.¹⁰³

Children affected by emergencies should be encouraged and enabled to participate in analysing their situation and future prospects. States are encouraged to support mechanisms which enable children, in particular adolescents, to play an active role in both post-emergency reconstruction and post-conflict resolution processes. Their views should be elicited in the assessment, design, implementation, monitoring and evaluation of programmes. For example, children in refugee camps can be encouraged to contribute to their own safety and well-being through the establishment of children's forums. Support needs to be given to enable children to establish such forums, while ensuring that their operation is consistent with children's best interests and their right to protection from harmful experiences.¹⁰⁴

Much of the opportunity for children's participation takes place at the community level. There are a growing number of local youth parliaments, municipal children's councils and ad hoc consultations where children can voice their views in decision-making processes. However, these structures for formal representative participation in local government should be just one of many approaches to the implementation of article 12 of the CRC at the local level, as they only allow for a relatively small number of children to engage in their local communities. Consulting hours of politicians and officials, open house and visits in schools and kindergartens create additional opportunities for communication.¹⁰⁵

5.4 OLDER PERSONS



UNITED NATIONS PRINCIPLES FOR OLDER PERSONS PARTICIPATION¹⁰⁶

ART 7.

Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.

ART 8.

Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.

ART 9.

Older persons should be able to form movements or associations of older persons.

Participation processes incorporated into social programmes should take due consideration of the factors that limit older persons' possibilities to take part in public life and influence decisions affecting them, such as physical impairments and sensory losses, local power structures and family relations. States should not rely on family members or community leaders as the only communication channel with older persons as this limits their ability to voice personal views and can reinforce their dependency on others. When defining collective priorities in social protection schemes, specific attention should be given to the concerns of older persons.¹⁰⁷ States should conduct their age-related policies through inclusive and participatory consultations with relevant stakeholders and social development partners in the interest of developing effective policies creating national policy ownership and consensus-building.¹⁰⁸

5.5 MIGRANT WORKERS

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

ART 41

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

ARTICLE 42

1. States Parties shall consider the establishment of procedures or

institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.



A human rights-based approach to migration brings the treatment of migrants as human beings to the forefront of all discussion and programming on migration, underlined by the fundamental principles of non-discrimination, empowerment, participation and inclusion, and accountability.¹⁰⁹

5.6 REFUGEES

Enhanced and meaningful participation of refugees in policies and decisions affecting them is implemented through the UNHCR Accountability Framework for Age, Gender and Diversity Mainstreaming. This process actively engages refugees in planning, implementation, monitoring and data collection on the gender and age dimensions of displacement and the related protection risks. The UNHCR also made five commitments to refugee women, principal among which is to ensure 50 per cent representation of women in refugee management committees. Field operations have reported difficulties in achieving quality participation owing to persistent gender discrimination.

5.7 HOMELESS PERSONS

Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, a national housing strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.¹¹⁰

5.8 PERSONS BELONGING TO MINORITIES

UN DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

ART 2.2

Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

ART 2.3

Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

ART 2.4

Persons belonging to minorities have the right to establish and maintain their own associations.

ART 2.5

Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

The right to effective participation for minorities can be divided into three key aspects: the right to participate in public life and decision-making, especially on issues that affect them; the right to participate in the life of their own

community; and the right to participate in the benefits of economic progress and development.¹¹¹

Any mechanism for participation should be genuine and inclusive.

At a minimum, minorities should have the right to vote and to stand for office without discrimination. Consideration may be given to the shape of electoral systems. Factors such as proportional representation, candidate selection and the boundaries of electoral districts can impact upon minority participation. Designated seats for minorities in the legislature may be created. Minorities have the right to form their own political parties as well.¹¹²

Full and effective participation in national and regional political structures, as well as representation within key government ministries and institutions, is essential to future efforts to protect and promote the rights of minorities.¹¹³

Although restrictions are often applied to political participation for non-citizens, efforts could be made to accommodate participation of immigrant minorities. This may include conferring voting rights in local elections or the creation of local consultative bodies for non-citizens. National consultative bodies for minorities are also common.¹¹⁴

States should develop and encourage appropriate modalities of communication and dialogue between Roma communities and central and local authorities.¹¹⁵

States should take the necessary steps, including special measures, to secure equal opportunities for the participation of Roma minorities or groups in all central and local governmental bodies.¹¹⁶

