

PURGES AND CLOSURES AND LINES, OH MY!—DO
GEORGIA’S 2018 ELECTION PROCEDURES VIOLATE
INTERNATIONAL LAW?

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I. INTRODUCTION

Imagine you are eighteen years old, you are a United States (“U.S.”) citizen living in the state of Georgia, and it is 2018. You have to be at work by 10:00 a.m., so you wake up early to make sure you can place your vote and get to work. Around 8:00 a.m., you drive through the same suburban Atlanta neighborhood where your parents have always lived to the church where your parents took you growing up when they were voting. You arrive at the church to find that the precinct has been closed. A note on the door tells you that you may vote at a different polling place several miles away. Determined, you drive to the new precinct. When you arrive at 8:45 a.m., you see a line of more than two hundred people stretching down the sidewalk. You decide it will be fine if you are a few minutes late to work, so you park your car and get in line to vote. At 9:30 a.m., you are still over one hundred people away from the front of the line, so you have to ask your boss for the morning off work. You stand in line waiting for four hours. When you finally reach the front of the line, the poll workers tell you there is a problem. They cannot find your name on the list of registered voters. You express your confusion, explaining that you are a U.S. citizen, that you filled out your voter registration application accurately and submitted it on time, and that you have not moved since submitting your voter application. While the election workers understand your frustration, they say there is nothing they can do. They direct you to fill out a provisional ballot and let you know that your vote may or may not be counted.

A week after the election, you call Georgia’s State Election Office to figure out why you were unable to place your vote using a traditional ballot. The woman who answers the phone lets you know that there was an error in your voter registration application and clarifies that your application did not match the information in the state’s database. After looking into the issue, she tells you that there must have been a clerical error. She explains that someone must have accidentally misspelled your name when entering the information into the state’s system, despite it being written correctly on your voter registration application. She apologizes and lets you know that your voter registration is now valid—a week after the deadline to cast your ballot in the 2018 election.

The right to vote is the hallmark of a free society. It is the most important of all the civil liberties possessed by an individual in a representative democracy. Imagine that the situation above is *your* first time voting in an election; that it is *your* first time participating in the democratic process; and that *your* vote did not count. Are the impediments you experienced unreasonable? Have you been deprived of your right to vote? If so, would your experience constitute a violation of international human rights norms?

This Note explores the state of Georgia's 2018 General Election to determine whether the state's election procedures in place at the time violated international law.¹ Part I of this Note discusses the International Covenant on Civil and Political Rights ("ICCPR") and the obligations it places on member States—including the United States—to protect their respective citizens' political rights under Article 25.² Part II examines several of Georgia's 2018 election procedures, which opponents argue may have suppressed the ability of legitimate citizen voters to exercise their right to vote. Part III considers whether these election procedures presented an unreasonable restriction on eligible Georgia citizens' right to vote, which would put the United States in violation of international law under Article 25 of the ICCPR. This Note concludes by offering recommendations for how the United States can best ensure that Georgia's election procedures comply with the ICCPR in the future. This Note primarily seeks to provide guidance to U.S. federal, state, and local governments regarding best practices for ensuring effective implementation of its citizens' right to political participation under the ICCPR.

II. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

It is important to note that "[t]he principle of universal and equal suffrage for all adult citizens constitutes one of the cornerstones of modern democracies."³ The Charter of the United Nations explains that one of the organization's purposes is "to promote and encourage respect for human rights and fundamental freedoms for all."⁴ After the Second World War, the United Nations General Assembly created the Universal Declaration of Human Rights, which represents "a proclamation of basic rights and fundamental freedoms, bearing the moral force of universal agreement."⁵ In order to give legal force to the human rights guaranteed under the Universal Declaration, the General Assembly adopted the ICCPR and the International Covenant on Economic, Social, and Cultural Rights

¹ For the purposes of this Note, "state" refers to a domestic state in the United States, while "State" refers to a nation-state.

² International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

³ Human Rights Comm., *Report of the Office of the United Nations High Commissioner for Human Rights: Factors that Impede Equal Political Participation and Steps to Overcome Those Challenges*, U.N. Doc. A/HRC/27/29 (2014) [hereinafter Political Participation Report].

⁴ U.N. Office of the High Comm'r for Human Rights, *Fact Sheet No. 15 (Rev. 1), Civil and Political Rights: The Human Rights Committee* 1 (2015) [hereinafter Fact Sheet No. 15]; see also U.N. Charter art. 1 para. 2.

⁵ Fact Sheet No. 15, *supra* note 4.

in 1966.⁶ Both treaties set “basic [human rights] standards that have inspired more than 100 international and regional human rights conventions, declarations, sets of rules and principles.”⁷ Once the ICCPR had thirty-five State ratifications, it entered into force in 1976 (ten years after its adoption by the General Assembly).⁸ At the time of this Note’s publication in July 2021, 173 countries were party to the ICCPR, and of those, 74 were signatories.⁹

A. *About the ICCPR*

The ICCPR is “the most comprehensive and well-established [United Nations] treaty on civil and political rights,” containing binding legal obligations for State parties.¹⁰ Despite its coexistence with various other human rights instruments, the ICCPR represents a basic universal human rights standard in international law.¹¹ It is often used “to measure and assess the human rights performance of States and as the starting point for the development of new international human rights instruments.”¹² The ICCPR’s civil liberty protections make it central to determining how the United States’ federal, state, and local governments can best ensure that U.S. elections comply with international law.

⁶ *Id.*

⁷ *Id.*

⁸ U.N. Treaty Collection, *International Covenant on Civil and Political Rights, Status of Ratification*, 16 December 1966, 999 U.N.T.S. 171, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (last visited Sept. 29, 2020).

⁹ *Id.*

¹⁰ SARAH JOSEPH, JENNY SCHULTZ, AND MELISSA CASTAN, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY* 4 (2000); Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights*, in *OXFORD MONOGRAPHS IN INT’L LAW* 1.34 (Ian Brownlie ed., 1991).

¹¹ Other international human rights instruments guaranteeing political rights include: Universal Declaration on Human Rights, Art. 21; Convention on the Elimination of All Forms of Racial Discrimination, Art. 5(c); Convention on the Elimination of Discrimination Against Women (CEDAW), Art. 7–9; American Convention on Human Rights, Art. 23; African [Banjul] Charter on Human and Peoples’ Rights, Art. 13; and the Convention on the Political Rights of Women. SCOTT N. CARLSON & GREGORY GISVOLD, *PRACTICAL GUIDE TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* 147 (2003); *see generally* Office of the High Comm’r for Human Rights, *The Core International Human Rights Instruments and Their Monitoring Bodies*, U.N. OFF. HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (last visited Feb. 15, 2020).

¹² McGoldrick *supra* note 10, at 1.38.

i. Human Rights Committee

Article 28 of the ICCPR establishes the Human Rights Committee (“HRC”), a treaty-based body created by the State parties.¹³ The HRC is comprised of eighteen independent experts elected for four-year renewable terms.¹⁴ HRC members must be nationals of State parties and “persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.”¹⁵

As the sole body with express functions related to the ICCPR, the HRC is in charge of monitoring compliance of member States with their obligations under the ICCPR.¹⁶ The HRC examines and responds to State reports and considers inter-State complaints and individual complaints¹⁷ with regard to alleged violations of the ICCPR.¹⁸ Additionally, the HRC works to clarify the scope and meaning of the ICCPR by developing “General Comments,” which are statements of law expressing the HRC’s understanding of a particular provision in the ICCPR.¹⁹ These General Comments serve to make the ICCPR a living instrument, capable of speaking to contemporary challenges in our evolving world.²⁰

¹³ McGoldrick, *supra* note 10, at 2.18.

¹⁴ U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, WORKING WITH THE UNITED NATIONS HUMAN RIGHTS PROGRAMME: A HANDBOOK FOR CIVIL SOCIETY, U.N. Doc. HR/PUB/06/10/Rev.1 (2008).

¹⁵ ICCPR, *supra* note 2, arts. 28–29; *see also* Dana D. Fischer, Note and Comment, *Reporting Under the Covenant on Civil and Political Rights: The First Five Years of the Human Rights Committee*, 76 A.J.I.L. 142, 142–43 (1982); Human Rights Comm., *Introduction*, U.N. HUMAN RIGHTS, <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx> (last visited October 8, 2019).

¹⁶ McGoldrick, *supra* note 10, at 2.1; Human Rights Comm., *supra* note 15; *see also* ICCPR, *supra* note 2, art. 28.

¹⁷ The HRC can only consider individual complaints from citizens of States that have signed onto the first optional protocol. *See* Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 1976.

¹⁸ ICCPR, *supra* note 2, art. 41.

¹⁹ Fact Sheet No. 15, *supra* note 4, at 24.

²⁰ *Id.*

ii. Optional Protocols

Two optional protocols supplement the ICCPR, and State parties may sign onto either or both.²¹ The first optional protocol, adopted in 1986, sets out a complaint system through which the HRC receives and considers complaints from individuals alleging that their rights guaranteed under the treaty have been violated.²² The second optional protocol, adopted in 1991, prohibits the death penalty.²³ At the time of this Note's publication in July 2021, of the 173 parties that have ratified the treaty, 116 are party to the First Optional Protocol and 88 are party to the second Optional Protocol.²⁴ The United States has not ratified either protocol.²⁵

iii. State Reporting

All parties to the ICCPR are required to submit reports to the HRC “on the measures they have adopted which give effect to the rights recognized [in the ICCPR] and on the progress made in the enjoyment of those rights”²⁶ This responsibility to periodically submit reports to the HRC is the only obligation that State parties assume upon ratification of the ICCPR.²⁷ The reporting process calls on States to indicate the factors impeding full implementation of the ICCPR.²⁸ In regard to political rights, parties are asked to describe their country's rules governing the right to vote, the application of those rules, factors which impede citizens from exercising their right to vote, and the positive measures

²¹ *Id.* at 3.

²² *Id.* at 10–11.

²³ *Id.*

²⁴ Optional Protocol to the International Covenant on Civil and Political Rights, Status of Ratification, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&clang=_en (last visited Apr. 23, 2018); Second Optional Protocol to the International Covenant on Civil and Political Rights, Status of Ratification, 1642 U.N.T.S. 414, *entered into force* July 11, 1991, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV12&chapter=4&clang=_en (last visited Apr. 23, 2018).

²⁵ Optional Protocol, *supra* note 24; Second Optional Protocol, *supra* note 24.

²⁶ ICCPR, *supra* note 2, at art. 40(1).

²⁷ McGoldrick, *supra* note 10, at 62.

²⁸ Human Rights Comm., *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, ¶ 13, CCPR/C/21/Rev.1/Add.7 (July 12, 1996), <https://www.refworld.org/docid/453883fc22.html> (last visited Oct. 15 2019) [hereinafter *General Comment No. 25*].

adopted to overcome these factors.²⁹ Additionally, States are expected to indicate and explain legislative provisions that would deprive citizens of their vote, proving that any grounds for deprivation are both objective and reasonable.³⁰

The HRC's process of reporting seeks to fulfill several goals. First, the reporting process provides an opportunity for State parties to develop an understanding of their obligations under the ICCPR, take stock of the current situation with regard to rights guaranteed under the ICCPR, and identify areas requiring reform to ensure the State's compliance with the ICCPR.³¹ Second, "publicity surrounding the preparation of a report draws attention to the level of the State's compliance with its obligations and the ways individuals and groups can further contribute to their implementation."³² Through its review of State reports, the HRC seeks to encourage public debate on its findings.³³ Finally, "reporting highlights good practices and lessons learned which may be drawn on by other States" as they implement the ICCPR.³⁴

Three types of State reports have emerged: (1) *Initial Reports*, submitted by parties in accordance with the basic obligation under Article 40(1)(a) of the ICCPR; (2) *Supplementary Reports*, containing additional inquiries, typically in response to inadequate or incomplete initial reports; and (3) *Periodic Reports*, which provide for continuous constructive dialogue between parties and the HRC.³⁵ A State party must submit its first report one year after the ICCPR enters into force for the country.³⁶ After the initial report, countries report whenever the HRC requests—usually between three to five years after the initial report.³⁷ The HRC sets out when a country's next report is due in its "Concluding Observations" of that State party's most recent report.³⁸

In July 2018, the HRC adopted a simplified reporting procedure and decided to strive to limit the number of questions in each list of issues to twenty-five questions.³⁹ The new procedure for State reporting, effective January 1, 2020,

²⁹ *Id.*

³⁰ *Id.* ¶ 14.

