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Voting Rights and Disability: Legal Challenges for Colombia

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ABSTRACT

This article contains a legal interpretation of relevant international human rights law provisions relating to voting rights of persons with disabilities. The focus is on a comprehensive interpretation of Article 29(a) of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which provides for the right to political participation for persons with disabilities. This interpretation is based on the application of the rules of the Vienna Convention on the Law of Treaties (Articles 31 and 32). The overall aim of this article is to identify and analyse the legal obligations of Colombia under Article 29(a) of the CRPD regarding the introduction of new technologies for the exercise of the right to vote for persons with disabilities, including screen readers, electronic voting systems equipped with magnification devices, and tactile ballots. The analysis of these commitments presented here may serve as a guide to assess the Colombian State's compliance with international human rights law, for example through the recent electoral reform project, including the amendment of the National Electoral Law (Legislative Decree 141 of 2022), as provided for by Legislative Decree 2241 of 1986. Reform of Colombia's electoral law must

ensure that people with disabilities have access to accessible voting materials, can vote secretly and independently, and can freely express their political opinions, in accordance with article 29(a) of the Convention on the Rights of Persons with Disabilities.

KEYWORDS: Persons with disabilities, human rights, voting, international law.

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El derecho al voto y la discapacidad: retos legales para Colombia

RESUMEN

Este artículo presenta una interpretación legal de las normas del derecho internacional de los derechos humanos aplicables a la protección del derecho al voto de las personas con discapacidad. El artículo se enfoca en la interpretación del Artículo 29(a) de la Convención Internacional sobre los Derechos de las Personas con Discapacidad (CDPD) que regula el derecho a la participación política de las personas con discapacidad. Dicha interpretación es el resultado de la aplicación de las reglas de la Convención de Viena sobre el Derecho de los Tratados (Artículos 31 y 32). El objetivo general de este artículo es identificar y analizar las obligaciones legales de Colombia en el marco del Artículo 29(a) CDPD relativas a la implementación de nuevas tecnologías para el ejercicio del derecho al voto por parte de personas con discapacidad, incluyendo sistemas de voto electrónico con asistentes de lectura de pantalla, lupas y tarjetones táctiles. El análisis de dichas obligaciones que aquí se presenta puede orientar la evaluación del cumplimiento del Estado colombiano con el derecho internacional de los derechos humanos, por ejemplo, a través del más reciente proyecto de reforma del sistema electoral (Draft Bill 141 of 2022) que busca modificar el Código Nacional Electoral (Executive Order 2241 de 1986). La reforma a ley electoral colombiana debe asegurar que las personas con discapacidad utilicen materiales accesibles de votación, voten de manera secreta e independiente, y expresen sus opiniones políticas de manera libre conforme al Artículo 29(a) CDPD.

PALABRAS CLAVE: Personas con discapacidad, derechos humanos, votación, derecho internacional.

I. Introduction

In Colombia, more than 39 million people, including Colombian citizens over the age of 18, are eligible to vote (National Civil Registry, 2022). Of these eligible voters (n=39 million), 2.6% are persons with disabilities (Ministry of Health and Social Protection, 2020). In the 2023 elections, 22,845,121 people voted, representing 60.7% of the electoral roll in the country according to the Electoral Observation Mission (*Misión de Observación Electoral: MOE*, 2022). There is no official data regarding voters with disabilities in the last election. Nevertheless, pursuant to Article 258 of the Colombian Constitution, Colombia must respect, protect, and ensure the right to vote of all eligible voters, including persons with disabilities. Nevertheless, 81.8% of Colombian voters with disabilities faced accessibility barriers that hindered their right to vote secretly and independently in the last 2022 presidential elections (Electoral Observation Mission (MOE), 2022, p. 32).

In the ongoing study “*Voting Matters: An Analysis of The Use Of Electoral-Assistive Devices Through The Lens of The United Nations Convention on The Rights of Persons with Disabilities*” (Caballero-Pérez, 2022), the author \ has gathered evidence of discriminatory practices and multiple barriers that persons with disabilities encounter when attempting to vote in elections in Colombia. These barriers include inaccessible voting materials, polling stations and procedures. Facing accessibility barriers to vote in elections on an equal basis with others increases the risk of low voter turnout among persons with disabilities (Guzmán and Caballero, 2021, p. 154). In Colombia, the Statutory Law (*Ley Estatutaria*) 1618 de 2013, guarantees accessibility for all persons with disabilities (Articles 2 and 5). The law also protects the right of persons with disabilities to participate in public life (Article 22). The current legal framework is crucial for the protection of voters with disabilities. It establishes legal obligations and standards to ensure that individuals with disabilities have equal access to the electoral process. The Law aims to ensure that voters with disabilities can exercise their right to vote independently and in secret, on an equal basis with other citizens, by removing physical, communication, and technological barriers.

