

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

THE RIGHT TO
PUBLIC
PARTICIPATION

- A HUMAN RIGHTS LAW UPDATE

ISSUE PAPER



**THE RIGHT TO PUBLIC PARTICIPATION
- A HUMAN RIGHTS LAW UPDATE
ISSUE PAPER**

Authors: Anette Faye Jacobsen

Public participation is based on the freedoms of expression, assembly and association, coupled with the right to take part in public affairs. All are well-established provisions in international human rights law. However new elements, supplementary to these rights, are emanating from the instruments of special groups as well as from social and economic rights. This report provides an update on this dynamic development with a focus on the upcoming 'right to consultation'.

Cover Photo: Colourbox

© 2013 The Danish Institute for Human Rights
Denmark's National Human Rights Institution
Wilders Plads 8K
DK - 1403 København K
Phone +45 3269 8888
www.humanrights.dk

This publication, or parts of it, may be reproduced if author and source are quoted.

At DIHR we aim to make our publications as accessible as possible. We use large font size, short (hyphen-free) lines, left-aligned text and strong contrast for maximum legibility. We are seeking to increase the number of accessible pdfs on our website, as well as to provide easy-to-read summaries for selected publications.

CONTENT

SUMMARY	6
PUBLIC PARTICIPATION IN HUMAN RIGHTS LAW	8
Background	8
Rights to public participation	10
RIGHT TO CONSULTATION	15
Specific groups' rights	15
Consultation on special interests	19
END NOTES	26

ABBREVIATIONS

AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CO	Concluding Observation (of treaty body to State party)
CoE	Council of Europe
Comm	Communication (= individual complaint to HRC, under OP1)
CRC	Convention on the Rights of the Child
CS	Civil society
CSO	Civil society organisation
DRIP	United Nations Declaration on the Rights of Indigenous Peoples
FPIC	Free, prior and informed consent
GC	General Comment (A particular treaty body's interpretation of the content of human rights provisions, on thematic issues or its methods of work. General comments often seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions)
GR	General Recommendations (The term used by CERD and CEDAW to refer to general comments)
HR Comm	The Human Rights Commission (now Human Rights Council)
HR Council	The Human Rights Council (formerly the Human Rights Commission)
HRC	Human Rights Committee (treaty body to ICCPR)
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural

	Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICRPD	Convention on the Rights of Persons with Disabilities
IPU	Inter-Parliamentary Union
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
WB	World Bank

SUMMARY

Public participation is the basis of democratic governance and a key to promotion of and respect for human rights. In recent years participation has been markedly endorsed in the human rights-based approach to development as a cross-cutting principle as well as a goal in itself.

Within the human rights community, participation has increasingly become a strongly emphasised catchword in policies and programmes. At the same time, however, the content and scope of the 'right to participation' appears unclear and lacks a common perception.

The freedoms of association, assembly and expression are well established as basic elements of public participation. Furthermore, the right to participate directly and indirectly in public affairs is an important component. All four provisions appear in individual articles in the International Convention of Civil and Political Rights, and each has a strong backing in human rights case law.

Other aspects of this composite 'right to participation' are, however, less founded in a mutual understanding, such as access to information and the right to consultation, i.e. the right of people or groups to be heard in decision processes pertaining to them.

On the other hand, developments in international human rights law show a clear tendency towards a wider commitment being placed on governments to secure information and consultation mechanisms for people and groups affected by political decisions.

Particularly in relation to economic, social and cultural rights, there is an emerging demand for people to be included in policy and decision-making processes, and for affected groups to be given opportunities for genuine consultation. Thus the assumed interrelation and interdependence between economic, social and cultural rights, and civil and political rights does indeed seem to be gaining ground through new opportunities for public participation.

Moreover, opportunities to participate and to be heard are acknowledged in human rights relating to special or vulnerable groups, including minorities and indigenous peoples. Most recently, the rights to participation and consultation have been specifically guaranteed in the Convention on the Rights of Persons with Disabilities.

The purpose of this report is to clarify the scope and content of the right to participation, with a special focus on the responsibility of authorities to inform, include and consult the affected people or groups in decision-making processes.

Ultimately, clarification of the right to participation could enhance the potential for further development of human rights standards in this field.

CHAPTER 1

PUBLIC PARTICIPATION IN HUMAN RIGHTS LAW

BACKGROUND

In recent years participation has gained increasing prominence in the general human rights discourse. One example of this was the slogan of the UN Human Rights Day 2012: 'Inclusion and the right to participate in public life'.

Most profoundly, though, participation has been incorporated into the human rights-based approach to development, as a goal as well as a cross-cutting principle. The importance of participation in development was already confirmed in the Declaration on the Right to Development, in which development is described as a "comprehensive economic, social, cultural and political process, which aims 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".¹ The principle of participation has since gradually been adopted by development actors and donors as well as recipient states, and corresponds very well with the concept of 'ownership' expressed as the first principle in the OECD's Paris Declaration, the current consensus document in international development aid policy.² Government commitments and obligations in international development aid relations are soft law though, not binding human rights law.

Nevertheless, even in a more specific human rights context the usage of participation varies substantially, even between representatives of the UN system. In promotional campaigns such as Human Rights Day, a far-reaching right to participation was proclaimed in the UN Secretary-General's message that launched the event: "Everyone has the right to be heard and to shape the decisions that affect their community."³ However, in human rights law, as it appears in treaty texts and communication decisions, the right to participate does not imply a general right to be heard, and even participation itself is a right which does not belong to everyone in every situation – as will be detailed further below.

On the one hand, there are strong indications that human rights law is gradually moving beyond conventional interpretations of the right to participation. In

particular, the Convention on the Rights of Persons with Disabilities (2006) has adopted unprecedented obligations on States parties to consult with representatives of people with disabilities in the monitoring mechanisms of the convention. Furthermore, for the first time in a UN treaty, the CRPD includes a set of cross-cutting principles that should guide the interpretation of all other provisions of the convention.⁴ One of these principles is: “Full and effective participation and inclusion in society” (Art. 3 [c]). A more precise understanding of what this principle entails will, in all likelihood, be specified by the treaty body in the years to come.

In relation to several economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights has issued general comments during the last decades that point to governments’ responsibility to inform and hear the opinions of groups affected by political decisions on, among other things, water supply, adequate food and eviction from houses. Other examples of consultation demands on governments can be seen in relation to indigenous peoples’ rights.