³¹ *Fact Sheet No. 15*, *supra* note 4, at 22.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ McGoldrick, *supra* note 10, at 3.3-.5

³⁶ Human Rights Comm., *Consolidated Guidelines for State Reports Under the International Covenant on Civil and Political Rights*, ¶ B.1, U.N. Doc. CCPR/C/66/GUI/Rev.2 (2001).

³⁷ U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, *supra* note 14.

³⁸ *Id.*

³⁹ U.N. Office of the High Comm'r for Human Rights, *Human Rights Comm.: The Predictable Review Cycle*, <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/PredictableReviewCycle.aspx> (last visited Oct. 19, 2020); Human Rights Comm., *Decision on Additional Measures to Simplify the*

aims to improve predictability in reporting and to ensure regular reporting by all State parties.⁴⁰ This eight-year review cycle “aims to focus, coordinate[,] and streamline the reporting process and the dialogues, [and] facilitate[s] enhanced interaction between States parties and other stakeholders and the treaty bodies.”⁴¹ Under the revised reporting procedures, the fifth U.S. Report is due to the HRC in 2021.⁴² Because this predictable review cycle did not exist during the 2018 U.S. elections, this Note references State party reports submitted under the HRC’s pre-2020 State reporting procedures.

iv. Examining State Reports

The process of examining a State’s report spans two consecutive HRC sessions.⁴³ During the first session, the report is assigned to a Country Report Task Force,⁴⁴ which drafts a “List of Issues” addressing the most crucial matters related to the enjoyment of rights guaranteed under the ICCPR within the member State.⁴⁵ When seeking additional information from a State party, the HRC sends a List of Issues to the party at least one HRC session prior to the one at which the State’s report will be examined.⁴⁶ The HRC encourages State parties to provide written answers to the List of Issues prior to the HRC’s public examination of the report.⁴⁷ The HRC’s examination process begins with a private meeting of representatives from specialized agencies and other parts of the United Nations that wish to provide information on the State to be considered as well as a briefing on views of members of civil society wishing to provide input.⁴⁸

The HRC then examines a State’s report “in a public constructive dialogue with a delegation of the relevant State party.”⁴⁹ During this examination, HRC members may ask questions of the State’s representatives in order to deepen their understanding of the issues concerning the State’s implementation of the

Reporting Procedure and Increase Predictability (2019), https://www.ohchr.org/Documents/HRBodies/CCPR/Decision_on_2020.docx (last visited Oct. 19, 2020).

⁴⁰ Human Rights Comm., *supra* note 39.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Fact Sheet No. 15*, *supra* note 4, at 18. Every year, the HRC holds three plenary sessions, which each last three weeks. *Id.* at 14.

⁴⁴ Country Report Task Forces consist of four to six HRC members and were created in 2002 to help streamline the State reporting procedure. *Id.* at 18.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

ICCPR.⁵⁰ After this discussion, the HRC drafts and publishes its “Concluding Observations,” which provide consensus comments on positive and negative aspects of a State party’s implementation of the ICCPR.⁵¹ These Concluding Observations are a useful way of monitoring a country’s human rights record, helping States prepare their future reports and enabling the HRC to focus on important issues in a State’s future reports.⁵²

In 2001, the HRC established the “Special Rapporteur on Follow-up to Concluding Observations” to collect and assess follow-up information requested from parties in the HRC’s Concluding Observations.⁵³ The HRC typically requests information regarding measures that the State has taken to address particular areas causing the HRC concern.⁵⁴ The Special Rapporteur makes a recommendation to the HRC on any further steps that may be appropriate, and the HRC meets to discuss next steps.⁵⁵

B. Political Rights Under Article 25

Article 25 of the ICCPR guarantees political rights to all citizens of State parties.⁵⁶ The provision is based on Article 21 of the Universal Declaration of Human Rights and represents a means by which the rights guaranteed under the Universal Declaration may be legally binding.⁵⁷ The rights guaranteed under Article 25 include the right to be involved in the conduct of public affairs; the right to vote and be elected to public office; and the right to seek public service positions on an equal basis.⁵⁸

i. State Obligations Under Article 25

Protecting political rights under the ICCPR not only requires that States refrain from certain acts but also places a duty on State parties to take certain positive

⁵⁰ *Id.* at 19.

⁵¹ *Id.*

⁵² *Id.* at 19–20.

⁵³ *Id.* at 20.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ CARLSON, *supra* note 11, at 147 (2003).

⁵⁷ MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 438 ¶ 5 (1st ed. 1993); *see also* G.A. Res. 217A (III) A, Universal Declaration of Human Rights, art. 21 (Dec. 10, 1948).

⁵⁸ CARLSON, *supra* note 11, at 147.

measures to protect citizens' rights.⁵⁹ A State party's primary responsibilities include ensuring that elections are held, that all citizens are able to exercise their right of equal suffrage, and that citizens are guaranteed a vote by secret ballot.⁶⁰ If any emergency threatens one of a State's institutions (i.e., the "life of the nation"), the country is authorized to derogate these institutions under the ICCPR; however, the HRC has refused to permit derogation of the rights provided for in Article 25.⁶¹ This suggests the importance of the political rights guaranteed by the ICCPR and demonstrates the HRC's desire for State parties to implement the rights guaranteed under Article 25 into domestic law. Analyzing whether Georgia's election procedures caused the United States to violate international law under the ICCPR requires an examination of the ICCPR's Article 25(a), governing the right to take part in the conduct of public affairs, and Article 25(b), guaranteeing the right to vote and be elected.⁶²

Guaranteeing the right to vote under the ICCPR requires, for instance, "that the State refrain from manipulatively influencing voters or that it respect the secrecy of the ballot."⁶³ State parties must also take positive steps to guarantee that all eligible persons have the actual opportunity to exercise their political rights.⁶⁴ It is not enough for States to extend formal voting eligibility to all citizens when the State does not simultaneously ensure that those citizens are truly able to make use of their right to vote.⁶⁵ Additionally, the HRC has advised States that voter education and voter registration campaigns may be necessary to ensure the effective exercise of Article 25 rights by an informed community.⁶⁶ In States where voter registration is required, the HRC established that registration "should be facilitated and obstacles to such registration should not be imposed."⁶⁷

⁵⁹ NOWAK, *supra* note 57, at 436 ¶ 1; General Comment No. 25, *supra* note 28 ¶ 12; CARLSON, *supra* note 11, at 151.

⁶⁰ NOWAK, *supra* note 57.

⁶¹ ICCPR, *supra* note 1, art. 4 (failing to prohibit derogation of Article 25); Human Rights Comm., *Silva et al. v. Uruguay*, Comm'n No. 34/1978, U.N. Doc. CCPR/C/OP/1 (1984) (demonstrating the HRC's inability to foresee justification for derogation of Article 25); *see also U.N. Experts Urge Turkey to Adhere to Its Human Rights Obligations Even in Time of Declared Emergency*, U.N. HUM. RTS. OFF. HIGH COMM'R NEWS, (Aug. 19, 2016), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394> (arguing HRC will not authorize derogation of Article 25). Thus far in the history of the ICCPR, two Member States have attempted to derogate Article 25, and in both instances, the HRC did not give any indication that justification is even possible for the derogation of Article 25. *Id.*

⁶² *See* ICCPR, *supra* note 2, art. 25(a-b) (guaranteeing these rights "without unreasonable restrictions").

⁶³ NOWAK, *supra* note 57, at 436 ¶ 1.

⁶⁴ *Id.* at 439 ¶ 9.

⁶⁵ *Id.*

⁶⁶ CARLSON, *supra* note 11, at 151.

⁶⁷ General Comment No. 25, *supra* note 28 ¶ 11.

The ICCPR does not require any particular electoral system, but it requires that the system each State party has is compatible with the rights protected by Article 25 and guarantees and gives effect to the free expression of the will of the electors.⁶⁸ The HRC has advised States that any abusive interference with registration or voting, as well as intimidation or coercion of voters, should be prohibited by penal laws to be strictly enforced.⁶⁹

ii. ICCPR Article 25(a)

Article 25(a) of the ICCPR requires that every citizen “have the right and the opportunity, . . . without unreasonable restrictions . . . [t]o take part in the conduct of public affairs, directly or through freely chosen representatives.”⁷⁰ The provision establishes, “[T]he exercise of State authority must be based on the principle of *sovereignty of the people*, i.e., the government is ultimately responsible to the people and may also be controlled and deposed by it.”⁷¹

Although the ICCPR does not call for a specific democratic model, State political systems based on absolute monarchical legitimacy, a “*Führerprinzip*,” or a similar autocratic structure, have been found to violate the basic right to political participation guaranteed under Article 25(a).⁷² A parliamentary democracy based on separation of powers does not violate Article 25(a) where the judicial and executive authorities are autocratically appointed or even where the head of State is determined by monarchic succession, as in northern Europe.⁷³ “In democratic models not based on separation of powers, . . . citizens [must] be able to exercise influence, at least indirectly, on the conduct of public affairs by way of the election of councils and similar [bodies] exercising State power.”⁷⁴

Article 25(a) is intended to protect not only indirect participation through elected individuals but also forms of direct or plebiscitary democracy.⁷⁵ However, the obligation under Article 25(b) of States to hold periodic elections makes clear that “representative democracy may not be completely supplanted by

⁶⁸ *Id.* ¶ 21; JOSEPH, *supra* note 10, at 503 ¶ 21.

⁶⁹ General Comment No. 25, *supra* note 28 ¶ 11.

⁷⁰ ICCPR, *supra* note 2, art. 25(a).

⁷¹ NOWAK, *supra* note 57, at 441 ¶ 11.

⁷² *Id.* ¶¶ 11–12.

⁷³ *See id.* ¶ 12 (“However, should the head of State exercise public affairs largely autonomously and independent of the legislative authority, it seems necessary that he (she) be elected either directly or indirectly by the people, which is usually the case in most presidential republics, following the model of the United States.”).

⁷⁴ *Id.*

⁷⁵ *Id.* at 441–42 ¶ 13.

plebiscitary forms of participation.”⁷⁶ The reference to direct participation in Article 25(a) gives citizens a subjective right to take part in forms of plebiscitary political participation when they are provided for by the respective State party.⁷⁷ Participation through freely chosen representatives is exercised through voting processes that must comply with Article 25(b).⁷⁸

iii. ICCPR Article 25(b)

Article 25(b) of the ICCPR is the specific application of the general rule expressed in Article 25(a).⁷⁹ The provision requires that every citizen “have the right and opportunity . . . without unreasonable restrictions . . . [t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”⁸⁰ The State bears the burden of proving “that any restrictions on Article 25 rights are objective and reasonable.”⁸¹ Additionally, the United Nations Office of the High Commissioner for Human Rights has explained that limitations on the right to vote “must be prescribed by law and must be necessary in the interests of certain public goals, such as national security, public order, health and morals, or for the protection of the rights and freedoms of others.”⁸² Therefore, State parties must take all necessary steps to implement the right to vote without restrictions, unless those restrictions are objective, reasonable, and necessary.

The selection of voting principles that would guarantee the right to vote and be elected under the ICCPR was originally highly controversial.⁸³ While the “Soviet Union placed emphasis on the principles of universal, equal, and direct suffrage, the Western States stressed the right of free and genuine elections.”⁸⁴ During the drafting of Article 25, only the right of secret ballot was generally

⁷⁶ *See id.* at 442 ¶ 13 (explaining that it may be inferred from the word “or” in Article 25 that State Parties are not obligated to create possibilities for plebiscitary participation).

⁷⁷ *Id.* at 444 ¶ 17.

⁷⁸ CARLSON, *supra* note 11, at 149.

⁷⁹ MARC J. BOSSUYT, GUIDE TO THE “TRAVAUX PRÉPARATOIRES” OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 474 (1987).

⁸⁰ ICCPR, *supra* note 2, art. 25.

⁸¹ DEMOCRACY REPORTING INT’L & THE CARTER CTR., *Strengthening International Law to Support Democratic Governance and Genuine Elections*, § 4.5.2 at 30 (2012).

