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Memorandum on Election Law

Introduction

You have asked the International Human Rights Program (“IHRP”) to research “free and fair election” standards to determine whether the events surrounding the election in Iran on 12 June 2009 were in accordance with Iranian and International law.

The *Constitution* of the Islamic Republic of Iran (“Iran”) protects the right to free and fair elections. This right is also protected by many provisions in international law, including article 25 of the *International Covenant on Civil and Political Rights* (“ICCPR”), to which Iran is a State Party.

To be valid under the *ICCPR*, restrictions on the right to free and fair elections must be provided by law, objective and reasonable. Based on the evidence provided by the Iran Human Rights Documentation Center (“IHRDC”), it is the position of the IHRP that the restrictions placed on the right to free and fair elections in Iran were not objective or reasonable, and it can therefore be argued that Iran violated article 25 of the *ICCPR*.

Iranian Law

The Iranian *Constitution* protects the right to free and fair elections. In article 6, the *Constitution* declares that:

the affairs of the country must be administered on the basis of public opinion expressed by the means of elections, including the election of the President, the representatives of the Islamic Consultative Assembly, and the members of councils, or by means of referenda in matters specified in other articles of this Constitution.¹

This is supported by other provisions in the *Constitution*. Article 62 outlines that “[t]he Islamic Consultative Assembly is constituted by the representatives of the people elected directly and by secret ballot...[and] the qualifications of voters and candidates, as well as the nature of election, will be specified by law.”² In article 114, the *Constitution* outlines the term of office for the President of Iran: “[t]he President is elected for a four-year term by the direct vote of the people. His re-election for a successive term is permissible only once.”³ Article 117 develops the specifics for elections and makes clear that “[t]he President is elected by an absolute majority of votes polled by the voters.”⁴

The *Constitution* guarantees that elections in Iran are supervised by an independent electoral authority. Article 99 states that “[t]he Guardian Council has the responsibility of supervising the elections of the Assembly of Experts for Leadership, the President of

¹ *Iran Constitution*, Article 6, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>.

² *Iran Constitution*, Article 62, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>. See also articles 63, 64, 65, and 66 on elections.

³ *Iran Constitution*, Article 114, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>.

⁴ *Iran Constitution*, Article 117, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>; article 117: “The President is elected by an absolute majority of votes polled by the voters. But if none of the candidates is able to win such a majority in the first round, voting will take place a second time on Friday of the following week. In the second round only the two candidates who received greatest number of votes in the first round will participate. If, however, some of the candidates securing greatest votes in the first round withdraw from the elections, the final choice will be between the two candidates who won greater number of votes than all the remaining candidates.”

the Republic, the Islamic Consultative Assembly, and the direct recourse to popular opinion and referenda.”⁵ This is reiterated in article 118: “[r]esponsibility for the supervision of the election of the President lies with the Guardian Council, as stipulated in article 99. But before the establishment of the first Guardian Council, it lies with a supervisory body to be constituted by law.”⁶

In summary, free and fair elections are protected by law in Iran. These elections must express the public opinion, they must be aimed at revealing the wishes of the majority of the voters, and they must be supervised by an electoral body, the Guardian Council.

International Law

International law also protects the right to free and fair elections through a number of treaties and conventions.⁷ The principal provision in international law on free and elections for the purpose of this analysis is article 25 of the *International Covenant on Civil and Political Rights (ICCPR)*. Article 25 states that:

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*

⁵ *Iran Constitution*, Article 99, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>.

⁶ *Iran Constitution*, Article 118, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>.

⁷ *Universal Declaration on Human Rights*, GA Res 217(III), UNGAOR, 3d Sess., UN Doc A/810 (1948), Article 25: “(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 of 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.”; *African Charter on Human and Peoples’ Rights*: Article 13: “(1) Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. (2) Every citizen shall have the right of equal access to the public service of his country. (3) Every individual shall have the right of access to public property and services in strict equality of all persons before the law.”; *European Convention for the Protection of Human Rights and Fundamental Freedoms*: (1st protocol): Article 3: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

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.⁸

The United Nations (UN) Human Rights Committee and international law recognize that free and fair elections are at “the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant”.⁹ The Human Rights Committee has consistently called upon Member States to protect this right in order to give substance to other rights in the Covenant.¹⁰ Additionally, the UN General Assembly has stressed:

that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and ... the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights.¹¹

A central facet of the protection of free and fair elections in international law is the requirement that elections be ‘genuine’. The Human Rights Committee has outlined in *General Comment 25* that genuine periodic elections are “essential to ensure the accountability of representatives for the exercise of the legislative or executive powers

⁸ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Article 25. [emphasis added]

⁹ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online: <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 1.