On the other hand, there is some reluctance, among developed states in particular, to link participation to broader issues such as social justice, globalisation and development. This is revealed by the number of abstentions and rejections to resolutions for such themes in HR Comm (since 2006 HR Council).⁵

In practical implementation there seems to be a reverse trend, limiting the space for public participation, parallel to the expansion under human rights law of the responsibilities put on governments to include and consult stakeholders. According to civil society monitoring groups, authoritarian and hybrid regimes are seeking to establish ever-more sophisticated barriers to public participation, including by legal and quasi-legal means.⁶

The tightening conditions for civic activities on the ground make it even more pressing to reach a common understanding and language in relation to the normative content and scope of participation rights. Hence, the purpose of this report is to outline the current human rights standards underpinning participation rights.

The focus of the report is limited in two respects. First, the right to public participation, as it is understood here, does not include entitlements pertaining to persons in relation to their individual circumstances, such as property and privacy rights. Second, the analysis is based solely on international human rights instruments issued by the UN. Hence, it does not embrace the European, the Inter-American or the African human rights systems.

The participation rights will be reviewed first on the basis of the core participation provisions in the International Covenant on Civil and Political Rights and the matching interpretation tools. Second, the rights to consultation will be described as they have appeared in relation to specific groups, including persons with disabilities and indigenous peoples, as well as in soft law instruments,⁷ in particular under the International Covenant on Economic, Social and Cultural Rights.

RIGHTS TO PUBLIC PARTICIPATION

In *ICCPR*, Article 25 describes the classic political participation rights: universal franchise, the opportunity to run for elected office, and to be employed as a civil servant. The more detailed interpretation of the provision has been unfolded by the Human Rights Committee in General Comment no. 25 and through individual communications under the First Optional Protocol.

Some of the key terms of Article 25 are, thus, explained in GC 25. This includes “the conduct of public affairs” defined as “a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers.” The allocation of powers should, moreover, be established by the constitution and other laws.⁸ Furthermore, the HRC has added that the article “covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”⁹ This means that not only national and foreign politics, but also municipal councils and other local public bodies should be open to public participation by virtue of Article 25.

However, Article 25 differs from most other human rights by only referring to *citizens*. Non-citizens are, as a starting point, not covered by the provision. Still, States parties can choose to also extend political rights to non-citizens, and in many countries local elections are also open to people with permanent residence of certain duration in the country. Notwithstanding the exception of non-citizens, the *ICCPR*’s general rule of non-discrimination is emphasised explicitly in Article 25.

Article 25 has two main components; it guarantees citizens the opportunity to participate *directly* and *indirectly* (i.e. through elected representatives) in public affairs. A third component: access to public service (in the sense of holding public office)¹⁰ will not be dealt with here as it falls outside the present focus on participation.

There is broad consensus in the international community that direct and indirect participation rights form “the core of democratic government based on the consent of the people”.¹¹ Some critical voices have deemed it paternalistic to assume that democracy is the best form of government.¹² Nevertheless, the Vienna Declaration of 1993 confirmed the world leaders’ acknowledgement of the interdependence between democracy and human rights.¹³ In practice though, there are considerable political exceptions to this apparent concord including, among others, China, Vietnam and North Korea.

Indirect participation refers to the election of representatives. Genuine periodic elections based on universal and equal suffrage held by secret ballot and with a free choice of representatives are basic requirements of Article 25 (a) and (b). The demand for the electorate’s free choice of candidates encompasses both that there is no unfair pressure on the voters and that voters can choose between candidates with different political views. GC 25 states that persons entitled to vote must be free to vote for any candidate, including those supporting or opposing the government. Further, it is stipulated that party membership cannot be a criterion of eligibility to vote, nor a ground for disqualification, and the HRC asks States parties to report how their electoral systems work to secure that different political views in the community are represented in elected bodies.¹⁴

Securing free and fair elections includes a wide range of organisational and technical considerations.¹⁵ States parties must also take *positive* measures so that, for instance, illiteracy, language barriers, poverty or impediments to freedom of movement do not hinder registration or voting.¹⁶ The UN engages in election monitoring and offers technical assistance to member states, as do many regional inter-governmental organisations such as OAS, AU, CoE, OSCE and others.

Direct participation within the context of Article 25 is understood in several ways. One is to cast a ballot in a referendum or a popular assembly with a mandate to take decisions, another is to run for office and participate directly as an elected representative.¹⁷ The GC 25 paragraphs 15–18 describe in more detail measures that States parties should take to secure transparency and fairness in regulations on the right to stand for election. On a global scale, too, the Inter-parliamentary Union has developed criteria for candidatures, parties and campaigns based on the international human rights framework.¹⁸

Any restrictions or conditions on the exercise of the rights in Article 25 must be objective and reasonable.¹⁹ The HRC has adopted decisions in a number of individual cases which provide more detailed examples of some of the practical

interpretations of the legitimate limitations to the right.²⁰ However, important elements of democracy seem, so far, not to have been adequately addressed through human rights standards. These include the division of power between state organs. The elected parliament may not have much influence if the executive power can rule through directives and is not held accountable by the other powers.²¹

Taking part in public affairs goes beyond mere political activities. People may seek influence in many other ways, and fundamental to all public participation are the three *freedoms – of expression, of association and of assembly*. The close link between these rights and democratic governance is recognised in a number of international documents.²²

The three freedoms are described in individual articles of the ICCPR.²³ They follow the same structure by first stating the right and then subsequently outlining criteria for *legitimate restrictions* that the government may, based on an individual, proportionate assessment, impose on the enjoyment of the right. The first criterion is that limitations on these liberties must be in conformity with the law and the second, that the purpose of the restraint must be either to protect national security or public safety, order, health or morals or the rights of others. In conjunction with applying these criteria, the *proportionality* of the abridgement of freedom rights must be tested through an assessment of whether it is necessary in a democratic society.

A number of individual case decisions provide a range of examples of States party practices in relation to the freedoms of expression, assembly and association.²⁴ The hearing of the cases, moreover, demonstrates the HRC's evaluation of States parties' justification for their specific regulation of the latitude given to the population in the public domain.

The freedom rights have certain individual traits that also deserve mention. Freedom of *association* encompasses the right to form trade unions. On the other hand, it does allow restrictions on the right to organise for members of the armed forces and the police. Furthermore, it does not guarantee the right to strike.²⁵ This is, by contrast, guaranteed in the Covenant on Economic, Social, and Cultural Rights, in Article 8(d).