States should develop modalities and structures of consultation with Roma political parties, associations and representatives, both at central and local levels, when considering issues and adopting decisions on matters of concern to Roma communities.¹¹⁷

States should involve Roma communities and associations and their representatives at the earliest stages in the development and implementation of policies and programmes affecting them and to ensure sufficient transparency about such policies and programmes.¹¹⁸

States should promote more awareness among members of Roma communities of the need for their more active participation in public and social life and in promoting their own interests, for instance the education of their children and their participation in professional training.¹¹⁹

States should organize training programmes for Roma public officials and representatives, as well as for prospective candidates to such responsibilities, aimed at improving their political, policy making and public administration skills.¹²⁰

5.9 HUMAN RIGHTS DEFENDERS (CIVIL SOCIETY)

States should recognize the crucial importance of the active involvement of civil society, at all levels, in processes of governance and in promoting good governance, including through transparency and accountability, at all levels, which is indispensable for building peaceful, prosperous and democratic societies.¹²¹

Domestic legal and administrative provisions and their application should facilitate, promote and protect an independent, diverse and pluralistic civil society and, in this regard, strongly rejecting any acts of intimidation or reprisals against civil society.¹²²

States have an obligation to respect and fully protect the civil, political, economic, social and cultural rights of all individuals, inter alia the rights to freedom of expression and opinion and to assemble peacefully and associate freely, online as well as offline, including for persons espousing minority or dissenting views or beliefs, and that respect for all such rights, in relation to civil society, contributes to addressing and resolving challenges and issues that are important to society.¹²³

States have the primary responsibility to ensure that defenders work in a safe and enabling environment. Such an environment should include a conducive legal, institutional and administrative framework; access to justice and an end to impunity for violations against defenders; a strong and independent national human rights institution; policies and programmes with specific attention to women defenders; effective protection policies and mechanisms paying attention to groups at risk; non-State actors that respect and support the work of defenders; safe and open access to international human rights bodies; and a strong, dynamic and diverse community of defenders.¹²⁴

States should recognize the rights of civil society organizations to participate in the design, implementation and evaluation of public policy.¹²⁵

It is during the policymaking phase that human rights standards are operationalized and State obligations materialize for local communities. For this to happen, those affected must effectively take part in the policymaking process. Human rights defenders are among the best placed to make the connections between human rights and development programming, as they are often at the heart of social dialogue and interactions between citizens and the Government at the local and community levels. It is therefore vital that Governments and other relevant actors facilitate the participation of human rights defenders in the development of policies or projects, as well as in their implementation and evaluation.¹²⁶

States should protect organizations that promote participation from retaliation or interference by State agents or non-State actors.¹²⁷

5.10 INDIGENOUS PEOPLES



INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (ILO NO. 169)

ART 6

1. In applying the provisions of this Convention, Governments shall:

(a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

ART 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.





DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (2007)

ARTICLE 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

ARTICLE 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

ARTICLE 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

ART 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization of, inter alia, of financial cooperation and technical assistance. Ways and

means of ensuring participation of indigenous peoples on issues affecting them shall be established



States parties should ensure that indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.¹²⁸

With regard to the exercise of the cultural rights protected under article 27 [of the ICCPR], it is important to note that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.¹²⁹

The admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a minority or indigenous community depends on whether members of the community in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy. Participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community.¹³⁰

5.11 LGBTI



DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS¹³¹

ART 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

THE YOGYAKARTA PRINCIPLES (PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY)¹³²



PRINCIPLE 25

Every citizen has the right to take part in the conduct of public affairs, including the right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment in public functions, including serving in the police and military, without discrimination on the basis of sexual orientation or gender identity.

States shall:

A. Review, amend and enact legislation to ensure the full enjoyment of the right to participate in public and political life and affairs, embracing all levels of government service and employment in public functions, including serving in the police and military, without discrimination on the basis of, and with full respect for, each person's sexual orientation and gender identity;

- B. Take all appropriate measures to eliminate stereotypes and prejudices regarding sexual orientation and gender identity that prevent or restrict participation in public life;
- C. Ensure the right of each person to participate in the formulation of policies affecting their welfare, without discrimination on the basis of, and with full respect for, their sexual orientation and gender identity.



