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**Submission by JUSTICE, the Hong Kong Section of the
International Commission of Jurist
to the Panel on Constitutional Affairs**

Consultation Document:

Green Paper on Constitutional Development

3 September 2007

JUSTICE Submission on the Green Paper on Constitutional Development

What's wrong with Government's Green Paper

1. The Government has not told the whole truth:
 - It has not told the public that our current electoral systems do not comply with the ICCPR and therefore do not meet international standards
 - It has not told the public that the UN Human Rights Committee, which is the authoritative body which monitors compliance with the ICCPR, has expressed the view that the Government can no longer rely on the Reservation entered by the UK Government in 1976
 - It has not told the public that the PRC Government/the HKSAR Government has an obligation under the ICCPR to put in place electoral systems which comply with the ICCPR and to accord HK people the full measure of their rights under Article 25 of the ICCPR
 - It has not explained why the UN Human Rights Committee considers that our electoral systems do not comply with the ICCPR

2. The Government has attempted to explain what the ICCPR does not require but made no attempt to explain what it does require. It has not put forward any models which would comply, even as an

example, despite the promises made by the Chief Executive during his election campaign that there would be proposals and that they would comply with international standards.

3. The United Nations Human Rights Committee (the UNHRC) is the authoritative body which monitors compliance by State Parties to the ICCPR. As well as considering periodic reports from State Parties, the UNHRC has also issued General Comments on Articles in the ICCPR. These distill the principles in the Articles and provide more detailed guidance on what does and what does not satisfy the requirements of the ICCPR. The UNHRC has made and published a General Comment on Article 25. In considering whether or not, our electoral systems comply with international standards, it is necessary to refer to the General Comment on Article 25 (annexed as Attachment 'A').

HK Government is in violation of ICCPR

4. Nowhere in Chapter 2 (or elsewhere) in the Green Paper does the Government tell the public that the UNHRC has repeatedly expressed the view that our electoral systems for returning members to the Legislative Council do not comply with Articles 2, 25 and 26 of the ICCPR, most recently in 2006.

The Government cannot rely on the Reservation

- 5.1 The Government relies upon the Reservation entered by the United Kingdom Government in 1976 at the time when the UK Government ratified the ICCPR and extended its application to 10 dependent

territories including Hong Kong (para. 2.20 of the Green Paper). However, the Government has omitted the full text of the Reservation which is as follows:

"The Government of the United Kingdom reserve the right not to apply sub-paragraph (b) of Article 25 in so far as it may require the establishment of an elected Executive or Legislative Council in Hong Kong...".

Thus, it is not a general reservation of a right not to apply sub-paragraph (b) of Article 25 as stated in paragraph 2.20 of the Green Paper. Such a reservation would be incompatible with the object and purpose of the ICCPR (article 19(c) of the Vienna Convention on the Law of Treaties) and would therefore be impermissible. Further, it is for the UNHRC to decide (and not the State Party entering the reservation) whether any reservation is incompatible with the object and purpose of the ICCPR (UNHRC General Comment No. 24 on Reservations, para. 18).

5.2 The UNHRC has expressed its view on the Reservation entered by the UK Government as follows:

"The Committee is aware of the reservation made by the United Kingdom that article 25 does not require establishment of an elected Executive or Legislative Council. It however takes the view that once an elected Legislative Council is established, its election must conform to article 25 of the Covenant."

5.3 Thus, the fact that the reservation was entered into by the UK Government in 1976 at a time when there was no elected Legislative Council does not excuse the electoral systems which now apply for returning elected members to the Legislative Council. Instead of

admitting this frankly in the Green Paper, the HK Government has put in a piece of nonsense about how the ultimate aim of universal suffrage originates from the Basic Law and not the Covenant (para. 2.20). This is nonsensical because the ICCPR has applied to Hong Kong since 1976 even before the Basic Law was drafted. The fact that the UK Government did not fulfill its obligations to the people of Hong Kong under the ICCPR cannot change the source of the obligation.