Colombia’s Electoral Office (*National Civil Registry*) has made efforts to increase the inclusiveness and accessibility of elections by improving aspects of the electoral processes (International Foundation for Electoral Systems, 2022, p.1). Nevertheless, barriers to participation of people with disabilities in political activity are common throughout Colombian electoral cycles (Caballero-Pérez, 2022, p. 9). These barriers can be categorized into two main groups: legal and procedural. First, legal barriers include prevailing guardianship laws and policies that prevent people with disabilities, especially those with intellectual and mental disabilities, from exercising their franchise *de jure* (Lord *et al.*, 2014; Priestley *et al.*, 2016; & Atkinson *et al.*, 2017). Second, procedural barriers to voting include barriers to

accessibility in the voting environment. These hurdles are pervasive throughout the electoral process (Schur *et al.*, 2017, p. 1374).

International human rights law, specifically Article 29(a) of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) (2006), established the right of persons with disabilities to vote on an equal basis with others. This article requires States Parties to ensure that all persons with disabilities can effectively exercise secret and independent voting through positive measures, such as the provision of technological solutions for voting (e.g., magnifying glasses, electronic voting systems, online voting systems, easily operable voting systems, etc.), voter education materials, and tactile voting aids) (Desmond *et al.*, 2018, p.440).

Colombia has been a party to the CRPD since 2011. therefore, Colombia is legally obliged to comply with Article 29(a) of the CRPD. Compliance with Article 29(a) of the CRPD involves the introduction of relevant constitutional and legal provisions that recognize the right of persons with disabilities to vote on an equal basis with others. Furthermore, Colombia must ensure the *de facto* realization of the right to vote for persons with disabilities, or the “possibility” to exercise this right on an equal basis with others (Fiala-Butora *et al.*, 2014, p. 85).

This article is based on the idea that the provision of technological solutions for elections, such as electronic voting systems and assistive technologies (e.g., magnifying glasses and tactile voting aids), is a means to achieve greater accessibility in the electoral environment (Caballero-Pérez, 2022, p. 110). The objective is to provide a legal basis under international human rights law for making voting technology solutions available to Colombian voters with disabilities where necessary and appropriate. To achieve its objective, this article answers the following research sub-question:

What is the legal duty of Colombia under the CRPD regarding the provision of voting technological solutions to be used by persons with disabilities?

The primary aim of this article is to identify and analyze the legal obligations of Colombia under the CRPD regarding the provision of voting technological solutions for persons with disabilities. The focus is on interpreting Article 29(a) of the CRPD. This article aims to establish a comprehensive legal framework for assessing compliance of Colombia with its international legal obligations.

In compliance with Article 29(a) of the CRPD, Colombia must enhance future electoral processes to ensure that all voters with disabilities have substantive equality of opportunity to vote. Colombia has two main avenues to achieve this. Firstly, by conducting the forthcoming gubernatorial elections in October 2023 based on a disability human rights paradigm in line with international human rights

law, particularly the CRPD. Secondly, by updating national electoral legislation to align with relevant provisions of international human rights law, specifically Article 29(a) of the CRPD. The Colombian Parliament is planning a significant legal and institutional reform to change the national electoral system (*Draft Bill 141 of 2022*).

Colombia is evolving regarding the update of its electoral law. Demographic changes and the emergence of new communities need adaptations to ensure fair representation for all citizens. Updating electoral laws allows for the inclusion of previously marginalized groups and ensures that elected bodies reflect the diversity of the population. Furthermore, electoral laws provide a framework for the exercise of the fundamental right to vote. Reforms to these laws in Colombia will help protect this right by addressing issues such as voter suppression and disenfranchisement and ensuring accessibility for all voters, including those with disabilities and language barriers. Legal reforms to the current national electoral law (*Executive Order 2241 de 1986 - Electoral Code-*) must ensure accessibility of voting procedures, materials, and venues, as required by Article 29(a) of the CRPD.