⁸² U.N. Office of the High Comm’r for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*, at 47, HR/PUB/06/12 (2002).

⁸³ NOWAK, *supra* note 57 ¶ 18, at 444.

⁸⁴ *Id.*

recognized among State parties.⁸⁵ Ultimately, however, the drafters accepted that universal and equal suffrage, along with the secret ballot, results in a democracy in which each vote counts equally.⁸⁶

In guaranteeing the right to vote under Article 25(b) of the ICCPR, States have the responsibility to ensure that elections are “periodic” and “genuine.”⁸⁷ Periodic means that elections must be held at regular intervals, the determination of which lies with State parties.⁸⁸ Scholars have assumed that the customary span of four to six years may not be exceeded too far.⁸⁹ Though this gives states some flexibility, the administration of elections should be systematic and predictable in accordance with rule of law; therefore, arbitrary postponement of scheduled elections violates Article 25.⁹⁰

Genuine elections require that voters have a certain minimum amount of political influence and that eligible voters may freely choose among various alternatives—parties, programs, or at least several candidates of the uniform party.⁹¹ The ICCPR’s *travaux préparatoires*, which explain the drafting of the ICCPR, demonstrate that one-party systems are permissible so long as there are no unreasonable restrictions on the principles of genuine, free elections.⁹² A one-party system may be justified in a country if “the structures within the party are pluralistic and when the party represents a broad spectrum of the population.”⁹³

C. Restrictions on the Right to Vote

Under the ICCPR, the right to vote must be established by law, but the right to vote is not an absolute right.⁹⁴ The HRC has established that limitations on the right to vote may be acceptable so long as no distinction is made between citizens

⁸⁵ *Id.* The concept of the secret ballot is considered the “best guarantee for free elections, mainly protecting minorities against the majority.” CARLSON, *supra* note 11, at 151.

⁸⁶ NOWAK, *supra* note 57 ¶ 18, at 444; *see also* Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT’L L. 539, 555–56 (1992) (providing an overview of Article 25’s development and application).

⁸⁷ ICCPR, *supra* note 2, art. 25.

⁸⁸ CARLSON, *supra* note 11, at 150.

⁸⁹ NOWAK, *supra* note 57, at 436 ¶ 1.

⁹⁰ CARLSON, *supra* note 11, at 150.

⁹¹ NOWAK, *supra* note 57, at 436 ¶ 1.

⁹² *Id.* at 443–44; *see generally* BOSSUYT, *supra* note 79 (discussing the drafting of the ICCPR).

⁹³ NOWAK, *supra* note 57, at 444.

⁹⁴ General Comment No. 25, *supra* note 28 ¶ 10; Alex Conte, *Democratic and Civil Rights*, in ALEX CONTE & RICHARD BURCHILL, *DEFINING CIVIL AND POLITICAL RIGHTS: THE JURISPRUDENCE OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE* ch. 4, p. 100 (Routledge 2nd ed. 2016), <http://search.ebscohost.com.proxy-remote.galib.uga.edu/login.aspx?direct=true&db=e000xna&AN=271888&site=eds-live> (last visited Feb. 16, 2020).

on the grounds mentioned in Article 2(1)⁹⁵ and no unreasonable restrictions are imposed.⁹⁶ The HRC has emphasized that restrictions should remain the exception rather than the rule and that limitations should never impair the essence of the right to vote.⁹⁷ Illegitimate restrictions on the right to vote are a barrier to the equal exercise of political rights.⁹⁸ The text of the ICCPR does not provide substantive guidance on what may constitute a reasonable restriction on the right to vote; however, through its General Comment on Article 25 and its published evaluations of State reports, the HRC has further defined the meaning of reasonable and unreasonable restrictions under Article 25.⁹⁹

The HRC has recognized that the principle of “one person, one vote” must apply, meaning the vote of one elector should be equal to the vote of another.¹⁰⁰ The HRC has also established that genuine elections require eligible individuals to have the opportunity to vote without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will.¹⁰¹

The HRC has established that “[t]here 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.”¹⁰² The HRC has not directly addressed vote counting beyond this observation. The only relevant decision from the HRC concerns the fairness of automated vote counting and was found to be inadmissible (although the decision did state that the ICCPR did not proscribe or prescribe any specific voting system).¹⁰³

i. Reasonable Restrictions

The HRC’s General Comment on Article 25 explains that setting a minimum age limit for the right to vote is a reasonable restriction.¹⁰⁴ Additionally, States

⁹⁵ Without distinction such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. See ICCPR, *supra* note 2, at art. 2(1).

⁹⁶ General Comment No. 25, *supra* note 28 ¶¶ 4, 10, 11, 14.

⁹⁷ Political Participation Report, *supra* note 3 ¶ 31.

⁹⁸ General Comment No. 25, *supra* note 28 ¶ 10.

⁹⁹ *Id.* ¶ 4.

¹⁰⁰ JOSEPH, *supra* note 10, at 503 ¶ 21.

¹⁰¹ General Comment No. 25, *supra* note 28 ¶ 19; CARLSON, *supra* note 11, at 150 (“Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”).

¹⁰² General Comment No. 25, *supra* note 28 ¶ 19.

¹⁰³ See Human Rights Comm., *Clippele v. Belgium*, Commc’n No. 1082/2002, U.N. Doc. CCPR/C/77/D/1082/2002 (2003); see also Conte, *supra* note 94, at 103.

¹⁰⁴ General Comment No. 25, *supra* note 28 ¶ 4.

may require a higher minimum age for election to particular offices than for exercising the right to vote, which should be available to every adult citizen.¹⁰⁵ Mental incapacity may also be a reasonable ground for denying an individual the right to vote.¹⁰⁶

States may deny the right to vote to persons convicted of serious crimes so long as the length of deprivation is proportionate to the offense.¹⁰⁷ The HRC established that laws that strip convicts of their voting rights for up to ten years “may be a disproportionate restriction of the rights protected by [A]rticle 25.”¹⁰⁸ If a criminal conviction is the basis for suspending an individual’s right to vote, “the period of such suspension should be proportionate to the offence and the sentence.”¹⁰⁹ Finally, the HRC has established that “persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.”¹¹⁰

ii. *Unreasonable Restrictions*

Although Article 25 limits the right to vote to *citizens* of State parties, the HRC has recognized that no distinction may be made among those citizens based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.¹¹¹ In *Debreczeny v. Netherlands*, the HRC noted that “the right provided for by [A]rticle 25 is not an absolute right and that restrictions of this right are allowed as long as they are not discriminatory or unreasonable.”¹¹² A State party may deprive citizens of their right to vote under Article 25(b) when the country has “objective and reasonable criteria regulated by law.”¹¹³ The HRC defines unreasonable restrictions on an individual’s right to vote to be those that lack a basis in objective and reasonable grounds.¹¹⁴

¹⁰⁵ JOSEPH, *supra* note 10, at 502 ¶ 4.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See Human Rights Comm., Comments on United Kingdom of Great Britain and Northern Ireland (Hong Kong), U.N. Doc. CCPR/C/79/Add.57 (1995), ¶ 19 (addressing voting restrictions in laws in Hong Kong).

¹⁰⁹ General Comment No. 25, *supra* note 28 ¶ 14.

¹¹⁰ *Id.*

¹¹¹ CARLSON, *supra* note 11, at 148 (discussing the potential for violations of Article 25 when distinctions are drawn between those entitled to citizenship by birth and those who acquire it by naturalization).

¹¹² Human Rights Comm’n., *Debreczeny v. Netherlands*, Commc’n No. 500/1992, ¶ 9.2, U.N. Doc. CCPR/C/53/D/500/1992 (Apr. 4, 1995).

¹¹³ CARLSON, *supra* note 11, at 151.

¹¹⁴ General Comment No. 25, *supra* note 28 ¶ 4.

The most severe restriction on the right to free elections is the establishment of a one-party system.¹¹⁵ The HRC found a violation of Article 25 where the electoral system failed to provide for an equal distribution of voters among districts due to the ICCPR's requirement that each vote in an electoral system carry equal weight.¹¹⁶ The HRC has established that restrictions on voting for students enrolled in military schools are not reasonable.¹¹⁷

The HRC has determined it unreasonable for States to restrict the right to vote based on a physical disability or to impose literacy, educational, or property requirements.¹¹⁸ Additionally, party membership should not affect an individual's eligibility to vote, which means that requiring an elector to be a member of a specific political party would present an unreasonable restriction.¹¹⁹ Moreover, the HRC has previously ruled that a person may not lose their right to vote based on personal political opinions.¹²⁰ The HRC analyzed Uruguay's law restricting political rights of "all candidates for election office, appearing in the 1966 and 1971 election lists of Marxist or pro-Marxist parties or political groups declared illegal by Executive Power resolutions"¹²¹ Because these eligible voters were deprived political rights for fifteen years based on party membership, the HRC concluded that they had suffered from the country's violation of Article 25.¹²² In its communications with Uruguay, the HRC established that deprivation of an individual's right to vote for a period of fifteen years is too long without specific justification of such a harsh measure.¹²³

In 2014, the HRC released a report on factors that impede equal participation and steps to overcome those challenges, hoping to encourage State parties to comply with the ICCPR's protection of political rights.¹²⁴ The report explains that recent human rights mechanisms have concluded that "wide-reaching restrictions or deprivations of electoral rights may not be compatible with guarantees of equality and non-discrimination under international law."¹²⁵ In its report,

¹¹⁵ Gregory H. Fox & Georg Nolte, *Intolerant Democracies*, 36 HARV. INT'L. L. J. 1, 49 (1995).

¹¹⁶ CARLSON, *supra* note 11, at 151; *see also* Human Rights Comm., *Istvan Mátyus v. Slovakia*, Commc'n No. 923/2000, U.N. Doc. A/57/40, Vol. II, at 257 (2002).

¹¹⁷ Human Rights Comm., *Concluding Comments on Paraguay*, ¶ 23, U.N. Doc. CCPR/C/79/Add.48 (1995).

¹¹⁸ General Comment No. 25, *supra* note 28 ¶ 10.

¹¹⁹ *Id.*; Fox, *supra* note 115.

¹²⁰ Human Rights Comm., *Silva et al. v. Uruguay*, Commc'n No. 34/1978, U.N. Doc. CCPR/C/OP/1 (1984).

¹²¹ Human Rights Comm., *Pietraroia v. Uruguay*, Commc'n No. 44/1979, ¶ 2.3, U.N. Doc. CCPR/C/12/D/44/1979 (1981).

¹²² *Id.* ¶ 17.

¹²³ *Id.* ¶ 16.

¹²⁴ Political Participation Report, *supra* note 3.

¹²⁵ *Id.*; *see also* Human Rights Comm., *Pietraroia v. Uruguay*, Commc'n No. 44/1979, U.N. Doc. CCPR/C/12/D/44/1979 (1981); Comm. on the Rights of Persons with Disabilities,

the HRC stated, “[a]dministrative restrictions, such as proof of residence or identity documentation requirements that might directly or indirectly prevent certain groups of citizens from exercising voting rights, should be removed.”¹²⁶ Any residency requirements applicable to voter registration “must be reasonable, and [the requirements] should not be imposed in such a way as to exclude the homeless from the right to vote.”¹²⁷

In 2015, the HRC released another report on the promotion, protection, and implementation of the right to participate in public affairs. In this report, the HRC explained its concern about the shrinking democratic space and the decline in voter turnout at elections in established democracies.¹²⁸ The HRC expressed concern that “[e]lection results do not always correspond to the wishes of the electorate and [that] political parties around the world have struggled to effectively address economic and other issues of primary interest”¹²⁹ Since the release of these reports, the United Nations has not provided additional guidance on how States should best ensure compliance with the provisions of Article 25 of the ICCPR.

D. The United States and the ICCPR

The United States signed the ICCPR in 1977 but waited to ratify it until 1992.¹³⁰ Due to its ratification, the ICCPR constitutes “the supreme Law of the Land” under the U.S. Constitution.¹³¹ Because the ICCPR limits international enforcement to a supervisory function, the primary responsibility for implementing the ICCPR falls upon State parties.¹³² State parties have broad discretion in implementing the rights guaranteed under the ICCPR.¹³³ The provisions of the

General Comment No. 1 (2014); Human Rights Comm., Concluding Observations of the Human Rights Committee: United States of America, Comm’n No. 1410/2005; U.N. Doc. CCPR/C/USA/CO/3 and Rev.1 (2006); NOWAK, *supra* note 57 at 576.