Obligation of the PRC Government and the HKSAR Government to the people of Hong Kong

- 6.1 The obligation of every State Party to the ICCPR is stated clearly in Article 2 of the ICCPR. Each State Party undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind. Where not already provided for by existing legislative or other measures, each State Party undertakes to take the necessary steps in accordance with its constitutional processes and with the provisions of the Covenant to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant.
- 6.2 By the Sino-British Joint Declaration, Annex I, the Government of the PRC declared the elaboration of its basic policies regarding Hong Kong which were to be stipulated in a Basic Law. In XIII of Annex I, it was explicitly stated that the provisions of the ICCPR (and the ICESCR) as applied to Hong Kong would remain in force. Article 39 is that stipulation.

- 6.3 It is therefore the obligation of both the PRC Government and the HKSAR Government to ensure the rights in Article 25 of the ICCPR and to take the necessary legislative and other measures to ensure that these rights can be exercised by the citizens of Hong Kong.
- 6.4 The Government of the HKSAR maintains that our electoral system *"is appropriate to Hong Kong's circumstances and gives rise to no incompatibility with any of the provisions of the Covenant as applied to the HKSAR."* (Press Release of 1 April 2006, Response to Concluding Observations of the UNHRC on the 2nd HKSAR Report). However, the Government has never explained how, despite the monitoring body's observations to the contrary, the HKSAR's electoral systems are compatible with the provisions of the ICCPR. In any event, surely the views of UNHRC which is the monitoring body and which scrutinizes reports from all States Parties to the ICCPR and thus has vastly greater experience and expertise in what Article 25 means than the HKSAR Government, must be authoritative. The HKSAR Government is merely denying the obvious.

What the ICCPR Requires

7. At the heart of the ICCPR is a recognition of the inherent dignity and worth of every person which in turn means that every person has an equal and inalienable entitlement to the rights in the ICCPR. What does 'inalienable' mean? It means that the right of every person cannot be given away by someone else still less can it be given away or violated by the Government itself. A person can choose not to

exercise his right but he cannot give it away. That is the meaning of 'inalienable'. Thus, in the Consultation exercise under the Green Paper, little if any weight should be attached to the view of those who already enjoy disproportionate voting power if their view is that the disproportionate power should be retained.

8. The rights in Article 25 of the ICCPR are the rights of every citizen. It includes the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives. The right is to participate in those processes which constitute the conduct of public affairs. The concept relates to "*the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.*" (General Comment_ para. 6).
9. It also includes the right to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and held by secret ballot, guaranteeing the free expression of the will of the electors. The right to be elected means the right to stand as a candidate for public office.

10. These rights are to be enjoyed "without any of the distinctions mentioned in article 2 [of the ICCPR]" and without unreasonable restrictions. Article 2 prohibits discrimination of any kind such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. "*Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria.*" (para. 4 of the General Comment). "*It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote nor a ground of disqualification.*" (para. 10 of the General Comment).
11. As every person has the right and is to have the opportunity to vote and to be elected, this means that any restriction on the right to stand as a candidate for election is to be without any prohibited discrimination and without unreasonable restrictions. The purpose of voting by universal and equal suffrage by secret ballot is to guarantee the free expression of the will of the electors. Any process which stands between a person who wishes to be a candidate and who is not for any reason disqualified from being a candidate cannot be a discriminatory process designed or intended to remove from the free choice of the voters a person on the grounds for instance of his political or other opinions. It is for the electorate to choose. Any restriction on the right of the electors and the would-be candidates has to be justified as a reasonable restriction.

12. *"The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation... (para. 15 of the General Comment). "The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy... political opinion may not be used as a ground to deprive any person of the right to stand for election." (para. 17 of the General Comment).*

Why our electoral systems are in violation of Articles 2, 25 and 26

13. It is necessary to understand in what respects our electoral systems are in violation so that we do not continue or perpetuate those violations and do not violate these articles in other respects. The UNHRC has already repeatedly said that our functional constituency system is in violation. No objective or reasonable criteria for having such a system has ever been propounded. Why some sectors have representation and others do not, the indirect discrimination which disproportionately disfavours most of the working population, those

who are unemployed, women, and those who cannot afford to incorporate companies giving themselves additional voting power, why indigenous villagers have over-representation etc. The list of what is wrong with the functional constituency system in every aspect as it has so far been established in Hong Kong is lengthy and no attempt has been made to justify it.