Modernizing the electoral laws of Colombia will enhance transparency and accountability in the electoral process. In an era of rapid technological advances, Colombian electoral law must respond to new challenges and opportunities. Updating the laws related to online voting, digital voter registration, and electronic voting systems can improve the efficiency and effectiveness of the electoral process while protecting against cybersecurity threats and privacy violations.

To address these issues, this article is divided into four sections. Following this introduction, Section 2 briefly describes the research methodology used in this article (contract interpretation). Section 3 aims to examine the high-level conceptual understanding of disabilities under the CRPD (sub-section 3.1). This is an important backdrop to the voting rights of persons with disabilities. Secondly, Section 3 considers the legal obligations of States Parties under Article 29(a) of the Convention and related provisions and use of voting technological solutions by persons with disabilities. Lastly, Section 4 provides some concluding remarks.

2. Methodology

This article uses treaty interpretation as a research method for identifying and analysing the obligations of Colombia under international human rights law, specifically Article 29(a) of the CRPD. Treaty interpretation is a research method used to determine what international rules require from the onset and what they demand in their application (D'Argent, 2018, p. 543). This article follows the previously established rules of the Vienna Convention on the Law of Treaties (or 'VCLT') (Articles 31 and 32) (United Nations, 1969).

First, the VCLT, adopted in 1969 and in force in 1980, is an important international agreement governing the negotiation, interpretation, and enforcement of treaties between states. The VCLT provides a comprehensive framework for the negotiation, conclusion, and adoption of treaties. It establishes the basic rules and principles that govern the treaty-making process, including the ability of states to conclude treaties, the form and content of treaties, and the procedures for the acceptance and validation of treaties.

Second, Article 31 of the VCLT lays down the general rules of interpretation. It provides:

Article 31 VCLT

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32 of the VCLT addresses the supplementary means of interpretation of a treaty. It provides:

Article 32 VCLT

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

In this article, the legal interpretation of the provisions of international law is based on the synthesis of all the interpretation rules established by the VCLT mentioned above, and the main principles of treaty interpretation. The *Principle of autonomous interpretation* refers to the idea that there is only one true interpretation of a treaty, the *principle of effective interpretation*, which emphasizes the completeness of the treaty and the need to give effective content to all its provisions, and the *principle of evolutionary interpretation* that considers human rights treaties as living instruments (Bjorge, 2015; Gardiner, 2008; Lauterpacht, 1949).

The next section of this article explains the application of the above principles of contractual interpretation to Articles 31 and 32 of the VCLT and to Article 29(a) of the CRPD. The legal interpretation of Article 29(a) of the CRPD serves as the legal basis for assessing compliance. As proposed by the Congress in a recent law reform proposal (*Draft Bill 141 of 2022*), it includes with commitments by Colombia regarding the provision and use of voting technological solutions by persons with disabilities,

3. Results

3.1. Introduction to Article 29(a) of the CRPD Participation in political and public life

The CRPD is a groundbreaking human rights treaty and is one of the most widely ratified human rights treaties in the world (United Nations Treaty Collection, 2006). The CRPD affirms a progressive and empowering rights-based approach to disability that recognizes that persons with disabilities are human rights subjects (Degener and Quinn, 2002, p. 17).

Under Article 29(a) of the CRPD, voters with disabilities are considered equal citizens who are capable of making decisions and actively participating in political life to the same extent as voters without disabilities. This progressive conceptual understanding of the right to vote for persons with disabilities is based on the core idea of human dignity (Article 1 of the CRPD). Indeed, the CRPD applies the right to vote recognized by other human rights treaties in a way that addresses the particular needs of persons with disabilities (Caballero-Pérez, 2022, p. 124).

The final sentence of Article 29(a) of the CRPD reads:

Article 29(a) of the CRPD

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

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

- (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible, and easy to understand and use;*
- (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;*
- (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice; [...].*

This interpretation of Article 29(a) of the CRPD begins with a further clarification of the wording of the preamble and Paragraph (a) of Article 29 of the CRPD, which encloses the concept of “opportunity” to exercise political rights and the obligation to “ensure effective and full participation.”

3.1.1. “Opportunity” for Colombian Voters with Disabilities to Exercise Their Political Rights

The principle of “equal opportunities” is a general principle of the CRPD, according to Article 3(e). According to the CRPD Committee, such a principle marks “a significant development from a model of formal equality to a model of substantive equality” (United Nations 2018a, para. 10). Fredman *et al.* (2017) also suggest that the CRPD goes beyond substantive equality by expanding and refining the meaning of equality to encompass a transformative equality approach that represents a more fundamental form of substantive equality.