States should ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity.¹³³

States should recognize a defender's right to promote and protect new human rights ideas (or ideas that are perceived as new) and to advocate their acceptance. States should publicly recognize the legitimacy of defender's activities as a first step to preventing or reducing violations against them.¹³⁴

States should take extra measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence because they are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society.¹³⁵

CHAPTER 6

6 OBLIGATIONS RELATING TO NON-STATE ACTORS IN THE AREA OF PARTICIPATION IN PUBLIC AFFAIRS

BUSINESS ENTERPRISES

UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

ART 18

In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation

To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.

Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include online updates and integrated financial and non-financial reports.

CHAPTER 7

7 CONSULTATION ON SPECIAL INTERESTS

7.1 RIGHT TO ADEQUATE HOUSING

The direct participation of affected communities in all stages of housing and urban planning decision-making is crucial for them to be successful.¹³⁶ States must not only provide full access to, and information on, housing and infrastructure planning, they must also build capacity in communities through public awareness and mobilization.¹³⁷

The full realization of the right to adequate housing requires that the State adopts a national housing strategy which should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.¹³⁸

Tenure takes a variety of forms [including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property]. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.¹³⁹

States shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.¹⁴⁰

Prior to carrying out any evictions, all feasible alternatives should be explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force; [legal remedies or procedures should be provided to those who are affected by eviction orders; and all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.]¹⁴¹

Appropriate procedural protection and due process which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (c) information on the proposed evictions, and, where

applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected.¹⁴²

Disaster prevention and post-disaster reconstruction processes must be designed within a human rights-based approach. These processes must be carried out with consultation and participation of concerned communities, be gender-sensitive, draw upon local knowledge and be culturally appropriate. Special attention must be given to vulnerable groups and those who may face discrimination and exclusion.¹⁴³

There is also need for increased transparency in the development of policies and openness in the assessment of priorities and results, with a space for public monitoring and full participation of affected populations.¹⁴⁴

7.2 RIGHT TO DEVELOPMENT



UN DECLARATION ON THE RIGHT TO DEVELOPMENT

ART 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

ART 2

3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.



Broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development. Sustainable development requires the meaningful involvement and active participation of regional, national and subnational legislatures and judiciaries, and all major groups: women, children and youth, indigenous peoples, non-governmental organizations, local authorities, workers and trade

unions, business and industry, the scientific and technological community, and farmers, as well as other stakeholders, including local communities, volunteer groups and foundations, migrants and families, as well as older persons and persons with disabilities. In this regard, States should work more closely with the major groups and other stakeholders, and encourage their active participation, as appropriate, in processes that contribute to decision-making, planning and implementation of policies and programmes for sustainable development at all levels.¹⁴⁵

Women have a vital role to play in achieving sustainable development. States should recognize the leadership role of women, and resolve to promote gender equality and women's empowerment and to ensure their full and effective participation in sustainable development policies, programmes and decision-making at all levels.¹⁴⁶

7.3 EDUCATION



ICESCR ART 13.1

[...] Education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society.



In all educational environments, including educational programmes in the early years, the active role of children in a participatory learning environment should be promoted.¹⁴⁷ Teaching and learning must take into account life conditions and prospects of the children. For this reason, education authorities have to include children's and their parents' views in the planning of curricula and school programmes.¹⁴⁸

Steady participation of children in decision-making processes should be achieved through, inter alia, class councils, student councils and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and codes of behaviour.

These rights need to be enshrined in legislation, rather than relying on the goodwill of authorities, schools and head teachers to implement them.¹⁴⁹

Beyond the school, States parties should consult children at the local and national levels on all aspects of education policy, including, inter alia, the strengthening of the child-friendly character of the educational system, informal

and non-formal facilities of learning, which give children a “second chance”, school curricula, teaching methods, school structures, standards, budgeting and child-protection systems.¹⁵⁰

Students, teachers and communities all have both rights and responsibilities in the implementation of education policies. As such, all stakeholders should contribute effectively to the implementation of the education reform agenda, which is poised on national consensus. Similarly, the evaluation of the achievements and the formulation of new strategies must draw upon the meaningful participation of the various actors of the education and school community.¹⁵¹

7.4 ENVIRONMENT

AARHUS CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

ART 6 – PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

- (a) The proposed activity and the application on which a decision will be taken;
- (b) The nature of possible decisions or the draft decision;
- (c) The public authority responsible for making the decision;
- (d) The envisaged procedure, including, as and when this information can be provided:
 - (i) The commencement of the procedure;
 - (ii) The opportunities for the public to participate;
 - (iii) The time and venue of any envisaged public hearing;
 - (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
 - (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
 - (vi) An indication of what environmental information relevant to the proposed activity is available; and
- (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:

(a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;

(b) A description of the significant effects of the proposed activity on the environment;

(c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;

(d) A non-technical summary of the above;

(e) An outline of the main alternatives studied by the applicant; and

(f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.