Freedom of *expression* also contains a right to seek information.²⁶ This aspect has been a focus of increasing interest in recent years. Civil society sees access to information as an important tool to further a knowledge-based public debate, and human rights defenders, the media and others need access to information in order to hold authorities accountable. In development and good governance

programmes not least, access to information has been emphasised as a core, cross-cutting human rights principle.²⁷

The understanding of *access to information* as a human right has been expanding in recent years. This can be documented, for instance, in a decision by the HRC in 2011. The majority of committee members declared that: “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 HRC observes that 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.”²⁸ It is clear from the same case that all restrictions on the right to access to information must be tested against the criteria in Article 19,3: be provided by law, be proportionate and be necessary to achieve the protection of rights of others, of national security, public order, public health or morals.

In 2011 the HRC adopted a General Comment on freedom of expression. This provides an updated, authoritative interpretation of the implications of the ICCPR Article 19, including access to information. Regarding the latter, States parties are recommended to proactively put Government information of public interest into the public domain and ensure easy, prompt, effective and practical access to such information. This could be ensured through legislation and procedures that, among other things, require that reasons be provided for any refusal to give access to information. Furthermore, arrangements should be made for appeals from refusals to provide access to information as well as failure to respond to requests.²⁹

Regulation of the *media* is another important aspect of freedom of expression. The General Comment mentioned above recommends liberal, fair and transparent licensing regulation of the media, including the internet, and further suggests that states take the necessary measures to prevent “undue media dominance” by both private and public media.³⁰ More specific recommendations to individual States parties are provided in the HRC’s concluding observations to periodic reports submitted by States parties to the ICCPR.³¹

Protection of freedom rights against infringements by third parties (called *horizontal* protection) is an aspect which takes a great variety of forms. The Special Rapporteur on Freedom of Expression has addressed issues of horizontal responsibility in relation to private intermediaries’ on the internet.³² Another relevant horizontal issue, this time with regard to freedom of assembly, is raised

by counter-demonstrations. It seems that this problem has not been addressed yet by the HRC.³³

Certain restrictions on freedom of expression are established in convention provisions. Article 20 of the ICCPR prohibits propaganda for war as well as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.³⁴ Article 4 of ICERD likewise prohibits advocacy of racial hatred and incitement to racial discrimination.³⁵ There are a number of decisions from the HRC dealing with restrictions on freedom of expression and organisation on account of racist or extremist opinions.³⁶

These limitations on freedom of participation point to duties and responsibilities of all actors in the public domain, although States parties are in charge of enforcing regulation in the field.

As stated in the Universal Declaration of Human Rights, everyone must exercise his/her rights and freedoms with due respect for the rights and freedoms of others and also meet reasonable requirements of morality, public order and the general welfare in a democratic society.³⁷ Seen from a civil society perspective this implies that NGOs, political parties and others shall always respect the human rights of others.³⁸ The ICCPR GC 25 mentions that “states should ensure that, in their internal management, political parties respect the applicable provisions of Article 25 in order to enable citizens to exercise their rights thereunder.”³⁹ What this requirement means for the internal management of political parties is somewhat unclear.⁴⁰ States should, thus, not allow that political parties, due to their internal organisation, hinder citizens in exercising their rights pertaining to Article 25. The intention of the GC statement may be to motivate political parties to follow democratic principles in their internal organisation.⁴¹ Yet, freedom of association is a right both for the individual and, also, for organisations, including political parties,⁴² and thus should protect them from States parties’ interference with their activities.⁴³

Article 5, 1 of the ICCPR implies that no actor in the public domain, including political parties and civil society groups as well as individuals, shall misuse the rights of the Convention to destroy others’ civil and political rights. Historically, as with Article 20, this clause was meant to prevent totalitarian groups from gaining power by democratic means and subsequently using those powers to dismantle the democratic system. Such misuse of political freedom is not protected under the Covenant and, in effect, this has the same scope as a legitimate restriction on one of the participation rights, Articles 19, 21, 22 and 25.⁴⁴ Article 5,1 does not bring us closer to outlining how far States parties can intervene in the internal management of political parties.

CHAPTER 2

RIGHT TO CONSULTATION

The increasing importance attributed to participation as a key principle mentioned above has spawned growing interest in defining the extent to which States parties should open up to wider dialogue with the public. Does the right to participate imply a right to consultation in the sense that the public or groups affected by certain political decisions should be invited to present their opinion or otherwise take part in the decision-making process?

From the wording of ICCPR Article 25 that citizens have the right and opportunity to “take part in the conduct of public affairs directly or through freely chosen representatives” it may appear that *direct participation* includes the right to be heard or consulted in decision processes. However, the HRC has established that there is no general right to consultation.

In a fairly recent case the HRC rejected an argument that the meaning of Article 25 (a) is to provide a special opportunity for interest or activist groups to be included in government decision making. It was ruled that the appropriate means to exert influence for such purposes are to join in public debate, have a dialogue with political representatives, and to organise meetings and similar engagements.⁴⁵

Furthermore, in this well-known case the HRC stated: “It is for the legal and constitutional system of the State party to provide for the modalities of such participation ... Article 25(a) of the Covenant cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of participation in the conduct of public affairs. That, in fact, would be an extrapolation of the right to direct participation by the citizens, far beyond the scope of Article 25(a).”⁴⁶

SPECIFIC GROUPS’ RIGHTS

Nevertheless, since the Committee adopted its view, quoted above, in 1991, States parties’ responsibility to conduct consultation processes has developed in several other contexts. It has been recognised for certain groups that they are

entitled to be heard and to have their interests taken into consideration by the authorities.

Under the ICCPR this has particularly developed regarding *indigenous* peoples. In a series of concluding observations, the HRC has pointed to Article 1 on the right to self-determination as a provision pertaining to indigenous groups. This includes an entitlement for such populations to freely determine their political status and freely pursue economic, social and cultural development. By virtue of Article 1 the HRC has welcomed ‘full consultation’ in matters relating to traditional means of livelihood of indigenous groups.⁴⁷

A General Comment to Article 27 on the rights of ethnic, religious and linguistic *minorities* states that with regard to cultural rights, this may include use of land resources, fishing and hunting, especially in the case of indigenous peoples. Moreover, enjoyment of these rights “may require (...) measures to ensure the effective participation of members of minority communities in decisions which affect them.”⁴⁸

In several cases the HRC has established more detailed demands regarding the situations in which consultation should take place. If there is a risk that an indigenous group of people is denied the right to enjoy its own culture, Article 27 is invoked. This, in fact, is a rather demanding precondition since it implies a threat to the *survival* of the traditional forms of living to bring about a duty on States parties to undertake consultations with the affected group. Measures that have a certain, limited, impact on the way of life of a minority will not necessarily constitute a denial of their culture. However, impacts on the protected culture should be seen as a whole, even if different activities individually do not constitute a violation of the rights of Article 27.⁴⁹