14. As it currently exists, the system confers a privileged status on 212,729 electors (on the basis of the 2007 Provisional Register) out of 3,296,687 electors (registered in the geographical constituencies), giving this minute electorate of 6.45% the right to return 30 members of the Legislative Council in clear violation of the ICCPR and therefore of the Basic Law. It is fundamentally discriminatory as it makes this minute percentage an elite which has more representation (by function) than the rest of the general electorate and it is fundamentally unequal and unfair. This unfair and discriminatory domination by the elite is carried through into the voting system in the Legislative Council.
15. The unfair and discriminatory nature of the electoral system is also true of the Election Committee, consisting of 800 members who elect the Chief Executive. The general electorate is excluded from voting for the Chief Executive. Most of them are also excluded from voting directly for the voters who vote for the Chief Executive (apart from having voted to return LegCo members in geographical constituencies). According to the voter registration figures for the last Chief Executive election, 665 members of the Election Committee

were elected from 35 subsectors (as, in some subsectors, there was no contest for election of members) and the registered electorate of the Election Committee consisted of 220,307 persons. The composition of the Election Committee can be seen from Annex I to the Green Paper. As can be seen from an examination of the current make-up of the Election Committee, only 30 out of the 800 members are elected by universal suffrage, being the 30 Legislative Council members who are elected from geographical constituencies. 30 out of 800!

16. The Election Committee is therefore formed along the same basic systems as the functional constituencies; the system is fundamentally discriminatory and unequal and unfair, giving disproportionate power to an elite. This electoral system too is in violation of the ICCPR.

Systems which will not comply with Art. 25 and systems which might

17. Any system which is based upon discrimination, inequality and unfairness is bound to lead to a divided and unharmonious society. Such systems have inbuilt flaws because representation is unbalanced and the views of the few prevail in their own narrow, selfish interests. We reject any such systems outright for their failure to comply with the ICCPR and so should every member of the public who believes in the rule of law. Anyone who proposes the continuance of the Functional Constituency system and the functionally based Election Committee or a functionally based nomination committee carries an obligation to explain how such a

system can be compatible with the international standards set out in the ICCPR which is incorporated into the Basic Law.

18. As the Government has not told the whole truth, the public must be careful about the way in which Government has presented the choices in the Green Paper. An obvious trap is the false choice between the number of candidates eligible to stand for election to the office of Chief Executive which should emerge from the process of nomination by the proposed nomination committee ie 10 or more, maximum 8 or 2 to 4. Any artificial, arbitrary and subjective barrier to the right to stand for election is itself contrary to the ICCPR. Therefore, the only answer which complies with the ICCPR is 'unlimited'. To insist that only 2 to 4 candidates emerge from the nomination process or only 8 candidates or even 10 or more candidates is itself an arbitrary and subjective restriction on the right to stand and is an obstacle to the free choice of the voters.
19. There is no justification put forward by the HKSAR Government for even suggesting that the number of nominations should be capped. Under most electoral systems (presidential), a multiplicity of candidates is handled by the voting system which is typically 'first past the post' (securing the highest number of votes) or by rounds of voting. There is no reason why this should not apply in Hong Kong.
20. Further, any requirement that in order to qualify as a candidate, a person must secure a minimum number of nominations from a

nomination committee, let alone a minimum number from all sectors of a nominating committee formed along the same lines as the existing Election Committee is also an unreasonable restriction on a person's right to stand and the voter's right to choose. Any comparison between the legal requirements for a minimum number of nominations to stand as a candidate in a geographical constituency for Legislative Council elections (currently 100) and the number of nominations which might be required to stand as a candidate for Chief Executive is invalid. In the former case, any eligible voter can nominate a candidate. In the latter, the ordinary voter is excluded from nominating his or her favoured choice for the office of Chief Executive because the ordinary voter is supposedly represented by a broadly representative nominating committee.

21. While it may be a necessary and practical requirement to require a 'presidential' candidate to demonstrate a certain level of support before he can put himself forward, the supporters in being willing to sign as nominees are expressing a personal view and not representing anyone except themselves. Once a nomination committee is introduced, they are representatives. They cannot at one and the same time be representative and expressing a personal view. When exercising the power of nomination, their representative capacity must be ensured. If they are supposed to represent the people of Hong Kong, their personal views and prejudices cannot be permitted to become an arbitrary and possibly unreasonable restriction on a potential candidate's right to stand for election and as an obstacle to those who do not share their opinions. Nor can they be generally

representative of the general electorate at large in performing the nomination unless the system binds them to collect opinion and nominate accordingly.