¹⁰ See for example UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Republic of the Congo*, 27 March 2000, CCPR/C/79/Add.118, online: <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.118.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.118.En?Opendocument)> at para. 20. “The Committee notes with concern that the Congolese people have been unable, owing to the postponement of general elections, to exercise their right to self-determination in accordance with article 1 of the Covenant and that Congolese citizens have been deprived of the opportunity to take part in the conduct of public affairs in accordance with article 25 of the Covenant. The Committee calls on the State party to organize general elections as soon as possible in order to enable its citizens to exercise their rights under articles 1 and 25 of the Covenant and, thus, to participate in the process of reconstruction of the country.”

¹¹ UN General Assembly, *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections*, 18 December 1990, A/RES/45/150, online: <<http://www.unhcr.org/refworld/docid/3b00efcf34.html>> at para. 2.

vested in them.”¹² Elections are genuine if they meet two broad requirements. Procedurally they are genuine if they guarantee periodicity, equality and universality of suffrage, and secrecy of the ballot. They are also genuine only if the outcome reflects the free expression of the will of the electors.¹³

Iran signed the *ICCPR* on 4 April 1968 and ratified it on 24 June 1975. As a State Party, it is bound by the provisions of the Covenant. The UN Human Rights Committee issues General Comments and Concluding Observations on the *ICCPR* as well as accepting complaints against States Parties which have ratified the First Optional Protocol of the *ICCPR*. While Iran is not legally bound by this jurisprudence, the Human Rights Committee’s interpretation of the rights of the *ICCPR* serve as persuasive authority for what Iran’s legal obligations under the *ICCPR* constitute in practice. In addition, while Iran is not bound by other regional human rights treaties, these documents, and the jurisprudence based on them, shed light on article 25 of the *ICCPR* as the protection of the right to free and fair elections in the *ICCPR* and other human rights treaties is very similar.

Restrictions on the Right to Free and Fair Elections in Iran

The Iranian government and officials restricted and infringed on the right to free and fair elections leading up to, during and after the June 12, 2009 election. This occurred in several ways: the Government restricted the media during this period, it restricted who could be a candidate for election, it used state resources to support one candidate, voters were intimidated, there was no guarantee of equal suffrage, the Government did not allow for scrutiny of the vote counting and the electoral authority supervising the election was

¹² UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument) at para. 9.

¹³ Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 76.

not independent. The international law concerning these restrictions on the right to free and fair elections is addressed below.

Restrictions on Media

Alternative media channels were severely restricted for opposition parties before the election took place. For example, websites were shut down, opposition news sources were made inaccessible and SMS services were halted. This occurred at the same time that state media was used to support the election campaign of Mahmoud Ahmadinejad.¹⁴ On its face, these facts suggest a violation of article 25 (in conjunction with article 19).

Requirement that Media be Accessible

International law requires that media be accessible in an election context. This is because freedom of expression and information contribute towards ensuring a free and fair genuine election. If citizens cannot freely express their political opinion without fear and there is a lack of public debate hampering the ability of citizens to access information, “there can be no guarantee that elections are a true manifestation of the will of the people.”¹⁵ Thus, the media must be accessible to political parties for campaign purposes as well as to citizens for purposes of voter education.

The Human Rights Committee has provided clear support to this requirement that media be accessible. In a recent concluding observation on Tunisia, it expressed concern that the *Electoral Code* limited the private use of radio or television to encourage listeners to vote in one way or another during an election period. In suggesting an appropriate

¹⁴ Facts provided by the Iran Human Rights Documentation Center (IHRDC).

¹⁵ Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 39.

response to ameliorate the situation, the Human Rights Committee stated strongly that Tunisia “should abolish these restrictions.”¹⁶

Requirement that Media be Balanced

As mentioned above, the media plays an important role in educating voters. In *General Comment 25*, the Human Rights Committee drew this link between the media and the establishment of an educated population of voters. It explained that:

In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and *to inform public opinion*.¹⁷

However, in order to achieve this objective, media must be both accessible and *balanced*. States have an obligation to create an environment where competing political parties all have the opportunity share their message and this has been made by clear by the Human Rights Committee. For example, in a concluding comment on Gambia, the Human Rights Committee noted that opposition parties are discriminated against, specifically pointing to their limited ability to make broadcasts over radio and television. In doing so, the Human Rights Committee urged Gambia to “treat all political parties equally.”¹⁸

¹⁶ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Tunisia*, 23 April 2008, CCPR/C/TUN/CO/5, online: <<http://www.universalhumanrightsindex.org/documents/825/1316/document/en/text.html>> at para. 19.