The *quality of the consultation* process has also been specified by the HRC to some extent in several cases. It is not only a matter of giving the affected group of indigenous people an opportunity to explain their opinion on a given issue. The State party should, furthermore, endeavour to determine the expected impact of its planned activities and, moreover, seek to minimise the adverse consequences of its projects to protect the cultural interests that are at stake.⁵⁰

The HR Committee explains that the admissibility of measures which “substantially compromise or interfere with the culturally significant economic activities of a minority or indigenous community depends on whether the 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. The Committee

considers that 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. In addition, the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members.”⁵¹

The statement is, unfortunately, not very clear. What is confusing, in particular, is the application of the phrase “*free, prior and informed consent*” (FPIC) above. What is meant by ‘consent’ in this context? It can hardly be understood as a right to veto a planned project even if it substantially interferes with a culturally significant activity. Such a decisive power vested in one party would render a consultation pointless. The required ‘free, prior and informed consent’, most probably, refers to the consultation process only, but, nevertheless, it appears controversial if one party as a general rule can block a state’s resolution through denying consent to a decision-making process.

Nonetheless, FPIC is a concept of increasing political significance.⁵² It appeared already in 1997 in a less elaborated form in an ICERD General Recommendation on *Indigenous People* which called on States parties to “ensure that members of 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.”⁵³ Also the Committee on ICESCR has in several GCs (discussed below) as well as in its Concluding Observations asked States parties to consult and seek the consent of indigenous groups prior to implementation of projects affecting them.⁵⁴

The principle of FPIC appears prominently in the Declaration on the Rights of Indigenous Peoples (DRIP) not least. Here it is established as a guiding principle in relation to several issues, including decisions on relocation, on storage of hazardous material and in the development of strategies regarding indigenous land,⁵⁵ – all vital interests for many of these groups. The FPIC is not, however, applied as a general principle. The DRIP suggests different levels of participation, apparently scaled depending on strategic interests of both parties: the state and the indigenous groups. For instance, in implementation of legislative or administrative measures affecting indigenous peoples the states shall consult and cooperate in good faith with the indigenous peoples concerned ‘in order to obtain’ their FPIC; while in military matters states shall undertake ‘effective consultations’, but a consent requirement is not necessarily envisaged in issues concerning national security.⁵⁶

Notwithstanding that the DRIP is a recommendatory document and not legally binding, it offers various modalities for consultation and will undoubtedly be

utilised as an interpretation tool by treaty bodies in their dialogue with States parties as well as in decisions on individual communications.

Other special groups have, in specific contexts, gained endorsement to claim a right to be consulted. Regarding the ICMW for example, receiving states should facilitate consultation with and participation of *migrant workers and their families* in decisions concerning the life and administration of local communities.⁵⁷

Women have the right to participate in public affairs on an equal footing with men. In relation to this provision of CEDAW the treaty bodies have prepared a general recommendation stating, “States parties have a responsibility, where it is within their control, (...) as a matter of course, to consult and incorporate the advice of groups which are broadly representative of women's views and interests.”⁵⁸

In a general comment the Committee on the Rights of the Child has emphasised that *children* as a group should be given opportunities to participate in the development of policies and programmes relevant to children's lives. In addition, it provides more detailed guidelines on how children should participate in decision-making processes relating to the different substantial fields covered by the CRC.⁵⁹

The Committee on Economic, Social and Cultural Rights has issued a General Comment on the rights of *older persons*. Here the Committee follows up on the United Nations Principles for Older Persons by resuming its principle that “older persons should participate actively in the formulation and implementation of policies that affect their well-being”.⁶⁰ However, the GC does not suggest generalised consultation measures in implementing the rights of the CESCR for older persons. It is only in relation to the right to culture, pursuant to the Covenant's Article 15 that the aforementioned principle is reiterated.

Much stronger still, a call for consultation has been built into the Convention on the Rights of Persons with Disabilities (CRPD). One of the Convention's ‘General Obligations’ reads: “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.” Moreover, in monitoring the implementation of the convention “...civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.”⁶¹

This feature of profound and obligatory involvement and consultation with the target group in a legally binding instrument is unprecedented in human rights law. This delegation of influence is all the more remarkable as the CRPD embraces social and economic rights that may prove to be costly for States parties to implement. It has been seen as a result of the improvement in state engagement with civil society, which was demonstrated in the very active involvement of CSOs in the preparation of the convention text in the Ad Hoc Committee.⁶² It is probably fairer to say that dialogues between states and CSOs have shown progress within the working modalities of the UN human rights machinery.

The CRPD entered into force in 2008 and has already been ratified by a remarkable 128 countries,⁶³ which might possibly be a signal of States parties' favourable view of more systematic collaboration with civil society. It will be interesting to follow how the consultation obligations and civil society's influence will materialise on the ground in member states.

CONSULTATION ON SPECIAL INTERESTS

In relation to decision processes influencing persons' access to vital resources such as water, food, housing and health services, the committee monitoring the ICESCR has emphasised the need for States parties to consult with affected groups.

This attention on including relevant groups more directly in policymaking had already been expressed by the Committee on ICESCR in its first GC on States parties reporting requirements. Here it was recommended that the examination process "encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies".⁶⁴

More elaborate prescriptions were issued a few years later in the ICESCR GC on the right to *housing*. In relation to the call to governments to develop a national strategy for housing, it is stressed that this "strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives".⁶⁵ In a closer scrutiny of necessary requirements in cases of *forced evictions* from housing, the first demand was for the government to secure "an opportunity for genuine consultation with those affected".⁶⁶

With varying strength and scope, the Committee on ICESCR has recommended consultation with groups of stakeholders since the early 1990s. Following the limited application to older persons (see above) the Committee is more far-reaching in the GC regarding *plans of action for primary education*. Such plans are obligatory by virtue of Article 14 of the ICESCR for States parties that have failed to secure compulsory primary education free of charge. Without further justification it is explained that “Participation of all sections of civil society in the drawing up of the plan is vital and some means of periodically reviewing progress and ensuring accountability are essential. Without those elements, the significance of the article would be undermined.”⁶⁷

In that same year, 1999, the next GC was issued on the right to *adequate food*. To secure this very basic right the GC involves all actors of society, including civil society and private corporations as responsible partners, even though States parties are the ultimate accountable agents. However, how this responsibility of civil society should materialise is not specified, apart from a broad request to include ‘people’s participation’ in formulation and implementation of national strategies for the right to food.⁶⁸

The *right to health* is defined very comprehensively in the ICESCR GC on this provision. First it is stated that participation of the population in all health-related decision making at the community, national and international levels is an important aspect of the normative content of the right.⁶⁹ It is not clear what is intended by this kind of participation. Again, in relation to the article’s provision on “creation of conditions which would assure to all medical service and medical attention in the event of sickness”, the GC states that “A further important aspect is the improvement and furtherance of participation of the population in the provision of preventive and curative health services, such as the organisation 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.”⁷⁰ This statement is not very transparent either, as ‘the population’, in principle, includes everyone, and how influence from such an unmanageably large group of people can be exerted beyond the normal representative channels is not evident.