22. Only a nomination committee which is directly elected by universal suffrage can be regarded as broadly representative. Even then, it would have to be recognized that when exercising the power of nomination, the person elected onto the nominating committee was exercising that power as a representative. Being a "representative", the representative must therefore carry more weight than the weight of an individual voter. For example, if there were 800 members of a nominating committee and there were a general electorate of 3,000,000, a nomination from one member of the committee should be recognized as being worth equivalent to the support of either 3,750 ordinary voters or the actual number of voters who elected him or her onto the nominating committee. And if it were considered that the threshold level of support necessary to be demonstrated were to be say 50,000 ordinary voters, then nomination by 13-14 members of the nominating committee should be sufficient or by reference to the number of votes which the member of the nominating committee had secured.
23. If the nominating committee were to be constituted in the same or a similar way as the current Election Committee, the system would still be very far from universal suffrage. However, in order to make it as compliant as possible, the underlying support for the member of the nominating committee who has himself or herself been voted onto the

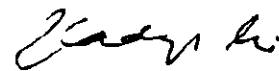
nominating committee should count in the same way as the proposal above. For example, if the 20 members of the Legal sub-sector were to nominate a candidate, they would be representing the 5000 or so lawyers who are registered voters and eligible to vote a representative onto the Election Committee. If they exercise their mandate, that is equivalent to nomination by 5000 ordinary citizens. If the threshold level of support necessary for a person to be a candidate were 50,000 ordinary voters, then the candidate would require nominations from other members of the nomination committee equivalent to the balance of support namely 45,000 ordinary voters. Clearly, a nomination by any single member of the Legislative Council elected from a geographical constituency (under the current system) would be likely to be sufficient to satisfy the threshold level of support of 50,000 voters.

24. Further, since the law has already prescribed the qualifications required of candidates ie by age, nationality etc., any additional requirement is that of a subjective choice of the voter. So a voter may choose on the basis that a candidate is patriotic but it will be the voter's own consideration of what patriotism means; it will not be objectively defined. Others may choose on the basis that a person is good at policy-making or proficient in management skills; again, not objectively defined. Thus, a nomination process which requires a candidate to secure a high number of nominations is subjectivising the whole process and introducing unreasonable restrictions upon the right to stand and interposing between the would-be candidate and the voter an entirely subjective process which is undemocratic and

incompatible with the clear purpose and intent of Article 25 of the ICCPR. Such processes would also be entirely incompatible with the ultimate aim in Articles 45 and 68 of the Basic Law. Even as interim measures, there must be the most careful consideration of what objective justification exists for such restrictions which cannot be met by having several rounds of voting by the general electorate which happens in many other systems around the world.

Conclusion

25. An electoral system which is fair, non-discriminatory and inclusive and which recognizes the worth of every individual as an equal is more likely to lead to stable, efficient and effective government. It prevents the government from being out of touch with the people's needs and wishes. The principles in the ICCPR are not only good law; they embody good sense. By violating them, we violate not only the rule of law but the potential for better government and governance and better accountability.


Gladys Li

pp. JUSTICE, the Hong Kong Section
of the International Commission of Jurists

Attachment A



OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS



**General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) : . 12/07/96.
CCPR/C/21/Rev.1/Add.7, General Comment No. 25. (General Comments)**

Convention Abbreviation: CCPR

GENERAL COMMENT 25

The right to participate in public affairs, voting rights and
the right of equal access to public service

(Article 25)

(Fifty-seventh session, 1996) (1) (2)

Adopted by the Committee at its 1510th meeting (fifty-seventh session) on 12 July 1996. The number in parenthesis indicates the session at which the general comment was adopted.

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

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

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

4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or

appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

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

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

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

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

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

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

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

and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.

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

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

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

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

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

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

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

19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be

free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.

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

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

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

23. Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.

Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

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

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

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

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

Notes

1/ Adopted by the Committee at its 1510th meeting (fifty-seventh session) on 12 July 1996.

2/ The number in parenthesis indicates the session at which the general comment was adopted.



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