¹²⁶ Political Participation Report, *supra* note 3.

¹²⁷ General Comment No. 25, *supra* note 28 ¶ 11; *see also* Human Rights Comm., *Concluding Observations on the Fourth Periodic Report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/4 (2014).

¹²⁸ Human Rights Comm., *Report of the Office of the United Nations High Commissioner for Human Rights: Promotion Protection, and Implementation of the Right to Participate in Public Affairs in the Context of the Existing Human Rights Law: Best Practices, Experiences, Challenges, and Ways to Overcome Them* 6, U.N. Doc. A/HRC/30/26 (2015).

¹²⁹ *Id.*

¹³⁰ U.N. Office of High Comm’r for Human Rights, *Human Rights and Elections Standards Plan of Action* (Dec. 2017), <https://www.ohchr.org/EN/Issues/Pages/HRElections.aspx> (last visited Oct. 16, 2020).

¹³¹ U.S. Const. art. VI.

¹³² NOWAK, *supra* note 57, at ¶ 15.

¹³³ *Id.*

ICCPR apply to all parts of federal States and to a State Party's dependent territories with no exceptions.¹³⁴ In the United States, federal, state, and local authorities share responsibility for implementing appropriate measures to ensure that the rights guaranteed under the ICCPR are protected.¹³⁵

When the U.S. Senate granted consent to ratify the ICCPR, it did not consent to either of the Optional Protocols.¹³⁶ Further, the United States attached several reservations and understandings to its ratification, two of which are key to determining the obligations of the United States under the ICCPR: (1) "That the United States declares that the provisions of Articles 1 through 27 of the [ICCPR] are not self-executing" and (2) "That the United States understands that this [ICCPR] shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments."¹³⁷ These provisions, along with the United States' refusal to consent to the First Optional Protocol (as an avenue for individual complaints to the HRC), make it difficult for the HRC to ensure that the United States is protecting its citizens' human rights as provided in the ICCPR.

i. Pre-2018 United States Reports

The United States previously submitted reports to the HRC in 1994, 2005, 2011, and 2014.¹³⁸ The U.S. Department of State is responsible for drafting the country's reports, coordinating U.S. government responses, and ensuring the country appears before the HRC.¹³⁹ In communicating with the HRC, the United

¹³⁴ *Id.*; see also ICCPR, *supra* note 1, art. 50; Human Rights Comm., General Comment No. 31 [80], Nature of the General Legal Obligations on States Parties to the Covenant, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

¹³⁵ Reservations, Understandings, and Declarations to the International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992); see also Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 33, available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (declaring that "every treaty in force is binding upon the parties").

¹³⁶ Reservations, Understandings, and Declarations to the International Covenant on Civil and Political Rights, *supra* note 135.

¹³⁷ *Id.*

¹³⁸ See U.N. Office of the High Comm'r for Human Rights, *Reporting Status for United States of America: CCPR – International Covenant on Civil and Political Rights*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=USA&Lang=EN (last visited Oct. 15, 2020) (compiling State party reporting cycles and related documentations).

¹³⁹ American Civil Liberties Union, *FAQ: THE COVENANT ON CIVIL & POLITICAL RIGHTS (ICCPR)*, <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr> (last visited Oct. 15, 2020).

States has expressed its commitment to the promotion and protection of human rights, promising to “work closely together with member States to advance human rights and to remain in an open dialogue with the special procedures mandate-holders.” However, the United States has frequently failed to submit timely reports or responses to HRC requests for information.¹⁴⁰

On October 10, 2013, four days before the start of the session in which the HRC would review the fourth U.S. Report, the United States requested that the review of its report be postponed due to the Government Shutdown. The HRC postponed its review of the U.S. Report until March 26, 2014.¹⁴¹ The HRC’s Concluding Observations following its review of the U.S. Report detailed positive actions taken by the State party to recognize the protected human rights, noting “with appreciation the many efforts undertaken by the State party and the progress made in protecting civil and political rights.”¹⁴² However, when announcing the HRC’s Concluding Observations on the U.S. Report during a press conference, the chairman of the HRC spoke out about the country’s failure to effectuate the ICCPR stating, “[t]here was no suggestion that any of those responsible for any of the past criminal violations of [the ICCPR] would be brought to justice or that its victims would have access to their day in court.”¹⁴³

The HRC’s response, detailing its principal matters of concern¹⁴⁴ regarding the fourth U.S. Report, included a section on voting rights reiterating the HRC’s “concern about the persistence of state-level felon disenfranchisement laws, their

¹⁴⁰ See generally Human Rights Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev.1/Add.2 (Sept. 24, 2009).

¹⁴¹ U.N. Office of the High Comm’r for Human Rights, *Human Rights Committee: The Review of the United States of America Has Been Cancelled* (2013), <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/ReviewUSA.aspx> (last visited Oct. 15, 2020).

¹⁴² Human Rights Comm., *Consideration of Reports Submitted By States Parties Under Article 40 of the Covenant*, U.N. Doc. CCPR/C/USA/4 (Mar. 26, 2014).

¹⁴³ Papers, Please: The Identity Project, *UN Human Rights Committee Calls on US to Effectuate the ICCPR* (2014), IDENTITY PROJECT, <https://papersplease.org/wp/2014/03/28/un-human-rights-committee-calls-on-us-to-effectuate-the-iccpr/> (last visited Apr. 23, 2020).

¹⁴⁴ In addition to expressing its concern regarding voting rights, the HRC detailed the following issues as principle matters of concern: applicability of the Covenant at the national level, accountability for past human rights violations, racial disparities in the criminal justice system, racial profiling, the death penalty, targeted killings using unmanned aerial vehicles (drones), gun violence, excessive use of force by law enforcement officials, legislation prohibiting torture, non-refoulement, trafficking and forced labour, immigrants, domestic violence, corporal punishment, non-consensual psychiatric treatment, criminalization of homelessness, conditions of detention and use of solitary confinement, detainees at Guantánamo Bay, National Security Agency surveillance, juvenile justice and life imprisonment without parole, and rights of indigenous peoples. *Concluding Observations on the Fourth Periodic Report*, *supra* note 127.

[sic] disproportionate impact on minorities[,] and the lengthy and cumbersome voting restoration procedures in states.”¹⁴⁵ The HRC also expressed its concern “that voter identification and other recently introduced eligibility requirements may impose excessive burdens on voters and result in de facto disenfranchisement of large numbers of voters.”¹⁴⁶ The HRC recommended that the United States “remove or streamline lengthy and cumbersome voting restoration procedures . . . [and] take all necessary measures to ensure that voter identification requirements and the new eligibility requirements do not impose excessive burdens on voters and result in de facto disenfranchisement.”¹⁴⁷

Following the U.S. Report submission and review in 2014, the United States submitted follow-up reports responding to the HRC’s concerns in April 2015, October 2015, and October 2017.¹⁴⁸ These communications focused on the HRC’s four recommendations from its 2014 Concluding Observations—accountability for past human rights violations, gun violence, detainees at Guantanamo Bay, and National Security Agency surveillance—but did not address issues related to political participation.¹⁴⁹

ii. *Post-2018 United States Reports*

In anticipation of the United States’ fifth periodic report, the HRC provided the country with a List of Issues on April 2, 2019.¹⁵⁰ The HRC set forth its concerns related to the right to political participation in the United States in this document, requesting updated information on the measures adopted by the United States to guarantee political rights since the HRC’s most recent Concluding Recommendations in 2014.¹⁵¹ The HRC requested that the United States “provide updated information on measures adopted by the State party to encourage . . . the removal of lengthy and cumbersome voting restoration procedures” and asked that the country “comment on the prevalence of voter suppression measures . . . such as cuts to early voting and voter identification laws, which

¹⁴⁵ *Id.* at 24.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Permanent Mission of the United States of America, *One-Year Follow-up Response of the United States of America to Priority Recommendations of the Human Rights Committee on its Fourth Periodic Report on Implementation of the International Covenant on Civil and Political Rights*, U.N. OFF. HIGH COMM’R FOR HUM. RTS., https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_FCO_USA_19957_E.pdf (last visited Apr. 23, 2020).

¹⁴⁹ *Id.*

¹⁵⁰ Human Rights Comm., *List of Issues Prior to Submission of the Fifth Periodic Report of the United States of America*, U.N. Doc. CCPR/C/USA/QPR/5 (2019).

¹⁵¹ *Id.* at 6.

may impose an excessive burden on voters, especially those belonging to minority groups.”¹⁵² Finally, the HRC requested “information on the measures taken to prevent undue influence on the conduct of elections at the federal and state levels.”¹⁵³

The United States responded to these concerns on January 15, 2021 in its fifth report to the HRC.¹⁵⁴ The fifth U.S. Report detailed recent decisions from the U.S. Supreme Court concerning election and voting laws and focused on the fact that U.S. citizens have the opportunity to challenge these laws in U.S. courts.¹⁵⁵ Implicitly, the United States argues that it has not violated *international* law under Article 25 of the ICCPR because the country’s courts have determined that the relevant election and voting laws do not violate *domestic* law under the U.S. Constitution, the Federal Voting Rights Act, state constitutions, or state statutory law.

III. GEORGIA’S 2018 ELECTION PROCEDURES

The 2018 U.S. midterm elections saw record levels of voter turnout, women and minorities elected to Congress, and complaints of voter suppression.¹⁵⁶ Although 118.5 million Americans across the country cast a ballot in 2018 (turnout being more than ten percent higher than it was during the 2014 midterm elections), nearly 120 million eligible Americans did not vote.¹⁵⁷ No state attracted more attention during the leadup to the elections than Georgia, where several lawsuits were filed alleging issues with the state’s election and voting systems.¹⁵⁸ Many of the complaints centered around concerns of voter registrations being

¹⁵² *Id.*

¹⁵³ *Id.* at 28.

¹⁵⁴ Human Rights Comm., *Fifth Periodic Report Submitted by the United States of America Under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure, Due in 2020*, U.N. Doc. CCPR/C/USA/5 (Jan. 19, 2021); see also Human Rights Comm., *Predictable Review Calendar*, https://www.ohchr.org/Documents/HRBodies/CCPR/List_countries_PRC.docx (last visited Apr. 24, 2020).

¹⁵⁵ *Id.*

¹⁵⁶ PIPPA NORRIS, HOLLY ANN GARNETT & MAX GRÖMPING, *THE ELECTORAL INTEGRITY PROJECT, ELECTORAL INTEGRITY IN THE 2018 AMERICAN ELECTIONS (PEI-US-2018)* at 4 (2019).

¹⁵⁷ DANIELLE ROOT & AADAM BARCLAY, *VOTER SUPPRESSION DURING THE 2018 MIDTERM ELECTIONS*, CTR. FOR AMERICAN PROGRESS (Nov. 20, 2018, 9:03 AM), <https://www.american-progress.org/issues/democracy/reports/2018/11/20/461296/voter-suppression-2018-midterm-elections/>.

¹⁵⁸ P.R. Lockhart, *Georgia, 2018’s Most Prominent Voting Rights Battleground, Explained*, VOX (Nov. 6, 2018), <https://www.vox.com/policy-and-politics/2018/10/26/18024468/georgia-voter-suppression-stacey-abrams-brian-kemp-voting-rights>.

put on hold, discriminatory voter purges, precinct consolidations, and long lines on election day.¹⁵⁹

In Georgia's gubernatorial race, Brian Kemp was simultaneously the Republican candidate and the acting Secretary of State, meaning he was in charge of administering the election in which he was running.¹⁶⁰ His opponent, Democrat Stacey Abrams—Georgia's former state House Minority Leader—was vying to be the first African-American governor of Georgia and the first female governor in U.S. history.¹⁶¹ In the weeks leading up to the election, Abrams and several voting rights advocacy groups claimed that Kemp was using his office to suppress votes and tilt the election in his favor, while Kemp denied those allegations.¹⁶² An American Public Media Reports ("APM") review of U.S. court records found that "more federal voting rights lawsuits have been filed against officials in Georgia than any other state except Texas since 2011."¹⁶³ APM also found that Georgia is the only state once under federal oversight¹⁶⁴ to have adopted all five of the most common voter suppression tactics studied in 2018 by the U.S. Commission on Civil Rights: voter ID laws, proof of citizenship requirements, purges, cuts in early voting, and polling places closures. This Note looks at two of these potential tactics—purges and polling place closures—as

¹⁵⁹ BARCLAY, *supra* note 157.