The *right to water* has also been elaborated on by the Committee on ICESCR in a GC. A general principle emphasised here is that States parties should take steps to ensure that, among other things, “women are not excluded from decision-making processes concerning water resources and entitlements.” Moreover, States parties must protect the right to water from abuse by third parties through, among other things, ‘genuine public participation’. One of the core obligations outlined under the right to water is to prepare a national water

strategy and plan of action based on “a participatory and transparent process” which “shall give particular attention to all disadvantaged or marginalised groups”. And furthermore, “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.”⁷¹ The more specific recommendation, thus, urges states to include population groups *affected* by prospective decisions.

In a GC on the right to ‘*intellectual interests*’ there is a rather detailed call for consultation by stating that the “obligation to fulfil (promote) requires States parties to ensure the right of authors of scientific, literary and artistic productions to take part (...) 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)”. Furthermore, in the GC it is regarded as a violation of States parties’ obligation to fulfil if they fail to “provide adequate opportunities for the active and informed participation of authors and groups of authors in any decision-making processes 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”.⁷² This establishes a clear demand for a consultation mechanism for affected rights-holders in advance of enactment of laws or similar regulation in the field and this specification of the right makes it well suited for review through the individual communication mechanism under the Covenant.

The right to *work*, too, has been elaborated on in a GC. As with other social and economic rights, the progressive realisation implies that States parties prepare a national plan for implementation in order to fulfil their obligations under the Covenant. As a part of this planning process the GC recommends “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”.⁷³ Concerning *social security*, the right to participation is mentioned for “(b)eneficiaries of social security schemes (who) must be able to participate in the administration of the social security system”.⁷⁴ In relation to both rights of work and social security the obligations to include stakeholders are rather specific.

A very broad recommendation to conduct consultations is given in the ICESCR GC on the *right to take part in cultural life*. Cultural life is defined as“(e)ncompassing

all manifestations of human existence". More concrete examples are also provided, including "ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity", etc.⁷⁵

Typical for GCs on social, economic and cultural rights, the elements necessary for the realisation of the rights are described under headwords such as 'availability', 'accessibility' and 'acceptability'. In relation to the latter, the GC on the right to take part in cultural life prescribes that in relation to laws, policies, programmes and measures adopted for the enjoyment of cultural rights, "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."⁷⁶ Although the right to take part in cultural life is aimed at everyone, throughout the GC there is a special focus on *minorities and indigenous peoples*.⁷⁷

The GC on the right to take part in cultural life recommends consultation measures in relation to certain groups requiring special protection. Again minorities and indigenous peoples feature prominently: States parties should take into consideration wishes from minority and indigenous groups when offering educational programmes addressed at children of these peoples. And any programme intended to promote integration of persons belonging to minorities should be based on inclusion, participation and non-discrimination. In relation to indigenous people, States parties should respect the principles of the FPRC in all matters covered by their specific rights.

However, *other groups* are also mentioned: in policies directly affecting older people, they should be participating actively in both formulation and implementation efforts.⁷⁸ Persons with disabilities, migrants and persons living in poverty are included as requiring special protection, although there are no specific calls for consultation with these groups. This is surprising, in particular with respect to persons with disabilities for whom strong demands on consultation mechanisms have been established by virtue of the CRPD.

Under the core obligations⁷⁹ it is stated that States parties should, with immediate effect, "allow and encourage the participation of persons belonging to minority groups, indigenous peoples and other communities in the design and implementation of laws and policies that affect them. In particular, States parties 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 expressions, are at risk.”⁸⁰

Summing up on the right to consultation as it appears in UN sources, it is a phenomenon with varying scope and precision. In relation to certain groups it has gained a strong backing, in particular regarding persons with disabilities and indigenous peoples, while for other groups and stakeholders it is still expressed in rather vague terms. There seems also to be a certain lack of consistency in the general comments and recommendations of treaty bodies. In some of these a call to States parties to consult with stakeholders is focused and rather concise, in others it is very broad and, seemingly, provides less guidance for implementation.

However, it is beyond doubt that active involvement and consultation with stakeholders in political decision processes is increasingly appearing in soft law instruments of all kinds, including in declarations and policy documents of international organisations beyond the UN. Still more remarkably, in the CRPD, which is a legally binding convention, consultation has been adopted as a general principle in relation to implementing and monitoring the provisions of the Convention. Moreover, the CRPD has gained strong support from States parties through a high number of ratifications. This testifies to the very wide acknowledgement of the right to consultation as an important aspect of a present-day interpretation of the right to participation.

An aspect that deserves mention is the potential of the right to consultation to strengthen and give substance to the link between civil and political rights on the one hand, and social, economic and cultural rights on the other. The right to be consulted and thus be part of decision making is in itself a political right, while obligations for States parties to involve affected groups in decision-making processes are often invoked in relation to economic, social and cultural rights. This may strengthen the human rights-based approach in development activities where social and economic needs are core issues.