7.

Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8.

Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

9.

Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

10.

Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied *mutatis mutandis*, and where appropriate.

11.

Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

ARTICLE 7 –

Public participation concerning plans, programmes and policies relating to the environment

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

ARTICLE 8 –

Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding

rules that may have a significant effect on the environment.

To this end, the following steps should be taken:

- (a) Time-frames sufficient for effective participation should be fixed.
- (b) Draft rules should be published or otherwise made publicly available; and
- (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.
- (d) The result of the public participation shall be taken into account as far as possible.

RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT PRINCIPLE 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

States must resolve to work to advance a human rights-based approach to the green economy, based on the principles of participation, accountability, non-discrimination, empowerment and the rule of law in green economy efforts, and to pursue a model of economic growth that is socially and environmentally sustainable, just and equitable, and respectful of all human rights.¹⁵²

7.5 EXTREME POVERTY

Any poverty reduction strategy must be a country-driven process. However, country ownership should not be interpreted narrowly to mean ownership on the part of the Government alone. The strategy has to be owned by all stakeholders within the country, including the poor. This can be possible, however, only when all stakeholders, including the poor, participate effectively in all stages of policy formulation.¹⁵³

Active and informed participation by the poor is not only consistent with but also demanded by the human rights-based approach, because the international human rights normative framework affirms the right to take part in the conduct of public affairs.¹⁵⁴

The point is not that the poor should take part in all the technical deliberations that underlie policy formulation, but rather that they must be allowed to take part in the process of setting priorities and benchmarks that will guide such deliberations. In practice, this means that when alternative policy options are being explored by experts, the implications of these options for the interests of various population groups must be made transparent and presented in an understandable manner to the general public, including the poor, so that they can have an opportunity to argue for the options that serve their interests best.¹⁵⁵

Although the implementation of policies is primarily the responsibility of the executive arm of the State, opportunities must be created to enable the poor to exercise their right to participate in it as well.¹⁵⁶

The final stage of participation is the monitoring and assessment of the success or failure of policies so that the State and other duty-bearers can be held accountable for their obligations. It is an essential feature of the human rights approach that the people who are affected by policies are able to participate in monitoring and assessing their success or failure and then take part in the procedures for holding the duty-bearers accountable. Appropriate institutional arrangements are needed for such participation to be possible.¹⁵⁷

It is not enough for the poor merely to participate in decision-making; they must be able to participate meaningfully and effectively. In order to ensure this, two sets of preconditions have to be satisfied. First, effective participation requires more than the practice of electoral democracy. Specific mechanisms and institutional arrangements through which people living in poverty can effectively participate at different stages of decision-making are needed. Second, the poor themselves must be empowered so as to make their participation effective. In part, this empowerment will depend on the realization of a minimum degree of economic security without which people living in poverty are unlikely to be able

to overcome the established structures which perpetuate their condition. Capacity-building activities, including human rights education, play an important role in this process.¹⁵⁸

Before any action is carried out by the State, or by any other third party, that interferes with the right of an individual to social security the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and include: (a) an opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies.¹⁵⁹

7.6 RIGHT TO ADEQUATE FOOD

The formulation and implementation of national strategies for the right to food requires full compliance with the principles of accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary.¹⁶⁰

States should strengthen existing strategies and policies relating to food security, in particular the outcomes approach, by adopting a rights-based approach. This means that the setting of targets and the identification of the concrete measures to be adopted should be the result of meaningful public participation; [that the authorities responsible for implementation should be held accountable for results; that the beneficiaries of all policies and programmes related to food security should be defined as rights holders, and that the indicators allowing the measurement of progress should be based on the normative components of the right to food, including non-discrimination.]¹⁶¹

Similarly, the adoption of framework laws on food security should be the result of an extensive and meaningful consultation process and should be supported by civil society organizations and the private sector [and the general public].¹⁶²

7.7 RIGHT TO HEALTH

The right to health is as inclusive right and it should encompass the participation of the population in all health related decision-making at the community, national and international levels.¹⁶³