¹⁷ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online: <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 25. [emphasis added]

¹⁸ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: The Gambia*, 12 August 2004, CCPR/CO/75/GMB, online: <<http://www.universalhumanrightsindex.org/documents/825/364/document/en/text.html>> at para. 23.

On a broader level, article 19 of the *ICCPR* which protects freedom of expression, generally requires that there be “media pluralism.”¹⁹ Thus, whether in the context of an election or not, freedom of expression requires that the state avoid monopolization of the media “either directly or indirectly through state-owned corporations.”²⁰

In discussing the requirements of accessibility and balance in media in greater depth, Guy S. Goodwin-Gill suggests that political parties must have equal access to the media but the *modus operandi* may vary.²¹ A set of guidelines for election broadcasting suggests certain mandatory obligations on the part of the state. These minimum obligations, as summarized by Guy S. Goodwin-Gill are:

to inform the public, to grant access and accord unbiased coverage, to abolish or suspend restrictions on public comment, to punish attacks on media personnel, to refrain from censorship, to grant access on a non-discriminatory basis to all parties, to ensure balance and fairness, to provide education for voters, and to provide for judicial review of broadcasting-related decisions.²²

In any case, Iran’s extreme control of the media makes it unlikely that it met any sort of minimum requirement for free media during elections. Thus, Iran’s restriction of the media likely constitutes a violation of article 25.

¹⁹ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Russian Federation*, 1 December 2003, CCPR/CO/79/RUS, online: <<http://www.universalhumanrightsindex.org/documents/825/525/document/en/text.html>> at para. 18.

²⁰ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Russian Federation*, 1 December 2003, CCPR/CO/79/RUS, online: <<http://www.universalhumanrightsindex.org/documents/825/525/document/en/text.html>> at para. 18.

²¹ Guy S. Goodwin-Gill, *Free and Fair Elections*, 2nd ed. (Geneva: Inter-Parliamentary Union, 2006), online: <<http://www.ipu.org/PDF/publications/Free&Fair06-e.pdf>> at 149. See pages 147-150 for both positive and negative examples about the role of media in elections.

²² Guy S. Goodwin-Gill, *Free and Fair Elections*, 2nd ed. (Geneva: Inter-Parliamentary Union, 2006), online: <<http://www.ipu.org/PDF/publications/Free&Fair06-e.pdf>> at 150-151. Minimum obligations listed are based on P. Merloe, *Election Campaign Broadcasting in Transitional Democracies: Problems, Principles and Guidelines*, pre-publication draft (The International Centre against Censorship, August 1993) at 61-84. See also *Guidelines for Election Broadcasting in Transitional Democracies* (Article 19, April 1997), online: <<http://www.article19.org/pdfs/tools/electionbroadcastingtrans.pdf>>.

Restrictions on Candidacy

The Agence France-Presse (AFP) reported that the Guardian Council approved only four candidates out of a total of 476 for the election. This suggests possible concerns about the lawful culling of candidates.²³ State obligations under article 25 for the culling of candidates are briefly summarized below.

Right to be Elected and Right to Choose Among Candidates

Article 25 of the *ICCPR* is applicable to the culling of candidates before an election. The culling of candidates is significant not only because it affects an individual's right to participate in "public affairs" but also because it affects the free choice of candidates for those entitled to vote.²⁴

It is article 25(a) in particular that provides citizens of States Parties with the right "to take part in the conduct of public affairs."²⁵ Paragraph (b) of the same article similarly provides for a right "to be elected."²⁶ The language of both provisions could apply to the culling of candidates and it is not fully clear under which provision the culling of candidates actually falls.²⁷ Manfred Nowak discusses issues related to the culling of candidates under article 25(a).²⁸ However, General Comment 25 suggests that this falls

²³ Aresu Eqbali, "Iranian women need more rights: candidate's wife" *Agence France-Presse* (29 May 2009),
online:
<<http://www.google.com/hostednews/afp/article/ALeqM5jDD9Q1xNs5VlqwgzYINkyU2y5Upg>>.

²⁴ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 15.

²⁵ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Article 25(a).

²⁶ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Article 25(b).

²⁷ This is assuming that the culling of candidates does in fact come within only one provision.