¹⁶⁰ GRÖMPING *supra* note 156, at 18, fn.7; *see also* Ben Nadler, *Voting Rights Become A Flashpoint in Georgia Governor's Race*, ASSOCIATED PRESS, Oct. 9, 2018, <https://ap-news.com/fb011f39af3b40518b572c8ccee6e906c>.

¹⁶¹ Brentin Mock, *Where Voter Suppression Hits Hardest in Georgia*, CITYLAB, Oct. 18, 2018, <https://www.citylab.com/equity/2018/10/where-voters-color-are-suppressed-hardest-georgia/573367/>.

¹⁶² Nadler, *supra* note 160; Astead W. Herndon, *Complaints of Voter Suppression Loom Over Georgia Governor's Race*, N.Y. TIMES (Oct. 11, 2018), https://www.nytimes.com/2018/10/11/us/politics/georgia-voter-registration-kemp-abrams.html?auth=forgot-password&referring_pv_id=uf6eB6jc3ZnIcF484y6O6nzV.

¹⁶³ ANGELA CAPUTO ET AL., THEY DIDN'T VOTE . . . NOW THEY CAN'T, APM REPORTS (Oct. 19, 2018), <https://www.apmreports.org/story/2018/10/19/georgia-voter-purge>.

¹⁶⁴ The Voting Rights Act of 1965 aimed to increase the number of people registered to vote in areas where there was a record of previous discrimination. Under Section 5, certain jurisdictions with a history of voting discrimination—mostly southern states—could not change voting practices or procedures without "preclearance," a determination by the U.S. Attorney General or the U.S. District Court for the District of Columbia determining that the change did not have a discriminatory purpose and would not have a discriminatory effect. In April 2010, Shelby County, Alabama (a largely white suburb of Birmingham) filed suit in federal court asking that Section 5 of the Voting Rights Act be declared unconstitutional. The Supreme Court held that the coverage formula in Section 4 of the Voting Rights Act was unconstitutional; while the Court's decision did not strike down Section 5, it has little significance without Section 4's coverage formula. *See* United States Dep't of Justice, *History of Federal Voting Rights Laws*, <https://www.justice.gov/crt/history-federal-voting-rights-laws> (last visited April 21, 2020); Adam Liptak, *Supreme Court Invalidates Key Part of Voting Rights Act*, N.Y. TIMES (June 25, 2013), <https://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html>.

well as the long lines at several Georgia polling places during the 2018 election to determine whether Georgia's procedures constitute a violation of international law under Article 25 of the ICCPR.

A. Problems with Voter Registration

Several voting-related complaints in Georgia centered around the state's process of maintaining its voter registration list.¹⁶⁵ Lawsuits challenged Kemp's methods of removing voters from the rolls, either because the voter did not vote in recent elections or because the information on the voter's registration form did not completely match information in the state's database.¹⁶⁶ The purpose of this purging process is to "ensure that the voter rolls are accurate and up-to-date, but when done incorrectly, it can "disenfranchise legitimate voters (often when it is too close to an election to rectify the mistake), causing confusion and delay at the polls."¹⁶⁷ Good reasons for removing a voter from the list include the voter's moving out-of-state or death.¹⁶⁸ However, problems arise when states remove eligible voters by relying on faulty data.¹⁶⁹ Often, these eligible voters do not realize they have been removed from the list until attempting to vote on Election Day. Further, if the voter lives in a state without election day registration, such as Georgia, he or she is often prevented from participating in the election.¹⁷⁰

Few states have increased the number of voter purges more than Georgia.¹⁷¹ In November 2018, Georgia had around seven million registered voters.¹⁷² Millions of eligible Georgia voters have been purged from the registration list since 2010, when Kemp began his tenure as Secretary of State.¹⁷³ According to a report by the Brennan Center for Justice, "Georgia purged twice as many voters—1.5 million—between the 2012 and 2016 elections as it did between 2008 and

¹⁶⁵ Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote*, BRENNAN CTR. FOR JUSTICE (2018), https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.1.pdf.

¹⁶⁶ Tony Pugh, *Georgia Secretary of State Fighting Accusations of Disenfranchising Minority Voters*, IMPACT2020 (Oct. 7, 2016, 1:14PM), <https://www.mcclatchydc.com/news/politics-government/article106692837.html>; see also Brater et al., *supra* note 165.

¹⁶⁷ Brater et al., *supra* note 165.

¹⁶⁸ Kevin Morris, *Voter Purge Rates Remain High, Analysis Finds*, BRENNAN CTR. FOR JUSTICE (Aug. 1, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds>.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ CAPUTO ET AL., *supra* note 163.

¹⁷² See *Georgia Shatters All-Time Voter Registration Record*, GA. SEC'Y STATE, https://sos.ga.gov/index.php/general/georgia_shatters_all-time_voter_registration_record (last visited Apr. 21, 2020).

¹⁷³ *Id.*

2012.”¹⁷⁴ Between 2010 and 2014, the median purge rate in Georgia increased from 6.7 percent to 10.7 percent.¹⁷⁵ APM recently reported that Georgia is one of at least nine U.S. states that has purged hundreds of thousands of people from the rolls since the 2014 general election.¹⁷⁶ Data demonstrates that leading up to the election in 2018, Georgia continued this trend, purging 10.6 percent of its total electorate between 2016 and 2018.¹⁷⁷

i. “Exact Match”

Pursuant to the U.S. Help America Vote Act of 2002, each state is required to implement a centralized, computerized statewide voter registration list containing the name and registration information of every legally registered voter in the state.¹⁷⁸ In Georgia, this system is called “eNet.”¹⁷⁹ Under Georgia’s 2018 “exact match” law,¹⁸⁰ when a person submits a voter registration application in Georgia, county election officials use eNet to compare the application information to information on file with the Georgia Department of Driver Services (“DDS”)¹⁸¹ or the Social Security Administration (“SSA”).¹⁸² If the information on the voter’s application does not exactly match the applicant’s data on file with DDS or SSA,

¹⁷⁴ Brater et al., *supra* note 165.

¹⁷⁵ Kevin Morris & Myrna Perez, *Florida, Georgia, North Carolina Still Purging Voters at High Rates*, BRENNAN CTR. FOR JUSTICE (Oct. 1, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/florida-georgia-north-carolina-still-purging-voters-high-rates>; Vann R. Newkirk II, *In the Georgia Governor’s Race, the Game Is Black Votes*, ATLANTIC (Oct. 12, 2018), <https://www.theatlantic.com/politics/archive/2018/10/georgia-race-mired-minority-vote-suppression-charges/572854/>.

¹⁷⁶ CAPUTO ET AL., *supra* note 163.

¹⁷⁷ Morris & Perez, *supra* note 175.

¹⁷⁸ 52 U.S.C. § 21083(a)(1)(A) (2002); *see also* *Ga. Coal. for the People’s Agenda v. Kemp*, 347 F. Supp. 3d 1251, 1255-56 (N.D. Ga. 2018).

¹⁷⁹ *See Georgia Voter Registration System*, GA. SEC’Y STATE, <https://gvrs.sos.state.ga.us/ElectioNet/> (last visited Apr. 21, 2020).

¹⁸⁰ *See* GA. CODE ANN. § 21-2-220.1 (2018).

¹⁸¹ When matching registration data against the DDS database, the automated system compares the following fields: first name, last name, date of birth, driver’s license or state ID number, and citizenship status. Complaint at ¶ 37, *Ga. State Conference of the NAACP et al. v. Kemp*, No. 1:17-cv-01427-TCB (N.D. Ga. 2017), <https://lawyerscommittee.org/wp-content/uploads/2016/09/2016-09-13-GA-NAACP-Kemp-Complaint-FINAL.pdf>.

¹⁸² *Ga. Coal. for the People’s Agenda*, 347 F. Supp. 3d at 1255–56. When matching registration data against the DDS database, eNet compares the following fields: first name, last name, date of birth, driver’s license or state ID number, and citizenship status. When matching registration data against the SSA database, eNet compares the following fields: first name, last name, date of birth, and last four digits of the social security number. Complaint at ¶ 37, *Ga. State Conference of the NAACP*.

the application is flagged and placed in “pending” status.¹⁸³ The person may not vote until he or she corrects the information.¹⁸⁴ When an application is flagged, county registrars mail a letter to the flagged applicants, notifying the individuals of their pending status and ways to remedy the issue.¹⁸⁵ The burden is on the applicant to correct the information or present the necessary proof required to become a Georgia voter within twenty-six months; if the applicant is unable to do so, his or her application is rejected, and the individual must start over with a new voter registration application.¹⁸⁶

In years prior to the 2018 controversy over the exact match rule in Georgia, Kemp’s office used an older version of the same protocol, which automatically cancelled registrations of those who failed to correct their information within forty days.¹⁸⁷ In 2016, a coalition of civil rights groups filed a lawsuit in federal court seeking to halt enforcement of the exact match rule, arguing that the process disproportionately affected voters of color in the state.¹⁸⁸ The case was settled in 2017 after Kemp’s office agreed to a number of reforms that removed the deadline period and allowed those flagged in the system to vote if they provided identification at the polls.¹⁸⁹ However, during the 2018 legislative session, Georgia passed a new version of the exact match protocol, Georgia State House Bill 268 (“HB 268”), which reinstated a deadline for correcting registrations within twenty-six months.¹⁹⁰

¹⁸³ An individual’s application may be flagged for several reasons, but a person is most often placed in pending status due to citizenship status or other non-matching information, such as a misspelled name. *See Ga. Coal. for the People’s Agenda*, 347 F. Supp. at 1256–57 (discussing potential reasons for flagged applications); Nadler, *supra* note 160 (“An application could be held because of an entry error or a dropped hyphen in a last name, for example.”); H.B. 549, 150th Gen. Assemb., Reg. Sess. (Ga. 2009) (enacted) (amending O.C.G.A. § 21-2-231 to require removal of registration of every person that declined jury duty based on noncitizenship).

¹⁸⁴ H.B. 549, 150th Gen. Assemb., Reg. Sess. (Ga. 2009) (enacted).

¹⁸⁵ *Id.*; Georgia Secretary of State, *Information for Pending Voters*, https://sos.ga.gov/index.php/general/information_for_pending_voters (last visited Apr. 21, 2020). These notification letters are sent only in English in all but one of Georgia’s 159 counties. *See* Brentin Mock, *How Dismantling the Voting Rights Act Helped Georgia Discriminate Again*, CITYLAB (Oct. 15, 2018), <https://www.citylab.com/equity/2018/10/how-dismantling-voting-rights-act-helped-georgia-discriminate-again/572899/>.

¹⁸⁶ *Id.*

¹⁸⁷ Lockhart, *supra* note 158.

¹⁸⁸ *Id.*; Joseph Ax, *Georgia Lawsuit is Latest Blow in U.S. Fight Over Voting Rights*, REUTERS (Oct. 12, 2018), <https://www.reuters.com/article/usa-election-registrations/georgia-lawsuit-is-latest-blow-in-u-s-fight-over-voting-rights-idUSKCN1ML333>.

¹⁸⁹ Lockhart, *supra* note 158.

¹⁹⁰ *See* Georgia General Assembly, *2017-2018 Regular Session – HB 268*, <http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/268> (last visited Apr. 21, 2020).