The formulation and implementation of national health strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. In particular, the right of individuals and groups to participate in decision-making processes, which may affect their development,

must be an integral component of any policy, programme or strategy developed to discharge governmental obligations under article 12 of the ICESCR. Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people's participation is secured by States.¹⁶⁴

The right to health facilities, goods and services (Art 12.2 (d) of ICESCR) also includes the improvement and furtherance of the participation of the population in the provision of preventive and curative health services, such as the organization of the health sector, the insurance system and, in particular, participation in political decisions relating to the right to health taken at both the community and national levels.¹⁶⁵

States should adopt a comprehensive mental health policy and plan of action based on the right to health, and ensure the active and informed participation of all relevant stakeholders, including people living with mental illness, in the decision-making process.¹⁶⁶

States should initiate and implement programmes and projects in the field of health for Roma, mainly women and children, having in mind their disadvantaged situation due to extreme poverty and low level of education, as well as to cultural differences; to involve Roma associations and communities and their representatives, mainly women, in designing and implementing health programmes and projects concerning Roma groups.¹⁶⁷

7.8 RIGHT TO WATER

As part of their core obligations, States should adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process.¹⁶⁸

The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.¹⁶⁹

National water supply and sanitation strategies should specifically provide for effective community participation in decision-making processes that affect them.¹⁷⁰ States should strengthen consultation with communities in designing

and implementing water and sanitation policies and solutions and ensure community participation in the design, implementation and monitoring of these initiatives.¹⁷¹

Before any action that interferes with an individual's right to water is carried out by the State, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant on Economic, Social and Cultural Rights, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies.¹⁷²

States should ensure adequate consultation and prior and informed consent of indigenous and minority communities regarding activities affecting their access to water and sanitation.¹⁷³

States parties should take steps to ensure that women are not excluded from decision-making processes concerning water resources and entitlements.¹⁷⁴

7.9 RIGHT TO INTELLECTUAL INTERESTS



UDHR ART 27.2

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.



The obligation to fulfil (promote) requires States parties to ensure the right of authors of scientific, literary and artistic productions to take part in the conduct of public affairs and in any significant decision making processes that have an impact on their rights and legitimate interests, and to consult these individuals or groups or their elected representatives prior to the adoption of any significant decisions affecting their rights under article 15, paragraph 1 (c).¹⁷⁵

Violations of the obligation to fulfil occur when States parties fail to take all necessary steps within their available resources to promote the realization of the right to benefit from the protection of the moral and material interests resulting from one's scientific, literary or artistic productions. Examples include the failure to provide adequate opportunities for the active and informed participation of authors and groups of authors in any decision making process that has an impact

on their right to benefit from the protection of the moral and material interests resulting from their scientific, literary or artistic productions.¹⁷⁶

7.10 RIGHT TO WORK

The formulation and implementation of a national employment strategy should involve full respect for the principles of accountability, transparency, and participation by interested groups. The right of individuals and groups to participate in decision making should be an integral part of all policies, programmes and strategies intended to implement the obligations of States parties under article 6 of the ICESCR. The promotion of employment also requires effective involvement of the community and, more specifically, of associations for the protection and promotion of the rights of workers and trade unions in the definition of priorities, decision making, planning, implementation and evaluation of the strategy to promote employment.¹⁷⁷

7.11 RIGHT TO TAKE PART IN CULTURAL LIFE



UDHR ART 27.1

Everyone has the right to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.



CERD ART 5 (E) (VI)

In compliance with the fundamental obligations laid down in Art 2 of this Convention, States Parties undertake to prohibit and 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:

- (e) Economic, social and cultural rights, in particular:
- (vi) The right to equal participation in cultural activities.



Acceptability entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them.¹⁷⁸

The obligation to create and promote an environment within which a person individually, or in association with others, or within a community or group, can participate in the culture of their choice, includes allowing and encouraging the participation of persons belonging to minority groups, indigenous peoples or to other communities in the design and implementation of laws and policies that affect them. States should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.¹⁷⁹

Minorities, as well as persons belonging to minorities, have the right not only to their own identity but also to development in all areas of cultural life. Any programme intended to promote the constructive integration of minorities and persons belonging to minorities into the society of a State party should thus be based on inclusion, participation and non discrimination, with a view to preserving the distinctive character of minority cultures.¹⁸⁰