²⁸ Manfred Nowak, Chapter on Article 25 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at paras. 11-17.

under paragraph (b).²⁹ The Human Rights Committee jurisprudence is similarly conflicting. In *Bwalya v. Zambia*, a leading opposition candidate was harassed, intimidated, detained and effectively prevented from running in the upcoming election. As a result, the Human Rights Committee found a violation of article 25(a).³⁰ On the other hand, in *Alexandre Dergachev v. Belarus*, the author claimed that there were “electoral irregularities” preventing him from being a qualified candidate for election and a violation under article 25(b) was found.³¹

Lawful and Unlawful Restrictions

Restrictions on candidacy for election are permitted as long as they are objective and reasonable.³² In addition, limitations must be provided by law.³³ Moreover, it is arguable that international law requires that any legislation covering candidate qualifications be made “clear” and “disqualifications...be subject to independent review.”³⁴ The general rules concerning permissible limitations on article 25 will be discussed in greater depth at a later stage in this report as well as examples from cases related to the culling of candidates. However, for present purposes it is useful to highlight some key pieces of guidance on the culling of candidates from the Human Rights Committee.

²⁹ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at paras. 9, 16.

³⁰ *Chiiko Bwalya v. Zambia*, Communication No. 314/1988, U.N. Doc. CCPR/C/48/D/314/1988 (1993).

³¹ *Alexandre Dergachev v. Belarus*, Communication No. 921/2000, U.N. Doc. CCPR/C/74/D/921/2000 (2002).

³² UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at paras. 4, 15.

³³ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 4. “The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law.”

³⁴ Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 107.

In *General Comment 25*, it is suggested that eligibility factors such as age, nomination dates, fees, deposits, number of supporters for nomination or pre-existing tenure in specific positions may be reasonable in certain circumstances.³⁵ In contrast, factors that are likely to be unreasonable and/or discriminatory are the existence of candidacy requirements relating to education, residence, descent and political affiliation.³⁶

Political opinion is a conditional factor that deserves further discussion. The Human Rights Committee specifically provides that, “the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties.” Indeed, ideologically based requirements for political participation will tend to violate article 25, especially given the protected right to freedom of opinion and expression in article 19 and the non-discrimination clause in article 2 of the *ICCPR*.³⁷ While emphasizing that political opinion should not be a reason to limit the right of an individual to stand for election, the Human Rights Committee has also made note that an exception to this rule lies in article 5(1) of the *ICCPR*, which provides as follows:

Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.³⁸

³⁵ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online: <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at paras. 15-17.

³⁶ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online: <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 15.

³⁷ Guy S. Goodwin-Gill, *Free and Fair Elections*, 2nd ed. (Geneva: Inter-Parliamentary Union, 2006), online: <<http://www.ipu.org/PDF/publications/Free&Fair06-e.pdf>> at 137.

³⁸ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Article 5(1).

Use of State Resources to Support One Candidate

Opposition candidates have complained that the election campaign for Mahmoud Ahmadinejad was at least partially supported by state resources such as airplanes and money.³⁹ The unequal treatment of different political parties puts into question the fairness of the election. Given that international law requires the state to treat all political parties equally, the evidence suggests another violation of article 25 by Iran.

Related to the requirement of having balanced media is the requirement that state resources (financial or other) not be used in an imbalanced manner to support one political party over another. In both cases, the broad applicable rule is that in order to ensure genuine multiparty elections, the state must treat all political parties equally. In *General Comment 25*, the Human Rights Committee emphasizes that, “No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, *political or other opinion*, national or social origin, property, birth or other status.”⁴⁰ Thus, it is not unlawful for a state to provide public financing to political parties. However, this must be done in a fair and equal manner.⁴¹

In the same general comment, the Human Rights Committee suggests that the state may impose a reasonable limit on campaign expenditure. In doing so, it again stresses the principle of equality but goes one step further by supporting states who actively strive to create equal conditions for parties in their political campaigning. For instance, expenditure limits could negatively affect the campaigning of one party and not another but it is done to create an ‘equal playing field’. Having equal conditions for political campaigning helps protect the free choice of voters. As the Human Rights Committee

³⁹ Fact provided by IHRDC.