To stop enforcement of HB 268 prior to the 2018 elections, several civil rights groups sued Kemp, alleging that the voter registration verification process imposed severe burdens on voting-eligible Georgians' fundamental right to vote.¹⁹¹ According to the lawsuit, discrepancies that placed eligible voters in "pending" status were often due to human data-entry errors, including typos, misreading of imperfect handwriting, and misspellings associated with maiden names, hyphenated names or initials.¹⁹² The complaint states that the exact match policy relies on county election officials to correctly input voter registration data into the match system.¹⁹³ Mismatches between databases can result from innocuous mistakes and frequently result from no fault of the voter whatsoever.¹⁹⁴

ii. "Use It or Lose It"

Georgia enacted its "use it or lose it" statute, which provides for the removal of citizens from voter registration rolls, in 1994.¹⁹⁵ The U.S. Department of Justice initially objected to the law, warning Georgia officials that the law was "directly contrary to the language and purpose of [U.S. law] and is likely to have a disproportionate adverse effect on minority voters in the state."¹⁹⁶ Despite this warning, Georgia's legislature enacted the statute, and it remains in effect today.¹⁹⁷ Georgia does not maintain any clear data on how many people have been purged under the use it or lose it policy, which makes it difficult to determine the effect these removals have had on the state's election outcomes.¹⁹⁸

In Georgia, the removal process is triggered if an individual does not vote, respond to a mailed notice, or make contact with election officials over a three-

¹⁹¹ An analysis of records obtained by the Associated Press also revealed racial disparity in the process: Georgia's population is approximately 32 percent black, according to the U.S. Census, but the list of voter registrations on hold with Kemp's office is nearly 70 percent black. See Nadler, *supra* note 160.

¹⁹² Pugh, *supra* note 166; Complaint ¶ 3, *Ga. Coalition for the People's Agenda*.

¹⁹³ Mock, *supra* note 185.

¹⁹⁴ Complaint ¶ 3, *Ga. Coalition for the People's Agenda*.

¹⁹⁵ Ga. H.R. Bill 12017 Reg. Sess., 1994 Ga. Laws 1443 (codified at O.C.G.A. § 21-2-234). At least nine states have a policy like Georgia's where citizens can be removed from the voter registration list for not voting in past elections. See Johnny Kauffman, *6 Takeaways from Georgia's "Use It or Lose It" Voter Purge Investigation*, NPR (Oct. 22, 2018, 4:59 PM), <https://www.npr.org/2018/10/22/659591998/6-takeaways-from-georgias-use-it-or-lose-it-voter-purge-investigation>.

¹⁹⁶ Deval Patrick, Assistant Attorney General Civil Rights Division, Letter to Dennis R. Dunn, (Oct. 24, 1994), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/GA-2570.pdf>.

¹⁹⁷ See O.C.G.A. § 21-2-234.

¹⁹⁸ CAPUTO ET AL., *supra* note 163.

year span.¹⁹⁹ Once the process is triggered, if the individual does not vote or make contact with election officials over two more federal election cycles, he or she will be purged from the voter rolls.²⁰⁰ The use it or lose it purging process takes seven years in Georgia.²⁰¹ Under this procedure, U.S. citizens in good standing who have not moved, committed a crime, or otherwise jeopardized their right to vote can trigger the removal process by not showing up to vote.²⁰²

In a *single day* in July 2017, more than half a million people—eight percent of Georgia’s registered voters—were removed from Georgia’s voter rolls, primarily based on their failure to vote in the previous election.²⁰³ Many of these previously registered voters did not realize they had been dropped from the rolls until showing up to vote in the 2018 election.²⁰⁴ Kemp oversaw this purge as Georgia’s Secretary of State just eight months after he announced his candidacy for governor.²⁰⁵ Although Georgia maintains no clear data on how many people have been removed from the list based on the state’s use it or lose it statute, an APM investigation found that it was the reason for removing eighteen percent of all individuals removed from the list during the July 2017 purge; under the statute, Georgia purged around 107,000 voters.²⁰⁶ Georgia voters who went to the polls in 2008—when President Barack Obama ran the first time and turnout was high—but have not voted since then were likely removed from the state’s voter registration list in 2017.²⁰⁷

In the United States, using a person’s decision not to vote as the trigger to remove them from the rolls is a highly controversial, yet legal, practice.²⁰⁸ Advocates of updating registration rolls justify purges by explaining that the state’s interest in prohibiting voter fraud outweighs the burden placed on voters; however, others see it as burdening an individual’s ability to exercise his or her right to vote. Voting rights advocates argue that one problem with the use it or lose it policy is that infrequent voting does not necessarily prove that a person is ineligible to vote.²⁰⁹

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*; see also Kauffman, *supra* note 195 (discussing takeaways from an investigation of Georgia’s “use it or lose it” voter purge).

²⁰⁷ CAPUTO ET AL., *supra* note 163.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

Kemp refers to this process as “voter list maintenance,” defending his office’s use of it as an effective way of protecting the state’s elections from voter fraud.²¹⁰ He has responded to complaints about the practice by stating,

So you think we should just leave people alone in perpetuity? I mean, what happens if they move to another state? People all the time move to another state, and they don’t tell us and end up getting on the voter rolls in two different states. We’ve had the same person voting twice in two different states in presidential elections. So there’s a reason you keep the voter rolls current and up to date We don’t have near the problems other states have with voter fraud, I believe, but we do have it.²¹¹

In 2018, the U.S. Supreme Court upheld the state of Ohio’s voter purge statute as constitutionally valid under federal law.²¹² Ohio’s statute is similar to Georgia’s, except registered voters in Ohio become ineligible after two years instead of three.²¹³ Writing for the majority, Justice Samuel Alito explained that “use it or lose it” statutes may or may not be good policy but do not violate federal law.²¹⁴ In response to the Supreme Court’s decision, Kemp stated, “[t]his ruling affirms that commonsense measures like Georgia’s voter list maintenance statutes, which prevent fraud at the ballot box, are appropriate and necessary to ensure secure, accessible[,] and fair elections.”²¹⁵ Despite this U.S. Supreme Court decision permitting the practice of removing eligible voters from the rolls under

²¹⁰ *Id.* Since 1998, Georgia officials have pursued 20 election fraud cases, seven of which resulted in a criminal conviction. See Heritage Foundation, *Election Fraud Cases: Georgia*, https://www.heritage.org/voterfraud/search?state=GA&combine=&year=&case_type=All&fraud_type=All&page=1 (last visited Apr. 21, 2020).

²¹¹ CAPUTO ET AL., *supra* note 163; see also Kauffman, *supra* note 195.

²¹² *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018) (evaluating Ohio’s voter purge statute by determining whether it complies with two federal statutes, the National Voter Registration Act of 1933 and the Help America Vote Act of 2002); see also Garrett Epps, *The Supreme Court Blesses Voter Purges*, ATLANTIC (June 12, 2018), <https://www.theatlantic.com/politics/archive/2018/06/the-supreme-court-blesses-voter-purges/562589/> (discussing the significance of the Supreme Court’s 5-4 decision giving the green light for states to purge voters from the rolls).

²¹³ Mark Niese, *Supreme Court Allows Voter Purges in States like Georgia*, ATLANTA JOURNAL-CONSTITUTION (June 13, 2018), <https://www.ajc.com/news/state—regional-govt—politics/supreme-court-allows-voter-purges-states-like-georgia/TJZqgnWEAWOB-vUMdB9eDOP/>.

²¹⁴ *Husted*, 138 S. Ct. at 1848 (“We have no authority to second-guess Congress or to decide whether Ohio’s Supplemental Process is the ideal method for keeping its voting rolls up to date. The only question before us is whether it violates federal law. It does not.”).

²¹⁵ Niese, *supra* note 213.

domestic law, the United States may still be violating *international* law under Article 25 of the ICCPR based on its states' use it or lose it statutes.

B. Problems with Voter Access

In Georgia, complaints of voter registration issues prior to election day were followed by complaints of voting access issues on election day. Many registered, eligible Georgia voters faced difficulty voting in the 2018 election due to state policies and decisions resulting in fewer precincts, a lack of voting machines, and issues with voting machines.

i. Precinct Consolidation

Following the U.S. Supreme Court's decision in *Shelby County v. Holder*,²¹⁶ which removed the preclearance requirement under the Voting Rights Act of 1965, counties across the United States began closing polling places.²¹⁷ Following the Court's decision, Kemp sent a memo to local election officials in Georgia encouraging them to begin planning consolidation of precincts and polling places and offering guidance on how to do so.²¹⁸ The only mention of voting rights in his six-page memo is the following sentence, which appears twice: "As a result of the *Shelby vs. Holder* Supreme Court decision, you are no longer required to submit [precinct or polling place] changes to the Department of Justice for preclearance."²¹⁹

According to a report by the Leadership Conference Education Fund, Georgia counties responded by closing 214 polling places.²²⁰ In Georgia, "[e]ighteen counties closed more than half of their polling places, and several closed almost [ninety] percent."²²¹ Among U.S. counties, the five that closed the most polling places following the Court's decision were all in Georgia.²²² According to the

²¹⁶ 570 U.S. 529 (2013).

²¹⁷ Nicquel Terry Ellis, *Report: Supreme Court Ruling Caused Mass Polling Place Closures Across Southern USA*, USA TODAY (Sept. 12, 2019), <https://www.usatoday.com/story/news/nation/2019/09/12/report-court-ruling-caused-mass-voting-place-closures-southern-u-s/2272866001>.

²¹⁸ The Leadership Conference Education Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote*, CIVIL RIGHTS DOCS 18, 32 (Sept. 2019), <http://civil-rightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

²¹⁹ *Id.* at 32 (alteration in original) (mistake in original).

²²⁰ *Id.* at 31.

²²¹ *Id.*

²²² *Id.* at 18.

report, the top three counties in Georgia were Lumpkin (eighty-nine percent closed); Stephens (eighty-eight percent closed); and Warren (eighty-three percent closed); Bacon County and Butts County tied just below, with eighty percent closed.²²³ Voters in seven Georgia counties now have only one polling site, which is expected to serve people over hundreds of square miles.²²⁴ For example, after closing the majority of its precincts in 2016, rural Lumpkin County only had one polling place to serve the 284-square mile county during the 2018 election.²²⁵ Additionally, Lanier County, a 200-square mile county, closed 75 percent of its polling places, leaving the county's voters with one polling place during the 2018 election.²²⁶

ii. Long Lines on Election Day

The Joint Center for Political and Economic Studies reported that long lines deterred approximately 730,000 Americans from voting in the 2012 elections.²²⁷ These long lines can be caused by a jurisdiction's lack of capacity to deal with the amount of voters or they can be caused by unexpected events, such as a power outages, sick poll workers, or broken voting machines.²²⁸ Often, precincts with large numbers of registered voters lack an adequate amount of check-in stations or voting booths to handle the volume of voters assigned to the precinct.²²⁹ According to voting rights advocates, long lines present three main problems in U.S. elections: "they discourage voting, lower voter confidence, and impose economic costs on voters."²³⁰

²²³ *Id.*

²²⁴ *Id.* at 33.

²²⁵ *Id.*

²²⁶ *Id.*; see also Terry Richards, *Lanier May Close 3 of 4 Voting Precincts*, VALDOSTA DAILY TIMES (June 28, 2016), https://www.valdostadailytimes.com/news/local_news/lanier-may-close-of-voting-precincts/article_6cf02c80-93ce-51df-86c6-3b4a692acc18.html.

²²⁷ Spencer Overton & Jenalyn Sotto, *How to Reduce Long Lines to Vote: Joint Center Policy Brief*, JOINT CTR. FOR POLITICAL AND ECON. STUDIES (Aug. 10, 2016), <https://jointcenter.org/how-to-reduce-long-lines-to-vote-joint-center-policy-brief-2/>.

²²⁸ John C. Fortier et al., *Improving the Voter Experience: Reducing Polling Place Wait Times by Measuring Lines and Managing Polling Place Resources*, BIPARTISAN POL'Y CTR. 5 (Apr. 2018), <https://bipartisanpolicy.org/wp-content/uploads/2018/04/Improving-The-Voter-Experience-Reducing-Polling-Place-Wait-Times-by-Measuring-Lines-and-Managing-Polling-Place-Resources.pdf>.

²²⁹ *Id.*

²³⁰ CHARLES STEWART III & STEPHEN ANSOLABEHRE, WAITING TO VOTE, ELECTION LAW JOURNAL: RULES, POLITICS, AND POLICY 14.1, 47–53, 47 (2015).