Rights to Participation

in public affairs according to international human rights law

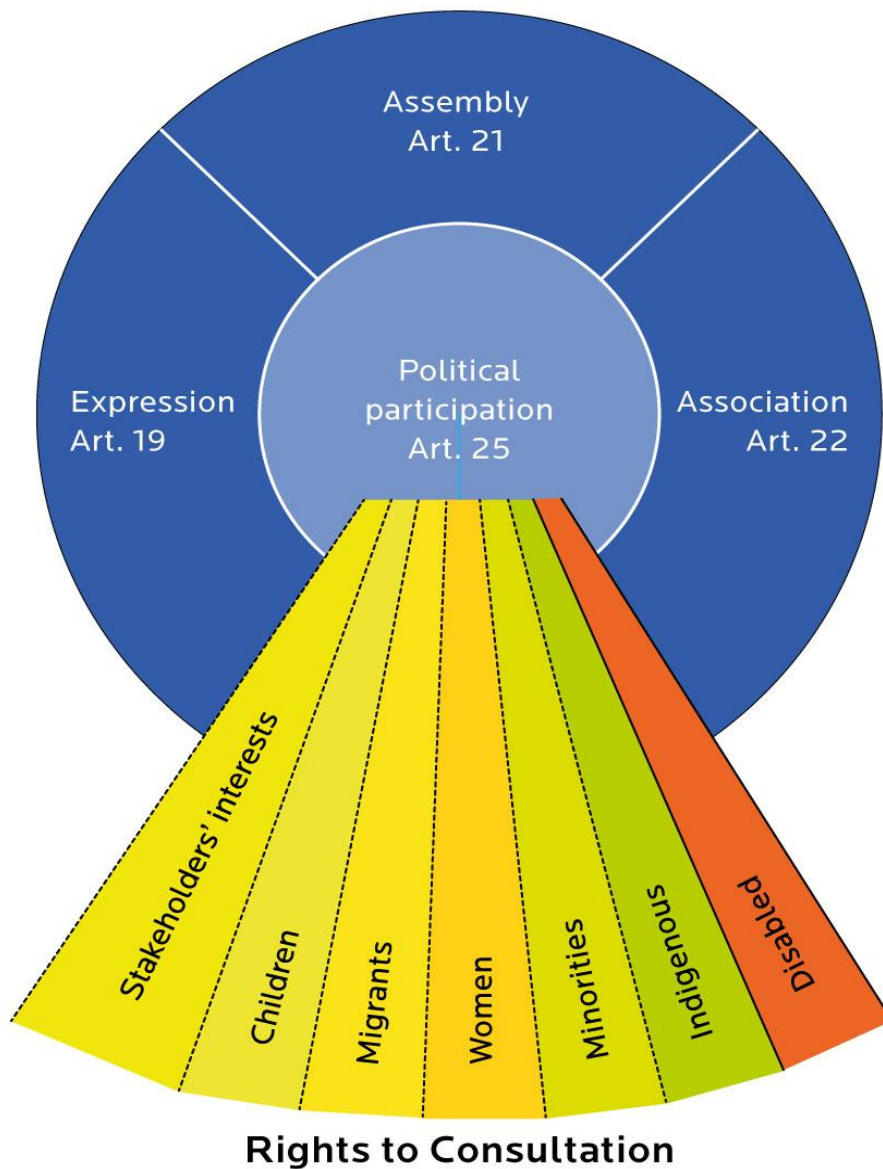


FIGURE 1: The figure shows the classic rights to participation, as provided in the ICCPR, in the blue circles at the centre. They are supplemented by incipient rights to consultation shown by the multi-coloured bars beneath.

REFERENCES

Conte, Alex, Scott Davidson and Richard Burchill (2004) *Defining Civil and Political Rights. The Jurisprudence of the United Nations Human Rights Committee*. Ashgate.

Defending Civil Society Report (2012) 2nd Edition. World Movement for Democracy.

Election Observation Handbook (2010) 6th Edition. OSCE/ODIHR.

Faye Jacobsen, Anette (2010) *Universal Periodic Review. An Introduction*. The Danish Institute for Human Rights.

Fox, Gregory H. (1992) "The right to political participation in international law", *17 Yale Journal Of International Law* 539

Freeman, Marsha A., Christine Chinkin and Beate Rudolf (2012) *The UN Convention on the Elimination of all Forms of Discrimination against Women. A Commentary*. Oxford University Press.

Gernigon, Bernard, Alberto Odero and Horacio Guido (2000) *ILO Principles concerning the Right to Strike*. ILO.

Goodwin-Gill; Guy (2006) *Free and Fair Elections*. Inter-parliamentary Union. Geneva.

IPU "Declaration on Criteria for Free and Fair Elections" (1994), available at: <http://www.ipu.org/cnl-e/154-free.htm> - <http://www.ipu.org/cnl-e/154-free.htm>

Handbook on Media Monitoring for Election Observation Missions (2012) OSCE/ODIHR.

Hanski, Raija and Martin Scheinin (2003) *Leading Cases of the Human Rights Committee*. Institute for Human Rights. Turko/Åbo.

Human Rights and Elections. A Handbook on the Legal, Technical and Human Rights Aspects of Elections (1994) Professional Training Series No. 2, Centre for Human Rights, Geneva. Includes the HR Commission's "Draft General Principles on Freedom and Non-discrimination in the Matter of Political Rights" (1962); and

END NOTES

“Enhancing the effectiveness of the principle of periodic and genuine elections: Framework for future efforts” (1989).

Joseph, Sarah, Jenny Schultz and Melissa Castan (2004) *The International Covenant on Civil and Political Rights. Cases, Materials and Commentary*. 2nd Edition. Oxford University Press.

Mendel, Toby (2008) *Freedom of Information: A Comparative Legal Survey*. UNESCO

Motoc, Antoanella-Iulia and the Tebtebba Foundation (2005) “Standard-setting legal commentary on the concept of free, prior and informed consent”, expanded working paper submitted to the Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Populations. 2005. Doc. E/CN.4/Sub.2/AC.4/2005/WO.1

National Human Rights Institutions. History, Principles, Roles and Responsibilities (2010) Professional Training Series No. 4. United Nations.

Nowak, Manfred (2005) *UN Covenant on Civil and Political Rights CCPR Commentary*. 2nd revised edition.

Paris Declaration for Aid Effectiveness and the Accra Agenda for Action (2005/2008), OECD.

Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies (2006) OHCHR.

Randolph, Susan & Maria Green (2011) *Bringing Theory into Practice: Operational Criteria for Measuring Implementation of the International Right to Development*. Economic Rights Working Paper Series 15. University of Connecticut.

Schulze, Marianne (2010) [Understanding the UN Convention on the Rights of Persons with Disabilities](#). Handicap International.

Weller, Marc (ed.) (2007) *Universal Minority Rights. A Commentary on the Jurisprudence of International Courts and Treaty Bodies*. Oxford University Press.

¹ Quoted from the second section of the preamble,
http://www.ohchr.org/Documents/Issues/Development/DeclarationRightDevelopment_en.pdf

² The concept of ownership entails, among other things, that, “Partner countries commit to:

- Exercise leadership in developing and implementing their national development strategies through broad consultative processes.

(...)