According to Fredman (2001), formal equality is generally associated with the elimination of direct discrimination, which occurs “when a person is treated less favourably than another person in comparable circumstances for one or more prohibited reasons” (p. 21). With regard to voting, direct discrimination still exists as some national election laws prohibit persons with disabilities from voting based on impairments (Fredman, 2001, p. 151). Achieving formal equality in Colombia would therefore be an important first step towards ensuring the effective participation

of voters with disabilities in elections. As part of the formal equality approach, the introductory text of Article 29(a) recognizes the *de jure* right to vote for persons with disabilities.

Furthermore, Fredman (2016) argues that the substantive equality approach not only addresses the issue of discrimination by focusing on “equal treatment”, but also addresses the unequal distribution of power within society. This substantive equality approach is reflected in the concept of “indirect discrimination”, which arises when practices, rules, or requirements that appear “neutral” are applied but which, if not based on the prohibited grounds of discrimination, have a disproportionately negative effect on members of the group defined by reference to the prohibited grounds (Moeckli, 2022, p. 165). In the electoral context, indirect discrimination and disparate impacts due to seemingly neutral rules and practices often occur. Seemingly, neutral practices that impede the participation of persons with disabilities in elections include voting materials that are more difficult to use for persons with disabilities, such as, ballot papers that are only available in printed format (Caballero-Pérez, 2022, p. 125).

By interpreting Article 29(a) in combination with other provisions of the CRPD (e.g., Preamble, Articles 1 -Purpose, 2 -Definitions, 3 -General Principles, and 5 -Equality and Non-Discrimination), it can be argued that Article 29(a) goes beyond the formal recognition of equality to prevent and eliminate barriers to participation that voters with disabilities encounter in the electoral environment (substantive equality approach). In particular, the CRPD as a whole goes beyond the formal recognition of equality to prevent and remove barriers to the participation of persons with disabilities, including the voting environment. Accordingly, the *chapeau* of Article 29(a) of the CRPD aims not only to guarantee the *de jure* right to vote, but also to impose specific positive obligations on Colombia and other States Parties to challenge discriminatory practices and laws, as well as to promote respect for differences among voters. Thus, the *chapeau* establishes the obligation of Colombia to ensure an environment in which persons with disabilities substantially have the same opportunities as people without disabilities.

Article 29(a) of the CRPD, and the CRPD as a whole aim to eliminate social and economic disadvantages related to impairment that hinder the full and effective exercise of the right to vote of persons with disabilities; address stigma, stereotypes, bias, and violence against persons with disabilities in the electoral process; enhance voter turnout on election day and throughout the electoral process; and to address differences among voters through laws, policies, programs, and practices that promote structural change within the national electoral systems (Caballero-Pérez, 2022, p. 127). These “active measures” or “specific measures” or “positive action” are proactive steps designed to enhance opportunities of disadvantaged groups (Broderick, 2015, pp. 43 and 91).

Waddington (2013, p. 188) explains that the Convention does not refer explicitly to “positive action”, but speaks of “specific measures” necessary to accelerate or achieve *de facto* equality [Article 5(4) of the CRPD]. The United Nations Committee (2018a) on the CRPD further clarified the term “specific measures” in its General Comment No. 6 on equality and non-discrimination. The CRPD Committee has highlighted two key elements to explain what are “specific measures”: (i) they are usually temporary in nature (although, as the Committee points out, in some cases permanent specific measures are required), and (ii) they depend on the context and circumstances “including those due to particular impairment or the structural barriers in society” (para. 28).

The Committee (2018a) also noted that the “specific measures” adopted by Colombia and other States Parties must be consistent with the principles and provisions of the CRPD (para. 29). Importantly, for the present purposes, the CRPD Committee (2018a) explicitly considers “technical assistance” as an example of a “specific measure” (para. 28). Thus, the provision of voting-related technical assistance is a “specific measure” that Colombia can adopt to enhance opportunities for persons with disabilities to exercise their right to vote, in accordance to Article 5(4) of the CRPD. The CRPD Committee (2018a) has also stated that “specific measures” adopted by States Parties must be consistent with the principles and provisions of the CRPD (para 29). This means that Colombia must ensure that all technical assistance used to facilitate the exercise of the right to vote by persons with disabilities fully complies with the requirements of the CRPD.