The obligation to fulfil requires that States parties must provide all that is necessary for fulfilment of the right to take part in cultural life when individuals or communities are unable, for reasons outside their control, to realize this right for themselves with the means at their disposal. This level of obligation includes, for example: c) the inclusion of cultural education at every level in school curricula, including history, literature, music and the history of other cultures, in consultation with all concerned.¹⁸¹

CHAPTER 8

8 RIGHT TO PARTICIPATION AT INTERNATIONAL, REGIONAL, NATIONAL AND LOCAL LEVELS

Everyone has the right, individually and in association with others, to unhindered access to and communication with subregional, regional and international bodies, in particular the United Nations, its representatives and mechanisms.¹⁸²

Everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and treaty bodies, as well as regional human rights mechanisms, bearing in mind that free and unhindered access to and communication with individuals and civil society are indeed indispensable to enable the United Nations and its mechanisms to fulfil their mandates.¹⁸³

The international community should ensure safe and open access to international human rights bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights.¹⁸⁴

The right of all peoples to participate in the conduct of public affairs at the national level must also be accompanied by their ability to do so in the international relations of States. In this context, the right of all peoples to participate in the conduct of public affairs at the national level must also be accompanied by their ability to do so in the international relations of States. In this context, meaningful participation of civil society in the conduct of public international affairs depends on the full realization of domestic democracy.¹⁸⁵

8.1 UN HUMAN RIGHTS COUNCIL

States should raise awareness within civil society and the general public on their participation and priorities at the UN Human Rights Council. To the extent possible there should be opportunities provided for public input into the priorities represented at, and reports submitted to, the Human Rights Council. Similarly, NHRIs should be provided an opportunity to assess the priorities of the State at the Human Rights Council and to make proposals thereon.

8.2 SPECIAL PROCEDURES

States should involve representatives of civil society and the general public into preparation for, and follow-up to the visits of Special Procedures mandate holders to the country. As a general good practice, States should facilitate, and under no circumstances hinder, access to Special Procedures mandate holders during their visits to the country¹⁸⁶ and also in general, when submitting individual complaints to them.

8.3 UNIVERSAL PERIODIC REVIEW (UPR)

States are encouraged to prepare the information [included in their national report] through a broad consultation process at the national level with all relevant stakeholders.¹⁸⁷

Part of the potential of the UPR mechanism lies in the process it can generate at the national level, both at the preparatory stage and in its follow-up. The preparation of the national report should be undertaken through a consultative process involving all interested and relevant stakeholders, including civil society organizations and human rights defenders. The consultations should be organized prior to the finalization of the national report; should be inclusive and all-encompassing; and should not be merely nominal: the views of civil society should be reflected in the national report.¹⁸⁸

States should make sure that defenders can actively participate in the universal periodic review process, including by raising awareness about the process, organizing open and meaningful consultations, including a section about the situation of defenders in the national report, and making concrete recommendations towards the improvement of the environment in which they operate.¹⁸⁹

Human rights communities at the national level should seek participation in the preparation of the national report of the UPR, and governments should create the space to engage in such consultations. In addition to the drafting of report, the consultation process can have a value on its own and be an additional opportunity for governments and human rights defenders to engage in a constructive dialogue on issues pertinent to the situation of defenders.¹⁹⁰

Broad consultations at the national level, with all relevant stakeholders, should always include NGOs working on human rights issues, and in particular human rights defenders.¹⁹¹ Such consultations should not be limited to registered NGOs only. After the conclusion of the UPR process, follow-up consultations should be organized with a view to identifying appropriate policy measures in order to comply with recommendations.¹⁹²

8.4 TREATY BODIES

States should seek to involve civil society, individual human rights defenders, NGRIs, members of the academia and relevant professional associations into the preparation of reports submitted to UN treaty bodies. Such involvement may take the form of coordinating and information meetings before the drafting starts; seeking inputs to the national report from various stakeholders and making the draft national report available for comments on the website of the foreign ministry and other ministries if relevant.

Additionally, there should be broad public involvement in the follow-up activities and implementation of the concluding observations of treaty bodies. States are encouraged to raise awareness of the findings of treaty bodies and to seek input from a wide range of interlocutors in the follow up activities, and allow maximum transparency in the monitoring of the implementation.