- Take the lead in co-ordinating aid at all levels in conjunction with other development resources in dialogue with donors and encouraging the participation of civil society and the private sector.” *Paris Declaration for Aid Effectiveness and the Accra Agenda for Action* (2005/2008), OECD. p. 3

³ www.un.org/en/events/humanrightsday/2012/message.shtml

⁴ Schulze, Marianne (2010) *Understanding the UN Convention On the Rights Of Persons With Disabilities*. Handicap International. p. 44

⁵ Goodwin-Gill (2006) refers to HR Comm resolutions 2001/36; 2002/34; 2003/35 and 2004/31, pp. 32–34

⁶ *Defending Civil Society Report* (2012) 2nd Edition. World Movement for Democracy, p. 3. *Shrinking Political Space of Civil Society Action* (2011) Act Alliance. p. 1

⁷ ‘Soft law’ here refers to statements from international and regional (governmental) organisations without binding legal status, including declarations, recommendations from, among others, the UN Human Rights Council and General Assembly, general comments of treaty bodies and concluding observations, and Special Procedures’ recommendations.

⁸ CCPR GC No. 25, paragraph 5

⁹ Quotation from Fox (1992), p. 17

¹⁰ Nowak (2005), pp. 584–86

¹¹ CCPR GC No. 25, para 1

¹² Conte et al. (2004), p. 68

¹³ Vienna Declaration and Programme of Actions paragraph 8 states:

“(...) 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. (...)”

¹⁴ CCPR GC No. 25, paras. 5, 19 and 22

¹⁵ The HRC has decided on, for instance, electoral districts and the weighting of influence distributed among constituencies, in Comm. No. 923/2000 *Mayus vs. Slovakia*. See also GC No. 25, para. 21 on electoral boundaries etc. Furthermore,

a number of guidelines and handbooks on free and fair elections are available from international organisations including the UN, see references and literature.

¹⁶ See also Nowak (2005) for a close reading of the article text and discussion of the scope of state obligations re. positive measures (pp. 569–79). See also CCPR GC25, para. 11 and CRPD, Art. 29, (a)(i)–(iii). The HR Commission called upon states to, among other things, take “measures as appropriate to address the representation of under-represented segments of society” in res. 2000/47, ‘Promoting and consolidating democracy’, 25 April 2000 (45-0-8), para. 1(d), (e). cf. UNGA res.55/96, 4 December 2000, 21–2 (quotation from Goodwin-Gill [2006] p. 30)

¹⁷ CCPR GC No. 25, para. 6

¹⁸ Declaration on Criteria for Free and Fair Elections, adopted by IPU 1994, includes a section on “Candidatures, Party and Campaign Rights and Responsibilities”, Section 3, paras. (1)–(11). Under IPU auspices, African parliamentarians developed a set of Guidelines on the Rights and Duties of the Opposition, available at <http://www.ipu.org/dem-e/opposition.pdf>. However, the IPU has not yet finalised and approved the document.

¹⁹ CCPR, Art. 25 reads that the rights should be without unreasonable restrictions. And GC No. 25, para. 4 adds that any condition should be based on objective and reasonable criteria.

²⁰ For examples of cases see Joseph et al. (2004) pp. 659–660 and 664–668; Nowak (2005) pp. 572–73, 577–80 and 592–93; and Conte (2004) pp. 70–75. The cases are, to a large degree, the same in the three books. New case law dating from 2005 onwards ought to clearly have an identifiable, fully updated interpretation from HRC on legitimate restrictions and conditions.

²¹ See Nowak (2005) pp. 590–91. Nowak states, “The real power factors are usually more decisive than formal legal norms. This has led to the situation where the Committee’s criticism is often directed at those States that set down restrictions on political rights in their laws, while other States practice much more far-reaching restriction of democratic participation within the framework of their political systems and their *de facto* power structures.” (p. 591)

²² CCPR GC para. 8 mentions the three freedoms as supportive of public participation and dialogue with elected representatives. IPU has adopted a Declaration of Democracy (1997). Para. 12 herein states very clearly that civil and political rights are essential to the exercise of democracy, and specify this to include “freedom of expression and assembly, access to information and the right to organise political parties and carry out political activities.”

²³ CCPR Articles 19, 21 and 22 respectively.

²⁴ Conte (2004), Joseph (2004) and Nowak (2005) describe key cases relating to the three freedoms, while cases from the following period of time still await a more systematic compilation.

²⁵ Neither does ILO Convention of 1949 concerning Freedom of Association and Protection of the Rights to Organise explicitly mention a right to strike. Nevertheless, this is today understood to be implicit in the provisions, see Gernigon (2000) p. 17. In a case before the HRC (No. 118/1982 Alberta Union v. Canada) it was claimed that the right to strike was contained in CCPR, Art. 22. The majority of the HRC decided that the right to strike was not covered by the Covenant. A minority opinion of five HRC members advocated the opposite point of view (strongly supported by Nowak [2005] pp. 503–04).

²⁶ The CCPR, Article 19 reads in paragraph 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 (...)”. ‘Freedom to seek information’ is the key phrase in this context.

²⁷ Randolph et al (2011) p. 7. See also OHCHR (2006? – no year provided): *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, para. 217: “The right to seek and receive information establishes the duty of Governments to provide the poor, and their freely chosen representatives, with all relevant information concerning governmental activities and services.”

²⁸ Comm no 1470/2006 Toktakunov vs. Kyrgyzstan, quotations from para. 6.3 and 7.4–7.6. One member of the committee, in a dissenting view, persisted in upholding a distinction between the traditional right to receive information from a ‘voluntary speaker’ and “the newer right of access to information held by government” (the information is held by government, not the right). This newer right, according to the dissenting committee member, “raises complexities and concerns that can justify limitations on the satisfaction of the right, based on considerations such as cost or the impairment of government functions”. Dissenting view by Gerald Neumann, Appendix p. 12

²⁹ CCPR GC No. 34, para. 19. The UN Special Rapporteur on freedom of opinion and expression extends States parties’ good practice somewhat further when he writes: “Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public...” In E/CN.4/2000/63, para. 44

³⁰ GC No. 34 paras. 39 and 40–41

³¹ Some of which are also referred to in GC No. 34 – a new phenomenon appearing in General Comments.

³² A/HRC/17/27 of 2011, paras. 45–48

³³ The European Court of Human Rights and others have recognised a positive obligation on states to protect against counter-demonstrations while balancing the two groups’ equal rights to freedom of expression/assembly according to Nowak (2005), p. 454

³⁴ The HRC has issued a General Comment (no 11) regarding Article 20. It is a brief document primarily emphasising the need for legislation and appropriate sanctions to tackle cases of violations of the article.