3.1.2. “Full and Effective Participation” of Colombian Voters with Disabilities

Article 29(a) of the CRPD focuses on measures to ensure “full and effective participation” of persons with disabilities in political endeavors. In the first days of the negotiation process, the drafters of the CRPD agreed that the inclusion of persons with disabilities requires “full and effective participation” in political and public life (United Nations, 2003). At the 6th session, the European Union noted that without “full and effective participation” in political and public life, “persons with disabilities risk being ignored by society and exposed to further discrimination” (United Nations, 2003, p. 32). In this respect, participation is one of the themes running throughout the entire CRPD.

It can be argued that the principle of “full and effective participation” is the basis of the legal duty of Colombia to ensure the exercise of all civil and political rights, as well as the social, economic and cultural rights recognized in the CRPD. This principle is also reiterated in paragraph 5 of the Preamble and in Article 1 (Objectives). Moreover, in Article 3 (General Principles) the CRPD recognizes “full and effective participation and inclusion in society” as a general principle. This means that achieving “full and effective participation” is part of the objectives

of the CRPD and serves as a benchmark for evaluating Colombian national laws, policies, and practices.

When reading of Article 29(a) in conjunction with the Preamble, Articles 1 (Objectives) and 3 (General Principles), “full and effective participation” refers to the idea that persons with disabilities have the right to participate in political and public life and should have the opportunity to be actively involved in decision-making processes regarding the governance of their country. Moreover, the term “full and effective participation” implies the recognition of the legal obligations of Colombia and other States Parties to guarantee the right of persons with disabilities to take part in elections through specific measures, such as the provision of technological solutions for voting.

3.2. Legal Obligations of Colombia under Article 29(a) of the CRPD

This sub-section provides a comprehensive interpretation of Article 29(a) of the CRPD, delineating Colombia’s legal obligations relating the provision of voting technological solutions for persons with disabilities. This interpretation determines the normative nature of the legal obligations of Colombia under Article 29(a) of the CRPD. These legal obligations can be summarized as follows: providing accessible voting materials under Article 29(a)(i) of the CRPD (sub-section 3.2.1. below); ensuring ballot secrecy under Article 29(a)(ii) of the CRPD (sub-section 3.2.2. below); and ensuring the free expression of the will of persons with disabilities as voters under Article 29(a)(iii) of the CRPD (sub-section 3.2.3. below). Not all the duties of Colombia under Article 29 CRPD fall within the scope of this article.¹

3.2.1. Legal Obligation to Provide Accessible Voting Materials

Article 29(a)(i) of the CRPD addresses, *inter alia*, the issue of barriers faced by persons with disabilities when using voting materials.

Article 29(a)(i) of the CRPD

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

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, (...), inter alia, by

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.

¹ The parts of Article 29 CRPD excluded from the scope of this article are: paragraph (a)(iii) regarding the duty to protect the right of persons with disabilities to stand for elections, hold office, and perform all public functions; and paragraph (b) regarding the duty to promote and encourage persons with disabilities’ participation in non-governmental organizations and forming organizations of persons with disabilities.

The authors of the CRPD agreed that accessibility of, *inter alia*, voting materials is essential for persons with disabilities to fully and effectively participate in elections. They further recognized that an accessible voting environment contributes significantly to reduce the barriers that persons with disabilities face in exercising their right to vote.

The term “accessibility” includes, among other things, the removal of physical, mental, and communication barriers (Palacios y Bariffi, 2007, p. 86). “Right of access” refers to the right to use and benefit equally from goods, services, facilities, and accommodations available to the public without discrimination on the basis of disability” (Seatzu, 2017, p. 228).

Although the CRPD is one of the first human rights treaties to address “accessibility” as a right, it does not define it *per se* (Lawson, 218, p. 259). Accessibility is considered a general principle according to Article 3(6) of the CRPD. According to Charitakis (2018, p. 31), accessibility is consistent with the CRPD’s goal of ensuring the full and equal enjoyment of human rights and fundamental freedoms by persons with disabilities. Therefore, accessibility is a cross-cutting principle of the CRPD and must be taken into account when implementing the human rights set out in the CRPD. This is particularly regarding the right to vote, since Article 29(a)(i) explicitly includes an accessibility obligation.

Furthermore, Article 4(1) of the CRPD sets out the general obligation of States Parties to ensure accessibility to promote the full realization of all human rights of persons with disabilities. This obligation, in conjunction with Article 29(a)(i), implies the provision of technical assistance to enable persons with disabilities to vote and the elimination of discriminatory practices in voting, such as the use of voting materials that are not accessible, such as printed ballot papers.