⁴⁰ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online: [http://www.unhchr.ch/tfs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tfs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument) at para. 3. [emphasis added]

⁴¹ Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 81. “[L]egislation should provide for *fair* and transparent funding of political campaigns.” [emphasis added]

explains, “Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”⁴²

This general principle of equal treatment towards all political parties has been emphasized by institutions other than the Human Rights Committee as well. For example, in discussing general election conditions, the Inter-American Commission on Human Rights suggested that different political parties should be able to participate under “equal conditions.”⁴³ In the 1983-84 Annual Report, it criticized the Sandinistas for using state resources for their own political advantage.⁴⁴

Voter Intimidation

During the Iranian election, paramilitary forces intimidated voters. Members of the paramilitary themselves were also pressured to vote for Mahmoud Ahmadinejad.⁴⁵ These facts suggest that the genuineness of elections was compromised. In order to have genuine elections, voters must be able to freely express their choice without the presence of fear or coercion.⁴⁶

Article 25(b) of the *ICCPR* guarantees “the free expression of the will of the electors.” This requires not only that votes be cast by secret ballot but also that any “intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly

⁴² UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 19.

⁴³ Inter-American Commission on Human Rights, *Annual Report of the Inter-American Commission on Human rights 1989-1990*, 17 May 1990, online: <<https://www.cidh.oas.org/annualrep/89.90eng/Mexico9768.htm>> at para. 49.

⁴⁴ Inter-American Commission on Human Rights, Chapter on Nicaragua in *Annual Report of the Inter-American Commission on Human rights 1983-1984*, 24 September 1984, online: <<http://www.cidh.org/annualrep/83.84.eng/toc.htm>>.

⁴⁵ Facts provided by IHRDC.

⁴⁶ Manfred Nowak, Chapter on Article 25 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 19.

enforced.”⁴⁷ Iran seems to have failed in this regard. The Human Rights Committee had stated unequivocally that, “[v]oters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”⁴⁸ The European Commission on Human Rights also takes this stance. In *X. v. United Kingdom*, the Commission held that:

les mots ‘libre expression de l’opinion du peuple’ signifient essentiellement que les élections ne sauraient comporter une quelconque pression sur le choix d’un ou plusieurs candidats et que, dans ce choix, l’électeur ne doit pas être indûment incité à voter pour un parti ou un autre.⁴⁹

Equal Suffrage was not Guaranteed

The requirement of genuine elections by article 25 of the *ICCPR* includes equal suffrage between voters. Election officials for opposition candidates in Iran cited a discrepancy between the number of registered voters in districts and provinces and the counted votes.⁵⁰ This suggests that Iran infringed upon the right to equal suffrage in some manner. Further, the explanations given by the Election Commission regarding these inconsistencies have not clarified the discrepancies.⁵¹

Citizens cannot vote more than once. Equal suffrage, meaning “one person, one vote,” is protected in international law. Equal suffrage also requires that no vote’s weight is more

⁴⁷ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 11. See also Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 32.

⁴⁸ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 19.

⁴⁹ *X. v. United Kingdom*, European Commission of Human Rights, Application 7140/75, (1977) 7 Decisions & Reports 95. Translation by Nicole Simes: “the words ‘free expression of the opinion of the people’ essentially means that the elections did not involve any pressure on the choice of one or more candidates, and that in this choice, the voter must not be improperly induced to vote for one party or another.”

⁵⁰ Fact provided by IHRDC.

⁵¹ Fact provided by IHRDC.

than another. *General Comment 25* on the *ICCPR* states the importance of equal suffrage:

The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.⁵²

Similarly, the UN Center for Human Rights highlights the legal and technical aspects necessary for elections. It cites that “[e]ach vote must carry equal weight in order to satisfy the element of fairness.”⁵³

The majority of international jurisprudence on equal suffrage concerns the drawing of electoral district boundaries. This case law is relevant to the situation in Iran because it highlights the importance of equal suffrage. In *Matyus v. Slovakia*, the electoral boundaries of five voting districts were drawn in such a way that the number of voters was severely disproportionate in each district.⁵⁴ The result was that a vote cast by a citizen in a district in which 1000 citizens voted was not equal to a vote cast by a citizen in a district where 200 citizens voted. The Human Rights Committee found a violation of article 25 of the *ICCPR* because the right of the candidate to be elected by equal suffrage was violated.

Restrictions on Scrutiny in Vote Counting

In order to guarantee fair elections, international law requires that there be independent scrutiny and observation of the vote counting process. During the June 12, 2009 election

⁵² UN Human Rights Committee, *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument) at para. 21.

⁵³ Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 68.

⁵⁴ *Istvan Matyus v. Slovakia*, Communication No. 923/2000, U.N. Doc. A/57/40 (Vol. II) at 257 (2002).

in Iran, election officials for the opposition candidates were barred from monitoring the vote count. This infringed on the fairness of the Iranian election in international law.