³⁵ Nowak (2005) discusses the definition of the criteria entailed in the two covenants' provisions, pp. 475–76

³⁶ Decisions referring to articles 19, 20 and 25, the latter in a case about a fascist party, are described in Nowak (2005) pp. 462, 476–479 and 595–96

³⁷ Universal Declaration of Human Rights, Article 29

³⁸ This is mentioned in the IPU Declaration on Criteria for Free and Fair Elections, para. 3(19). Notwithstanding that it follows automatically from respecting others' rights, the Declaration adds that no candidate or political party shall engage in violence and, moreover, that they shall accept the outcome of a free and fair election, para. 3 (9) and (11).

³⁹ CCPR GC, para. 26

⁴⁰ Joseph et al. (2004) only adds that “parties should conduct themselves in accordance with the Covenant’s provision” – which does not give any more clarity to the GC statement.

⁴¹ The German Constitution (Grundgesetz), Article 21, 1 says: “Die Parteien wirken bei der politischen Willensbildung des Volkes mit. Ihre Gründung ist frei. Ihre innere Ordnung muß demokratischen Grundsätzen entsprechen. Sie müssen über die Herkunft und Verwendung ihrer Mittel sowie über ihr Vermögen öffentlich Rechenschaft geben”. However, this provision is linked to other constitutional claims on political parties and is subject to review by the Constitutional Court.

⁴² Nowak (2005) p. 500, footnote 23

⁴³ Nowak (2005) p. 498, para. 8

⁴⁴ See Nowak (2005) pp. 115–117

⁴⁵ Comm. No 1400/2005 Beydon et al. vs. France. Para. 4.5

⁴⁶ Comm No 205/1986 Marshall et al. vs. Canada (sometimes referred to as ‘the Mikmaq tribal society versus Canada’) paras. 5.3 and 5.4

⁴⁷ CO on Norway, UN doc CCPR/C/79/Add. 112, para. 10. For more references to HRC CO with references to Art. 1 see Motoc (2005), endnote 36

⁴⁸ CCPR General Comment No. 23, para. 7

⁴⁹ HRC Comm. No 671/1995 Länsman et al. vs. Finland, para 10.6, states that “additional work and extra expenses for the authors and other herdsmen, does not appear to threaten the survival of reindeer husbandry”, the latter being the core of the case for the Sami herdsmen (the authors) and seen as “an essential element of their culture” (para. 10.2). However, the HRC also writes that the impact on the cultural rights must be taken as a whole, para. 10.7.

⁵⁰ Comm No. 511/1992 Länsman et al. vs. Finland, para. 9.4. Comm No. 1457/2006 Poma vs. Peru, para. 7.7

⁵¹ Comm No. 1457/2006 Poma vs. Peru, para 7.6

⁵² See Motoc (2005)

For a description of World Bank policy and projects involving indigenous people including an assessment of the current WB collaboration principle based on 'free, prior and informed consultation' and debates about 'free, prior and informed consent' see "Implementation of the World Bank's Indigenous Peoples Policy. A Learning Review (FY 2006-08)", August 2011, OPCS Working Paper.

⁵³ CERD General Recommendation No XXIII, para. 4 (d)

⁵⁴ GC No. 17 on the right to intellectual property with the full title: "The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author", Art. 15(1), 2005, para. 32. CO on Columbia (2001) and Ecuador (2004) quoted in Motoc (2005), para. 15

⁵⁵ DRIP, Arts. 10, 29 and 32 stipulate free, prior and informed consent. According to Art. 19 States parties "shall consult and cooperate in good faith (...) in order to obtain their free, prior and informed consent".

⁵⁶ DRIP, Arts. 19 and 30, respectively.

⁵⁷ CMW, para. 42,2

⁵⁸ CEDAW GR No. 23 on Art. 7 (political and public life), para. 26

⁵⁹ CRC GC No. 12 (2009) The right of the child to be heard. para. 13 (general recommendation to involve children), paras. 72–73 (in relation to Art. 3), 87–88 (different groups of children, including indigenous children, children with disabilities, etc.) and generally, in decision-making processes in families, schools, at local and national level), paras. 104 (health) 110–111 (school and education), 115 (play and recreation), 116–17 (work), 118, 119, 121 (violence), 124 (asylum), 126 (emergency situations).

⁶⁰ CESCR GC No. 6 (The economic, social and cultural rights of older persons) (1995), para. 5. The UN Principles for Older Persons, Article 7 (1991). Adopted as Annex to GA Resolution 46/91

⁶¹ CRPD, Article 4,3 and Art. 33,3

⁶² Schulze (2010), p. 59

⁶³ 128 States parties and 155 signatories were reported 25 February 2013

⁶⁴ CESCR GC No. 1 (1989), para. 5

⁶⁵ CESCR GC No. 4 (1991) on the right to adequate housing, para. 12

⁶⁶ CESCR GC No. 7 (1997) on the right to adequate housing: forced evictions, Art. 11,1, para. 15

⁶⁷ CESCR GC No. 11 (1999), para. 8

⁶⁸ CESCR GC No. 12 (1999), paras. 20 and 23

⁶⁹ CESCR GC No. 14 (The right to health) (2000), para. 11

⁷⁰ Ibid, para. 17

⁷¹ CESCR GC No. 15 (the right to water) (2002), paras. 16(a), 24, 37(f) and 48.

⁷² GC No. 17 on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author, Art. 15(1), 2005, paras. 34 and 46

⁷³ CESCR GC No.18 (the right to work), 2005, para. 42

⁷⁴ CESCR GC No. 19 (the right to social security), 2008, para. 26

⁷⁵ CESCR GC No. 21 (the right of everyone to take part in cultural life, Art. 15, para. 1 (a) of the International CESCR, 2009, paras. 11 and 13

⁷⁶ CESCR GC No. 21, para. 16 (c)

⁷⁷ The GC in a subsequent section, paras. 40–43, “Cultural diversity and the right to take part in cultural life”, quotes UNESCO’s Universal Declaration on Cultural Diversity (2001): “The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity”, and other provisions from this Declaration and the UNESCO Convention on the Protection and Promotion of Cultural Expressions (2005).

⁷⁸ CESCR GC No. 21, para. 27 (children of minority groups), para. 29 (older persons, see also a similar phrase in GC No. 6, and footnote 60 above), para. 33 (minorities), para. 37 (indigenous peoples).

⁷⁹ This notion stems from CESCR GC No. 3 (1990), para. 10 which states that a “minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.”

⁸⁰ CESCR GC No. 21, para. 55(e)

**THE DANISH
INSTITUTE FOR
HUMAN RIGHTS**