8.5 REPRISALS

Any person or group who cooperates with Special Procedure mandate holders is entitled to protection by the State from harassment, threats, or any other form of intimidation or retaliation.¹⁹³

States should prevent and refrain from all acts of intimidation or reprisal against those who:

- (a) Seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them;
- (b) Avail or have availed themselves of procedures established under the auspices of the United Nations for the protection of human rights and fundamental freedoms, and all those who have provided legal or other assistance to them for this purpose;
- (c) Submit or have submitted communications under procedures established by human rights instruments, and all those who have provided legal or other assistance to them for this purpose;
- (d) Are relatives of victims of human rights violations or of those who have provided legal or other assistance to victims.¹⁹⁴

States should take all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and consequently implementing specific legislation and policies and by issuing appropriate guidance to national authorities in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisal.¹⁹⁵

States should ensure that acts of intimidation and reprisals against defenders who engage with the United Nations, its representatives and mechanisms in the field of human rights, and international human rights bodies are firmly and unequivocally condemned. Ensure that these acts are promptly investigated, perpetrators brought to justice and that any legislation criminalizing activities in defence of human rights through cooperation with international mechanisms is repealed.¹⁹⁶

CHAPTER 9

9 SPECIAL ROLE OF NHRIS IN PROMOTING AND ENSURING EFFECTIVE PUBLIC PARTICIPATION¹⁹⁷

NHRIs themselves should be an example of institutions adhering to the principles of participation. It is therefore important that the participatory approach is not limited to the appointment of commissioners but is regarded as an overarching principle in all work of NHRIs and in the recruitment of staff that reflects the diversity of groups and languages in the country.

NHRIs should conduct a review of legislative and administrative regulations specifically focusing on public participation. The areas concerned are: the right to information; freedom of expression including defamation laws; freedom of association; freedom of assembly. NHRIs could also review customary laws where applicable as well as budgeting at state and local levels. NHRIs should not merely indicate problematic provisions or gaps in legislation, but also propose and promote the necessary changes.

NHRIs should review all pending legislation to ensure adherence to human rights provisions, paying particular attention to public participation.

NHRIs should also scrutinize new administrative regulations and policy documents, to the extent possible, based on close cooperation with relevant government departments and civil society organizations.

NHRIs should also assess how existing legislation is applied in practice by the authorities.

NHRIs should not simply treat individual complaints on an individual basis but consider these as a source of information on the implementation of the right to participation and consultation in the country concerned.

NHRIs should develop strong ties with civil society in order to receive information about the state of public participation in the country. Such a cooperation should extend beyond human rights NGOs and encompass a wide range of women's organizations, children's organizations, organizations representing the disabled and minorities, rural organizations, community organizations, trade unions, professional associations etc. Similarly, strong relationship with universities and the press could prove indispensable in this regard.

NHRIs should include matters relating to public participation in general reports on human rights to the relevant competent bodies.

NHRIs should encourage the ratification of, or accession to, international human rights instruments, and review existing reservations and declarations. This also encompasses research into the consequences of ratification of a specific human rights instrument, as well as the consequences of withdrawing declarations and reservations.

NHRIs should contribute to States' periodic reports to UN human rights bodies and, where necessary, express an opinion in this respect. The issues central to public participation and the right to consultation should also systematically be raised in stakeholders' reports to the UPR process and in the NHRIs' own shadow reports to treaty bodies.

NHRIs should also participate in, and monitor the state's follow up to concluding observations and use relevant concluding observations (and general comments) in the advocacy and lobbying work.

NHRIs can also assist in submitting individual complaints to UN treaty bodies and Special Procedure mandate holders in the area of public participation.

NHRIs should also work closely with relevant UN bodies, in particular with OHCHR and UNDP, on issues relating to public participation.

In the framework of human rights education, NHRIs should assist in formulating and implementing programmes with a view to securing children the right and ability to be heard in educational settings, in particular schools.

NHRIs should carry out broad information campaigns to raise awareness about the right to participation among the general public, including what to do when these rights are violated. In addition to broad-based campaigns, certain groups requiring particular attention should be also directly targeted by campaigns.