Vote counting must be an open process to be observed by all concerned parties. Transparency in this process requires that the counting, verification and reporting of election results be secure and fair.⁵⁵ A re-count procedure should also be in place. *General Comment 25* on the *ICCPR* states that “votes should be counted in the presence of the candidates or their agents. ... There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.”⁵⁶

The requirement that opposition parties be able to monitor the vote counting process is one aspect of requiring an open and transparent vote counting. In order for elections to be considered genuine, votes must be honestly counted and recorded.⁵⁷ The lack of transparency and the opportunity for opposition officials to monitor the vote counting process brought into question the fairness of the June elections in Iran.

Lack of Independent Electoral Authority

A fair election requires that an independent electoral authority be established to review and monitor all of the election processes to ensure fairness. The Iranian *Constitution* establishes that the Guardian Council will supervise Iranian elections. However, the independence of the electoral authority during the June 2009 was questionable. Evidence suggests that the Election Commission was run by a close ally of President Mahmoud Ahmadinejad, who has recently been appointed to a ministerial position by the

⁵⁵ Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 112.

⁵⁶ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 20.

⁵⁷ Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* (Cambridge: Cambridge University Press, 2002) at 808.

President.⁵⁸ Additionally, several members of the Guardian Council had already endorsed Mahmoud Ahmadinejad prior to the time of the election. These conflicts of interest bring into question the independence of the Guardian Council and Election Commission in a way that suggests Iran violated the right to fair elections.

The Human Rights Committee, in *General Comment 25* on the *ICCPR*, requires that, “an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.”⁵⁹ This is directly connected to the scrutiny of vote counting and the issue of equal suffrage. The independent electoral authority should monitor all the election counting to insure that double voting or inconsistencies with the ballot boxes do not occur.

The UN Center for Human Rights provides clearly in its report on human rights and elections that fair elections require an “objective, unbiased, independent and effective administrative” structure to observe and monitor the fairness of elections.⁶⁰ In order to achieve this structure careful attention must be paid to “provisions for appointment, remuneration, duties, powers, qualifications and reporting structure of electoral staff. At all levels, staff must be insulated from bias and political pressure.”⁶¹ Further, in order to insulate the electoral authority from bias and corruption, legal measures and guarantees must be in place. This also requires appropriate training for election officials. It is important that “all electoral activities, including the decision-making process, the legal

⁵⁸ Fact provided by IHRDC.

⁵⁹ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument) at para. 20.

⁶⁰ Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 101.

⁶¹ Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 101.

process and the organization of events, should be conducted in a wholly transparent manner.”⁶²

Jurisprudence from various jurisdictions highlights the importance of the electoral authority in maintaining fair elections. In the case *Republican Party v Malawi Electoral Commission and Others*, the Malawi Supreme Court considered questions relating to the number of election monitors and which polling station they observed, the use of public resources for election campaigning, the period of verification of the voters roll and whether an election would be free and fair if it went ahead without first addressing these concerns. The Supreme Court held that the mandate of the Electoral Commission is “to conduct a free and fair election and not a “substantially free and fair election.”⁶³ The Court held that the serious flaws in the compilation of the voters register required “adequate time for inspection and verification by the voters, representatives of the Plaintiffs and other political parties and international observers” if the Electoral Commission was “to conduct a free and fair election.”⁶⁴

Similarly, in *Mohinder Singh Gill & Anr V. The Chief Election Commissioner, New Delhi & Ors*, the Supreme Court of India held that “the periodical process of free and fair elections, uninfluenced by the caprice, cowardices or partisanship of hierarchical authority holding it and unintimidated by the threat, tantrum or vandalism of strong-arm tactics, exacts the embarrassing price of vigilant monitoring.”⁶⁵ The importance of an independent supervisory electoral authority is universal.

The UN Commission on Human Rights has further noted the necessity for independent monitoring of elections in its concluding comments. In its report on Burundi, the

⁶² Centre for Human Rights, C4: Professional Training Series No.2, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: W&W United Nations, 1994) at para. 102.

⁶³ *Republican Party v Malawi Electoral Commission and Others* (Constitutional Case No. 5 of 2004) [2004] MWHC 30 (14 May 2004) at para. 10.

⁶⁴ *Republican Party v Malawi Electoral Commission and Others* (Constitutional Case No. 5 of 2004) [2004] MWHC 30 (14 May 2004) at para. 10.

⁶⁵ *Mohinder Singh Gill & Anr V. The Chief Election Commissioner, New Delhi & Ors* [1977] INSC 227 (2 December 1977).