Wait times of more than an hour were a common hurdle facing voters across the state during Georgia's 2018 election.²³¹ Long lines plagued several Gwinnett County voting locations and resulted in extended voting hours at multiple precincts.²³² Machines temporarily went down in at least four of the county's voting locations, causing voters to resort to paper ballots.²³³ At Gwinnett County's Anderson Livsey Elementary School in Snellville, voters were left waiting after the batteries died in each of the voting machines, which were not connected to power cords.²³⁴ According to one voter, it took about an hour and forty-five minutes for election officials to retrieve the power cords.²³⁵ Voting machine issues caused even longer lines at busy polling locations, resulting in some voters waiting more than four hours to vote.²³⁶

In Fulton County, at least three precincts had to stay open as late as 10:00 p.m. due to extreme lines resulting from a limited number of voting machines.²³⁷ Fulton County's Pittman Park Recreation Center had only three machines, which sparked complaints from voters who waited in line for hours.²³⁸ A precinct is supposed to have one machine for every 350 registered voters.²³⁹ According to Fulton County Election Director Rick Barron, the number of voters entered into the system in Fulton County was incorrect, leading to far fewer machines than necessary actually being set up; Barron apologized to voters for the mix-up.²⁴⁰

Georgia's election officials explained that the lack of voting machines combined with high turnout and wordy constitutional amendments on the ballot

²³¹ Mark Niese, *Long Lines and Equipment Problems Plague Election Day in Georgia*, ATLANTA JOURNAL-CONSTITUTION (Nov. 6, 2018), <https://www.ajc.com/news/state-regional-govt-politics/long-lines-and-equipment-problems-plague-election-day-georgia/17NUidWbMetr5OFdGcb5ZM/>.

²³² *Id.*; BARCLAY, *supra* note 157.

²³³ Tyler Estep & Amanda C. Coyne, *BREAKING: Extended Hours Ordered at 3 Gwinnett Precincts*, ATLANTA JOURNAL-CONSTITUTION (Nov. 6, 2018), <https://www.ajc.com/news/local-govt-politics/machines-down-hundreds-wait-one-gwinnett-voting-precinct/nNdh2wuAvjinnomVB5Oq9M/>.

²³⁴ Michael King & Nick Sturdivant, *Gwinnett Co. Voters Wait for Hours After Workers Forget Power Cords for the Voting Machines*, 11 ALIVE, <https://www.11alive.com/article/news/politics/elections/gwinnett-co-voters-wait-for-hours-after-workers-forget-power-cords-for-the-voting-machines/85-611764666> (last updated Nov. 7, 2018). Gwinnett County is the second most populous county in the state and is a political battleground in Georgia of which Republicans are trying to retain control in the face of swiftly changing demographics. Mock, *supra* note 160.

²³⁵ See King & Sturdivant.

²³⁶ P.R. Lockhart, *Voting Hours in Parts of Georgia Extended after Technical Errors Create Long Lines*, VOX (Nov. 6, 2018), <https://www.vox.com/policy-and-politics/2018/11/6/18068492/georgia-voting-gwinnett-fulton-county-machine-problems-mid-term-election-extension>.

²³⁷ Niese, *supra* note 231.

²³⁸ Lockhart, *supra* note 236.

²³⁹ *Id.*

²⁴⁰ *Id.*

created some of the longest lines in years.²⁴¹ At the time of the 2018 elections, hundreds of Georgia's voting machines were sequestered by local officials because of an ongoing federal lawsuit determining whether the state's electronic voting machines could be hacked.²⁴² On Election Day, there were about 1,050 voting machines in Cobb County precincts while 550 were sequestered; another 700 machines were out of service in Fulton County and 585 in DeKalb County.²⁴³ Some argue that voting machines being held back was a contributing factor to the long lines, along with high turnout.²⁴⁴

A study of 3,119 polling places across the United States (representing 3.3% of all Election Day voters) conducted by the Bipartisan Policy Center, a D.C.-based think tank, and MIT, revealed that on average, voters in Georgia had a wait time of 21.7 minutes in 2018—2.5 times the national average of 8.7 minutes.²⁴⁵ Data from that study indicated that “policy decisions in certain states cause or exacerbate many of the longest lines and have led to long lines for years.”²⁴⁶ Many have argued that these voting issues and long wait times represent excessive burdens on the right to vote.

IV. DO GEORGIA'S 2018 MIDTERM ELECTION PROCEDURES VIOLATE INTERNATIONAL LAW?

The right to vote falls under Article 25(b) of the ICCPR. According to the HRC, “[a]ny conditions which apply to the exercise of the rights protected by [A]rticle 25 should be based on objective and reasonable criteria.”²⁴⁷ Although the ICCPR does not define what constitutes objective or reasonable criteria, the historical background of Article 25 and the HRC's interpretations when expanding on the meaning of the ICCPR provide clarity in determining whether Georgia's election procedures violate international law and how the United States can best ensure its future compliance with the ICCPR.²⁴⁸

²⁴¹ See Mark Niese, *Why Did Some Voting Machines Sit Unused on Busy Georgia Election Day?*, ATLANTA JOURNAL-CONSTITUTION (Nov. 8, 2018), <https://www.ajc.com/news/state-regional-govt-politics/why-did-some-voting-machines-sit-unused-busy-election-day/GEe491hw2FsEAKESx42TYM/>.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Matthew Weil et al., *The 2018 Voting Experience: Polling Place Lines*, BIPARTISAN POLICY CTR. (Nov. 2019), <https://bipartisanpolicy.org/wp-content/uploads/2019/11/The-2018-Votin-Experience.pdf>.

²⁴⁶ *Id.*

²⁴⁷ General Comment No. 25, *supra* note 28 ¶ 4.

²⁴⁸ NOWAK, *supra* note 57, at 443–50.

A. Are the Restrictions Used in Georgia Reasonable?

Based on previous HRC decisions involving restrictions on the right to vote, the election procedures used during Georgia's 2018 General Election creating voter *registration* issues are likely reasonable restrictions on the right to vote under the ICCPR based on United States court decisions finding the procedures constitutional under domestic law; however, procedures that created voter *access* issues likely constitute unreasonable restrictions on the right to vote under the ICCPR.

i. Voter Registration Issues

In *Husted v. A. Philip Randolph Institute*, the U.S. Supreme Court examined the state of Ohio's process of removing eligible voters from registration lists and held that the purging process did not constitute a violation of U.S. law.²⁴⁹ The Court explained that although the process does use failure to vote as a *trigger* for removal, the failure to vote is not the *sole basis* for removal; therefore, removing eligible voters does not violate U.S. law.²⁵⁰ The HRC may decide that Georgia's removal statute puts the United States in violation of international law under the ICCPR even if the statute does not violate U.S. law under the U.S. Supreme Court's ruling in *Husted*.

A 2005 HRC decision regarding the removal of an eligible voter suggests that a cited "motivation or court decision" could convince the HRC to rule that removal of a voter or group of voters is reasonable.²⁵¹ In *Gorji-Dinka v. Cameroon*, the HRC reviewed the complaint of an individual who was arrested and later notified by mail that his name had been removed from the register of electors in the country of Cameroon until such time he could produce a "certificate of rehabilitation."²⁵² The individual's name was removed because of his "judicial antecedent."²⁵³ In its decision, the HRC stated:

[T]he [HRC] is of the view that exercise of the right to vote and to stand for election is dependent on the name of the person

²⁴⁹ 138 S. Ct. at 1848 (2018).

²⁵⁰ *Id.*

²⁵¹ See Human Rights Comm., *Gorji-Dinka v. Cameroon*, Commc'n No. 1134/2000, U.N. Doc. CCPR/C/83/D/1134/2002 (2005).

²⁵² *Id.*

²⁵³ *Id.*

concerned being included in the register of voters. If the author's name is not on the register of voters or is removed from the register, he cannot exercise his right to vote or stand for election. In the absence of any explanations from the State party, the [HRC] notes that the author's name was arbitrarily removed from the voters' list, *without any motivation or court decision*. The very fact of removal of the author's name from the register of voters may therefore constitute denial of his right to vote and to stand for election in accordance with [A]rticle 25 (b) of the [ICCPR].²⁵⁴

In absence of any explanation from Cameroon, the HRC concluded that the individual's name was arbitrarily removed from the voters' list, without being prompted by any motivation or court decision.²⁵⁵ The HRC explained that although the individual received a letter informing him of the removal of his name from the register of voters, a procedure the decision suggests complies with Cameroon's current electoral law, the justification for that measure was his "judicial antecedent"—despite the expungement of his criminal conviction based on his absence from the country when the offense was committed.²⁵⁶ Because Cameroon failed to submit any objective and reasonable grounds to justify the deprivation of the individual's right to vote and to be elected, the HRC concluded that the removal of the individual's name from the voters' register constituted a violation of his rights under Article 25(b) of the ICCPR, despite the procedure's compliance with Cameroon's electoral laws.²⁵⁷ This decision demonstrates the HRC's willingness to find that a procedure violates international law under the ICCPR despite its compliance with domestic law. However, the decision also suggests that the HRC may deem Georgia's removal of eligible voters prior to the 2018 election a reasonable restriction of the right to vote based on the United States' ability to point to *Husted* as a court decision justifying removal of voters.

For a removal of voters from the roll to be valid under the ICCPR, the voters must share a common trait that constitutes objective and reasonable criteria on which the United States may justify deprivation of the citizens' right to vote. Depending on the reason for removal, the citizens' commonality is either (1) their failure to vote and subsequent failure to respond to a mailer or (2) the mismatch of information on their voter application and information on file with the state. While the HRC may decide that neither of these common traits represents an objective and reasonable criterion on which the country may be permitted to deprive the right to vote, the HRC would likely rule that Georgia's voter purge procedures do not constitute a violation of international law under the ICCPR

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

based on the U.S. Supreme Court's decision in *Husted* and the HRC's decision in *Gorji-Dinka*.

ii. Voter Access Issues

If U.S. citizens were able to submit individual complaints to the HRC, the HRC would likely find that the voter access issues in Georgia during the 2018 election caused the United States to be in violation of the ICCPR under Article 25. The HRC would likely find that Georgia's polling place closures and lack of usable voting machines on Election Day in 2018 placed an excessive burden on voters who lived in certain counties. These voters arguably faced an unreasonable restriction on their right to vote in the 2018 election because in order to place their votes, many Georgians had to travel long distances to polling places and stand in lines for hours (and potentially face registration issues upon reaching the front of the line).

Although the HRC has not considered any comparable complaints, it would likely find that the voter access issues in Georgia violate international human rights norms by disproportionately overburdening eligible Georgia voters in certain counties. The HRC's decision would hinge on its determination of whether polling places in Georgia are being closed based on reasonable and objective criteria. Because Georgia has not yet presented reasonable and objective criteria on which they base precinct closures and because long lines and voting machine problems deterred hundreds of thousands of eligible voters (primarily in populous Georgia counties) from casting their ballots in 2018, the HRC would likely rule that Georgia's practice of closing precincts and failure to provide enough functional voting machines on Election Day constitutes an unreasonable restriction on people's right to vote based on the county in which they live.

B. Should the United States Act to Ensure Georgia's Compliance with the ICCPR?

The United States should work to ensure Georgia's compliance with the ICCPR in order for the United States to play a leading role in setting and promoting human rights norms. When the U.S. Senate discussed ratification of the ICCPR in 1992, Senator Claiborne Pell stated, "[t]he rights guaranteed by the [ICCPR] are the cornerstones of a democratic society. By ratifying the [ICCPR] now, we have an opportunity to promote democratic rights and freedoms and the rule of law in the former Soviet Republics, Eastern Europe[,] and other areas

where democracy is taking hold.”²⁵⁸ The United States took advantage of the opportunity to ratify the ICCPR, putting the country in position to serve as a leader in the realm of international human rights law; however, the country’s violation of Article 25 of the ICCPR, based on the state of Georgia’s unreasonable restrictions on its citizens’ right to vote, worsens the country’s position as an international human rights leader.

V. HOW TO ENSURE GEORGIA’S COMPLIANCE WITH INTERNATIONAL LAW UNDER THE ICCPR

Although Georgia drew the greatest national attention for voter suppression tactics during the 2018 midterm elections, similar trends of voter suppression tactics and election issues can be seen across the United States.²⁵⁹ As a result, “American democracy finds itself at a crossroads, and a future where *more* suppression is the norm seems like a strong possibility.”²⁶⁰ The United States declared that its federal law generally complies with the provisions of the ICCPR, as it did prior to the country’s becoming a party to the ICCPR, because the U.S. Constitution and laws of the states protect the individual rights and freedoms protected by the ICCPR.²⁶¹ The current process of State reporting under the ICCPR, however, does not adequately ensure each U.S. state’s compliance with the ICCPR.