END NOTES

- ¹ Vienna Declaration and Programme of Action (VDPA) OP4
- ² Declaration on Human Rights Defenders, PP6
- ³ UDHR Art 21(3)
- ⁴ VDPA OP8
- ⁵ Guiding Principles on Business and Human Rights, General Principles
- ⁶ ICCPR Art 25 (a)
- ⁷ UNSG's message on the occasion of Human Rights Day 2012;
<http://www.un.org/en/events/humanrightsday/2012/message.shtml>
- ⁸ UN HCHR Navi Pillay's message on the occasion of Human Rights Day 2012,
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12865&LangID=E>
- ⁹ VDPA, PP2
- ¹⁰ VDPA, PP14
- ¹¹ Guiding Principles on Business and Human Rights, General Principles
- ¹² Declaration on Human Rights Defenders, Art 4
- ¹³ Guiding Principles on Business and Human Rights, General Principles
- ¹⁴ Report of the UN SR on extreme poverty, A/HRC/23/36, para 38-39
- ¹⁵ UDHR Art 2
- ¹⁶ A/HRC/RES/24/8 Equal political participation, PP5
- ¹⁷ A/HRC/23/36 SR Extreme poverty, para 40
- ¹⁸ A/HRC/RES/24/8 Equal political participation, OP 3
- ¹⁹ A/HRC/23/36 SR Extreme poverty, para 44
- ²⁰ A/HRC/23/36 SR Extreme poverty, para 86 (c) (i)
- ²¹ A/HRC/RES/24/8 Equal political participation, OP 4 (c)
- ²² A/HRC/23/36 SR Extreme poverty, para 86 (c) (v)
- ²³ CESCR GC 20 Non-discrimination in economic, social and cultural rights, para 36
- ²⁴ Report of the UN SR on extreme poverty, A/HRC/23/36, para 50-54
- ²⁵ Report of the UN SR on extreme poverty, A/HRC/23/36, para 60-64
- ²⁶ A/HRC/23/36 SR Extreme poverty, para 86 (e) (i)
- ²⁷ Report of the UN SR on extreme poverty, A/HRC/23/36, para 65-69
- ²⁸ Report of the UN SR on extreme poverty, A/HRC/23/36 para 71-72
- ²⁹ A/HRC/23/36 SR Extreme poverty, para 86 (f) (ii)
- ³⁰ Report of the SR on Human Rights Defenders A/62/262, para 24
- ³¹ Report of the SR on Human Rights Defenders A/62/262, para 68

- ³² Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, para 74
- ³³ CCPR GC 25, para 3
- ³⁴ CCPR GC 25 para 9
- ³⁵ CCPR GC 25 para 19
- ³⁶ CCPR GC 25 para 20
- ³⁷ A/68/299 SR FoAA para 7
- ³⁸ CCPR GC 25 para 11 and 12
- ³⁹ CCPR GC 25 para 23
- ⁴⁰ IE on the Promotion of a democratic and equitable international order, A/HRC/21/45, para 48
- ⁴¹ CCPR GC 25 para 1
- ⁴² A/HRC/25/55 SR HRD para 66
- ⁴³ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144
- ⁴⁴ CCPR GC 34 para 11
- ⁴⁵ CCPR Communication No 1470/2006 (CCPR/C/101/D/1470/2006), *Toktakunov v Kyrgyzstan*, para 6.3
- ⁴⁶ CCPR GC 34 para 13
- ⁴⁷ CCPR Communication No. 633/1995, *Gauthier v. Canada*, Views adopted on 7 April 1999, paragraph 13.4.
- ⁴⁸ CCPR Communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*, Views adopted on 19 March 2009, para 8.4
- ⁴⁹ CCPR Communication No 1470/2006 (CCPR/C/101/D/1470/2006), *Toktakunov v Kyrgyzstan*, para 6.3
- ⁵⁰ CCPR Communication No. 633/1995, *Gauthier v. Canada*, Views adopted on 7 April 1999, para 13.4
- ⁵¹ CCPR Communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*, Views adopted on 19 March 2009, para 8.4
- ⁵² CCPR Communication No 1470/2006 (CCPR/C/101/D/1470/2006), *Toktakunov v Kyrgyzstan*, para 7.4
- ⁵³ A/HRC/15/21 The rights to freedom of peaceful assembly and of association, PP7
- ⁵⁴ A/HRC/15/21 The rights to freedom of peaceful assembly and of association, OP1
- ⁵⁵ SR on FoAA, A/68/299, para 6
- ⁵⁶ CRC GC 12, The right of the child to be heard, para 128
- ⁵⁷ A/HRC/RES/24/8 Equal political participation, PP 6
- ⁵⁸ A/HRC/23/36 SR on extreme poverty, para 86 (a) (i)
- ⁵⁹ A/HRC/RES/24/8 Equal political participation, OP 4 (b)

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