Independent Expert on the Human Rights Situation in Burundi, Akich Okola, praised the “exemplary and successful completion of election process.” The Independent Expert noted that in particular the National Independent Electoral Commission contributed to this success.⁶⁶ The UN Human Rights Committee has also commented on this issue. It noted that in June 2002 Togo dissolved its Independent National Electoral commission (CENI). The Human Rights Committee reported that the State had not made all the necessary efforts to ensure the smooth operation of CENI. As such, the HRC found that “in such conditions, legislative elections of 27 October 2002, in which part of the opposition again refused to participate, might not have been sufficiently in keeping with requirements of transparency and honesty under article 25 *ICCPR*.”⁶⁷

The fact that members of the Guardian Council had previously declared their support for Mahmoud Ahmadinejad, and the fact that members of the Electoral Commission had strong ties to Mahmoud Ahmadinejad personally and have now been appointed to the Government, suggest that the supervising electoral authority in Iran was subject to clear bias and corruption. This is not in keeping with the requirements on Iran under article 25 of the *ICCPR*.

Remedies

The Human Rights Committee further requires in *General Comment 25* that there be a process in place to question or challenge the decisions made by the electoral authority or other vote counting officials. This challenge can be in the form of judicial review or an equivalent process.⁶⁸ In *Leonid Sinitsin v. Belarus*,⁶⁹ the Electoral Commission in

⁶⁶ UN Commission on Human Rights, Economic and Social Council, *Report of the Independent Expert on the Human Rights Situation in Burundi, Akich Okola*, 23 December 2005, E/CN.4/2006/109 (IE Burundi, 2005), online: <<http://www.universalhumanrightsindex.org/documents/21/833/document/en/pdf/text.pdf>> at para. 78.

⁶⁷ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Togo*, 28 November 2002, CCPR/CO/76/TGO, online: <<http://www.universalhumanrightsindex.org/documents/825/583/document/en/pdf/text.pdf>> at para. 20.

⁶⁸ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

Belarus refused to validate the nomination of the author as a candidate for election and refused to register him. The Human Rights Committee held that the absence of judicial review or an “independent and impartial remedy to challenge” this decision was a violation of the author’s rights under article 25.

Permissible Restrictions

Article 25 rights are not absolute. Restrictions on article 25 rights are permitted provided that they are objective and reasonable.⁷⁰ Reasonableness requires that restrictions be proportionate and non-discriminatory.⁷¹ In addition to the requirements of objectiveness and reasonableness, any limitations must also be provided by law.⁷²

Despite these criteria, it often remains unclear what is to be considered permissible limitation. Due in part to the fact that the international law around free and fair elections is still very much evolving, States’ obligations under article 25 are “vague and broad discretion is left to states parties.”⁷³ In providing some guidance, Manfred Nowak explains that, “whether specific restrictions on various political rights are reasonable may

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 20.

⁶⁹ *Leonid Sinitin v. Belarus*, Communication No. 1047/2002, U.N. Doc. CCPR/C/88/D/1047/2002 (2006).

⁷⁰ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at paras. 4, 15.

⁷¹ UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 16. “If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should *not unduly* limit the rights protected by paragraph (b).” [emphasis added] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, chapeau of Article 25.

⁷² UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 4. “The exercise of these rights by citizens may not be suspended or excluded except on grounds which are *established by law*.” [emphasis added]

⁷³ Manfred Nowak, Chapter on Article 25 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 45.

only be evaluated on a case-by-case basis by drawing on the principle of proportionality and taking into account the overall political situation of the State concerned.⁷⁴ There is little jurisprudence from the Human Rights Committee dealing with permissible restrictions on article 25. However, a few cases that were heard by the Human Rights Committee are described below in order to shed some light on how the rules for permissible restrictions operate in practice.

Requirement of Objectivity

In the case of *Antonina Ignatane v. Latvia*, Latvian language requirements were used to prevent an individual from obtaining candidacy in a local election. A few years before the election, the author of the communication had completed a language proficiency test and was awarded a certificate suggesting that she had the highest possible level of proficiency in Latvian. Nevertheless, before the upcoming election, her candidacy was annulled by an election commission due to an opinion issued by the State Language Board (SLB) suggesting that she did not meet the minimum language requirements. The Human Rights Committee noted that the decision to annul her candidacy was based on the “decision of a single inspector” that was “conducted in an ad hoc manner” as opposed to a “board of Latvian language specialists.”⁷⁵ A violation of article 25 was found not because the language requirements were considered unreasonable, but rather because the author’s annulment of candidacy was not based on objective criteria.⁷⁶

Requirement of Reasonableness

As mentioned earlier, reasonableness requires that restrictions be both proportionate and non-discriminatory.⁷⁷ Proportionality is referenced in the case of *Pietrarroia v. Uruguay*.