International and regional judicial institutions offer little recourse to Americans who claim a violation of their human rights. The HRC’s lack of adequate information on the laws of each U.S. state, the lack of an individual complaint mechanism, and the United States’ resistance to HRC judgments present significant obstacles for Americans who wish to file a complaint with the HRC alleging that their human rights have been violated. The HRC would likely find that the voting *access* procedures affecting Georgia’s 2018 elections, but not the state’s voter *registration* procedures, unreasonably restricted eligible voters’ ability to exercise their right to vote. Because the United States has not ratified the first optional protocol to allow individual complaints, however, the burden of rectifying the United States’ violation of the ICCPR will likely fall on the

²⁵⁸ 138 Cong. Rec. S4781-01, 102nd Congress, Second Session, 2 April 1992.

²⁵⁹ Vann R. Newkirk II, *Voter Suppression is the New Old Normal*, ATLANTIC (Oct. 24, 2018), <https://www.theatlantic.com/politics/archive/2018/10/2018-midterms-and-specter-voter-suppression/573826/>.

²⁶⁰ *Id.*

²⁶¹ David P. Stewart, *United States Ratification of the Covenant on Civil and Political Rights: Article: The Significance of the Reservations, Understandings, and Declarations*, 42 DEPAUL L. REV. 1183, 1188–89 (1993).

federal, state, and local governments, as well as the civil society actors within the United States.

A. Federal Government Recommendations

In order to ensure the state of Georgia's compliance with the human right guarantees under the ICCPR, the U.S. federal government should more closely monitor each state's election procedures and more accurately report potential restrictions on the right to vote to the HRC. The federal government should take action to ensure that local governments are informed about and uphold their obligations under the ICCPR. The federal government should adopt measures to make the procedures for voting, removing voters from registration lists, and closing polling places objective, reasonable, and uniform throughout the country. Furthermore, the federal government should work with the state and local governments to provide resources necessary to protect the right to vote. The ICCPR would better protect rights of Americans under international law if Congress were to implement legislation guaranteeing the rights contained in the ICCPR under U.S. federal law.²⁶² If the rights contained in the ICCPR were guaranteed under U.S. federal law, violations of the rights would be more easily challenged, and any contrary state laws would be preempted.

The Carter Center has reviewed decisions and interpretations of the ICCPR and released an *Election Obligations and Standards Manual* ("Manual") to help State parties implement the rights guaranteed under Article 25 of the ICCPR. The Manual explains the right and opportunity to vote guaranteed under the ICCPR and details potentially unreasonable restrictions, such as restrictions based on national or social origin,²⁶³ language,²⁶⁴ sex,²⁶⁵ religion,²⁶⁶ birth or other status,²⁶⁷ and economic circumstances.²⁶⁸ The U.S. federal government should review this Manual, disperse its contents or a similar guide to each state government, and communicate the federal government's expectations for state

²⁶² Aryeh Neier, *Political Consequences of the United States Ratification of the International Covenant on Civil and Political Rights*, 42 DEPAUL L. REV. 1233, 1239 (1993); see generally Michael H. Posner & Peter J. Spiro, *Adding Teeth to United States' Ratification of the Covenant on Civil and Political Rights: The International Human Rights Conformity Act of 1993*, 42 DEPAUL L. REV. 1209 (1993).

²⁶³ ICCPR, *supra* note 1, at art. 2, 25.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ U.N. Office of the High Comm'r for Human Rights, *Monitoring Human Rights in the Context of Elections*, in MANUAL ON HUMAN RIGHTS MONITORING CHAPTER 23, at 21; see generally CARTER CTR., *Election Obligations and Standards Manual*.

compliance with the ICCPR. If the United States begins following the guidance in this Manual and the 2014 and 2015 HRC report guidance, the country could better ensure compliance with the treaty's guarantees. The new HRC reporting guidelines, which took effect in 2020, will likely also help ensure the United States' compliance with the ICCPR by simplifying the reporting process and enabling the HRC to clearly communicate its principal areas of concern.

To realize the country's goal of being a leader in setting international human rights standards, the U.S. federal government should coordinate with other State parties to create an independent electoral monitoring body to ensure that each member State's federal and state elections comply with the guarantees of Article 25. Previously, the HRC has suggested that parties establish an independent electoral monitoring body and that restrictions on campaign finance and outside election observers might help in securing genuine elections.²⁶⁹

B. State and Local Government Recommendations

State legislatures within the United States are in the best position to ensure that their state's election laws comply with international law under Article 25 of the ICCPR. U.S. state governments bear the responsibility of changing and updating their state's laws to continually ensure compliance with international human rights norms. To increase turnout in U.S. elections and decrease instances of long lines at polling places, civil society actors should consider closing schools and places of work on election days. Cancelling school on election days would enable public schools to serve as additional polling places, while cancelling work would reduce work-related impediments to voting. It is already the practice in Fulton County and Cobb County to cancel school on election day; other Georgia counties should consider following their lead.²⁷⁰ Cancelling school on election day also provides parents the opportunity to take their child to the polling place, and a parent's demonstration of the importance of civic involvement early in his or her child's life could lead to long-term increased participation in and enthusiasm about voting in Georgia.

The problem of long lines at polling places can be improved if the number of voters reporting to each polling place is reduced,²⁷¹ the number of service points

²⁶⁹ CARLSON, *supra* note 11 at 150.

²⁷⁰ Ty Tagami, *Some Major Atlanta School Districts Will Close on Election Day*, ATLANTA JOURNAL-CONSTITUTION (Nov. 6, 2017), <https://www.ajc.com/news/state—regional-education/some-major-atlanta-school-districts-will-close-election-day/gau7Gog33HTEg2YOcXBhRL/>.

²⁷¹ Common policy proposals include increased opportunities to vote by mail or early in-person and making Election Day a holiday, allowing for arrival times of voters to be dispersed throughout the day at traditional polling places. ANSOLABEHERE, *supra* note 230, at 50.

is increased,²⁷² and the average transaction time is reduced.²⁷³ To combat issues of long wait times at polling places, state “election officials should collect information about the number of people in line on a regular basis at every polling place in their jurisdiction.”²⁷⁴ Essential to identifying problems and finding solutions is the proper documentation of line lengths on an hourly basis.²⁷⁵ Leading up to an election, officials should assess whether the resources devoted to polling places, such as poll books, poll workers, ballots, and voting machines, are adequate to handle the quantity of voters expected on Election Day. On Election Day, election officials must measure lines and document wait times in order to see whether the pre-election plans were adequate and to understand where any unanticipated problems might emerge. After Election Day, they should reassess their previous plans in anticipation of the next election.

Georgia’s state government could implement same-day voter registration to help fix potential voter registration and access issues. Although bills to add same-day registration in Georgia have been introduced in Georgia’s State House of Representatives over a dozen times since 2011, none have passed.²⁷⁶ Ensuring that eligible voters are able to rectify issues with their voter registration at the polls just prior to voting would serve the purpose of Article 25 of the ICCPR by protecting the right to vote for eligible Georgia voters who were mistakenly or incorrectly purged from the voter list. Georgia’s state legislature should also work with local governments across the state to provide information from the federal government and collect information regarding the number of voters in each precinct across the state so that Georgia is able to appropriately disperse its usable voting machines.

Finally, local governments should take steps to enforce the rights guaranteed under the ICCPR. Local governments have taken action to enforce rights guaranteed under international law in multiple U.S. cities already. For example, Chapel Hill, North Carolina, adopted the Universal Declaration of Human Rights.²⁷⁷ Using this city’s decision as guidance, local governments should act to enforce the provisions of Article 25 of the ICCPR through implementation into local law, so far as it does not conflict with existing state law. Additionally,

²⁷² Common policy proposals include increasing the number of precincts, poll workers, and machines as well as favoring paper balloting over electronic voting machines. *Id.* at 51.

²⁷³ Common policy proposals include increasing voter information and the functionality of electronic poll books and decreasing the length of ballots. *Id.* at 51.

²⁷⁴ FORTIER, *supra* note 228.

²⁷⁵ *Id.*

²⁷⁶ CAPUTO ET AL., *supra* note 163.

²⁷⁷ See also KU ET AL., EVEN SOME INTERNATIONAL LAW IS LOCAL: IMPLEMENTATION OF TREATIES THROUGH SUBNATIONAL MECHANISMS (2019); Vanita Gupta, *Opinion: The Voter Purges are Coming*, N.Y. TIMES (Jul. 19, 2017) (“Local election registrars are really in control of the rolls and have the final say on most purges. We need to organize in our communities and ensure they hear our concerns.”).

local governments should work with state governments to compile better data on the number of voters reporting to each precinct on Election Day during each election cycle.

C. Civil Society Recommendations

Nongovernmental organizations (“NGOs”) are encouraged to participate whenever the HRC considers a State party’s compliance with the treaty. The HRC relies on reports from NGOs to provide clarity and potential arguments against information submitted by the government.²⁷⁸ NGOs can help ensure the United States’ compliance with the ICCPR by “documenting and providing information about civil and political rights violations in their states and communities, organizing local events, [and] publishing materials that raise public awareness.”²⁷⁹

NGOs should promote the scrutiny and assessment of the United States in light of its international commitments under the ICCPR. In order to do so, groups should call public attention to the rights guaranteed under the ICCPR and to any steps that U.S. citizens can take to ensure that the country makes tangible advances in joining the international system for protection of human rights.²⁸⁰ Groups should urge the HRC to establish clear standards for democratic and representative government.²⁸¹ Specifically, groups should ask the HRC to provide a clear definition of the term “genuine elections” by releasing a new or revised General Comment on Article 25 of the ICCPR. Finally, NGOs could urge the U.S. federal government to sign onto the ICCPR’s Optional Protocol, which would enable U.S. citizens to submit complaints against the United States to the HRC claiming that their political rights guaranteed under Article 25 have not been or are not being protected.²⁸²

Individuals may also act to call public attention to the United States’ obligation to ensure that an individual’s right to vote is protected under the ICCPR. For example, in order to reduce each state’s ability to purge eligible voters, communities should organize to ensure that local election registrars, who control the

²⁷⁸ American Civil Liberties Union, *supra* note 139.

²⁷⁹ *Id.*

²⁸⁰ Neier, *supra* note 262.

²⁸¹ Instead of proclaiming fundamental principles, Article 25 guarantees particular forms and formal institutions which are common to a variety of political systems, but which do not play the same roles in different systems. See Karl Josef Partsch, *Freedom of Conscience and Expression, and Political Freedoms*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 209, 241 (Louis Henkin ed., 1981).

²⁸² CARLSON, *supra* note 11 at 149.

rolls and have the final say on most purges, are aware of voters' concerns.²⁸³ Moreover, voting experts should work to verify or debunk the federal administration's claims of voter fraud; attorneys should continue to wage legal battles against unreasonable restrictions; and local politicians should stand firm against pressure from the federal government.²⁸⁴

VI. CONCLUSION

Upon the ICCPR's ratification by the United States, the Senate Committee on Foreign Relations issued a report, recommending that Congress ratify the treaty and stating two goals: (1) to "remove doubts about the seriousness of the U.S. commitment to human rights" and (2) to "strengthen the impact of U.S. efforts in the human rights field."²⁸⁵ In order to remove doubts about the country's commitment to international human rights, the U.S. federal, state, and local governments, along with civil society actors, should call public attention to the existence of the ICCPR, the United States' obligations as a party to it, and the importance of ensuring each U.S. state's compliance with the treaty's guarantees.

²⁸³ Vanita Gupta, *The Voter Purges Are Coming*, N.Y. TIMES (July 19, 2017), <https://www.nytimes.com/2017/07/19/opinion/donald-trump-voting-rights-purge.html>.

²⁸⁴ *Id.*

²⁸⁵ Senate Comm. on Foreign Relations, *Report on the International Covenant on Civil and Political Rights*, S. Exec. Rep. No. 23, 3 (102d Sess. 1992), reprinted in 31 I.L.M. 645 (1992).