⁷⁴ Manfred Nowak, Chapter on Article 25 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 49.

⁷⁵ *Antonina Ignatane v. Latvia*, Communication No. 884/1999, U.N. Doc. CCPR/C/72/D/884/1999 (2001) at para. 7.4.

⁷⁶ *Antonina Ignatane v. Latvia*, Communication No. 884/1999, U.N. Doc. CCPR/C/72/D/884/1999 (2001) at para. 7.4.

⁷⁷ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, chapeau of Article 25; UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public*

In that case, a former trade union leader was barred by legislation from participating in the conduct of public affairs for a period of 15 years. The same piece of legislation also prevented him from exercising his right to be elected for 15 years. The Human Rights Committee suggested that application of the principle of proportionality means that the greater the restriction imposed on article 25 rights, the greater the obligation on the State to provide specific justification.⁷⁸ Since the state in this case did not provide any justification and so a violation of article 25 was easily found based at least in part on a lack of proportionality.⁷⁹

The case of *Pietraroia v. Uruguay* also shows that discrimination is generally considered unreasonable. With relevance to the facts surrounding the Iranian election, the case takes a strong stance against discrimination based on political opinion in particular. The Human Rights Committee emphasized that political opinion cannot serve as a legitimate basis for restricting the rights found under article 25: “In no case...may a person be subjected to such sanctions solely because of his or her political opinion (arts. 2(1) and 26).”⁸⁰

Another case in which discrimination based on political opinion arose in the facts is that of *Bwalya v. Zambia*. In that case, a leading opposition candidate was harassed, intimidated and detained based solely on his membership in a certain political party.⁸¹ As a result, he was effectively prevented from being elected in the upcoming election. In the

Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25), 12 July 1996, CCPR/C/21/Rev.1/Add.7, online:

<[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)> at para. 16. “If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should *not unduly* limit the rights protected by paragraph (b).” [emphasis added]

⁷⁸ Manfred Nowak, Chapter on Article 25 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 48.

Rosario Pietraroia v. Uruguay, Communication No. R.10/44, U.N. Doc. Supp. No. 40 (A/36/40) at 153 (1981) at para. 16.

⁷⁹ A violation of article 25 based on the same piece of legislation was also found in another communication. See *Alberto Altesor v. Uruguay*, Communication No. 10/1977, U.N. Doc. CCPR/C/OP/1 at 105 (1985).

⁸⁰ *Rosario Pietraroia v. Uruguay*, Communication No. R.10/44, U.N. Doc. Supp. No. 40 (A/36/40) at 153 (1981) at para. 16.

⁸¹ *Chiiko Bwalya v. Zambia*, Communication No. 314/1988, U.N. Doc. CCPR/C/48/D/314/1988 (1993) at para. 6.6.

end, the Human Rights Committee found a violation of article 25 due to a finding of unreasonableness.⁸²

Although state practice suggests that discrimination based on political opinion is not so unreasonable, the *travaux préparatoires* of the *ICCPR* reflect an agreement that all restrictions on political rights based on political opinion are to be prohibited.⁸³ Manfred Nowak builds on this point and comes to the general conclusion that, “Restrictions on political rights for reasons of political opinion are thus permissible only when they are based on reasonable and objective grounds or when they are called for or can be justified by other provisions of the Covenant. The only provisions of relevance are Arts. 5(1) and 20.”⁸⁴

Conclusion

Iran protects the right to free and fair elections through several articles of the Iranian *Constitution*. The *Constitution* is not explicit regarding the manner in which this right may be restricted under Iranian law. However, article 25 of the *International Covenant on Civil and Political Rights*, to which Iran is a State Party, is explicit about the possibility of lawful restrictions on the right to free and fair elections. In order to be lawful, restrictions on this right must be provided by law, objective and reasonable.

The Iranian Government, and its officials, restricted the right to free and fair elections in several ways leading up to, during and after the 12 June 2009 election. An argument can therefore be made that these restrictions are not objective or reasonable, and that Iran’s actions constituted a violation of its international obligations under article 25 of the *ICCPR*.

⁸² *Chiiko Bwalya v. Zambia*, Communication No. 314/1988, U.N. Doc. CCPR/C/48/D/314/1988 (1993) at para. 6.6.

⁸³ Manfred Nowak, Chapter on Article 25 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 52.

⁸⁴ Manfred Nowak, Chapter on Article 25 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 53.