According to Article 4(1)(g) of the CRPD, Colombia and other States Parties have the discretion to take measures for the research, development, and of new technologies and to develop policies that ensure accessible information and voter education. For this reason, Colombia should promote voter education with a focus on the rights of persons with disabilities and train political parties and media providers on accessibility requirements. In addition, Article 4(1)(i), in conjunction with Article 29(a)(i), requires Colombia to train election officials on the accessibility needs of persons with disabilities to ensure that such officials can provide voters with disabilities and ensure that they are able to provide appropriate assistance when needed. These obligations under Article 4(1) are comprehensive and essential to understanding the obligation to ensure accessibility in the voting environment of Colombia.

In addition, accessibility is addressed separately in Article 9 of the Convention, which establishes a substantive and transformative equality-based model, the implementation of which requires public funding and policy planning (Seatzu, 2017, p. 237). For Charitakis (2018), the relevance or transformative potential of Article 9 is the possibility it offers to provide private (e.g., technology manufacturers) and public actors (e.g., national electoral authorities) to address accessibility barriers comprehensively and at an early stage in the planning processes. Colombia should ensure accessibility to electoral materials as a top priority when planning its electoral process.

In this regard, Article 9(1) of the CRPD, in conjunction with Article 29(a)(i) of the CRPD, obligates Colombia to take appropriate measures from the beginning of the electoral process to ensure that persons with disabilities have equal access to the electoral environment, information on the electoral processes, communication technologies, including the Internet, and other public services.

Article 9(1) of the CRPD requires Colombia enact appropriate legislation and develop concrete policies to identify and eliminate barriers to accessibility in the electoral environment. Article 9(2) of the CRPD obliges Colombia to take “appropriate measures” to remove accessibility barriers faced by persons with disabilities in using voting materials, although the specific measures are non-exhaustive. Article 29(a)(i), in conjunction with Article 9(2), outlines specific measures such as providing training to voters and electoral officials on accessibility barriers, providing various forms of assistance and ensuring accessibility to the websites of national electoral managements bodies and the public media, and the introduction of accessibility standards for electoral materials adapted to the needs of Colombian voters with disabilities.

The obligation to ensure accessibility is unconditional for Colombia and all States Parties to the CRPD (United Nations, CRPD Committee, 2018b, para. 8.8). This means that duty bearers (e.g., National Civil Registry) cannot justify the lack of accessibility for persons with disabilities and the burden that this entails. Furthermore, the CRPD Committee stated that the States Parties must ensure accessibility through a phased implementation (United Nations, CRPD Committee, 2014, paras. 11, 14, 24 y 27). Providing accessibility in the electoral environment takes time and resources and is not free. Nevertheless, Colombia must immediately take initial steps to progressively implements the rights set out in Articles 9 and 29(a)(i) of the CRPD. To this end, Colombia must set clear timelines and allocate sufficient resources to gradually and steadily remove existing barriers, as explained by the CRPD Committee (2014, paras. 27-28).

3.2.2. *Legal Obligation to Ensure Ballot Secrecy*

In the context of disability rights, the principle of ballot secrecy is enshrined in Article 29(a)(ii) of the CRPD. This provision states:

Article 29(a)(ii) of the CRPD

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

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, (...), inter alia, by

Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate.

The importance of ensuring secret and independent elections was highlighted upon by the CRPD Committee in its concluding observations on Article 29 of the CRPD in the initial report of Colombia (United Nations, CRPD Committee, 2016, paras. 64-67). The Committee expressed concerns at Colombia' consistent refusal to protect the right of persons with disabilities to vote in private in polling stations. It recommended that Colombia pay particular attention to ensuring secret ballots and access to voting environments, especially in rural and remote areas (United Nations, CRPD Committee, 2016).

In the ongoing research project "*Voting Matters: An Analysis of the Use of Electoral-Assistive Devices through the Lens of the United Nations Convention on the Rights of Persons with Disabilities*", the authors of this article support the view that assistive technologies are important to ensure accessibility and, where applicable, to ensure the autonomy and participation of persons with disabilities, including the right to vote. This idea is explicitly recognized in Article 29(a)(ii) of the CRPD. As a result, the CRPD links the right to a secret ballot for persons with disabilities with the legal duty of States Parties to promote the use of appropriate assistive and new technologies. Notably, technological aids and assistive technologies can enable persons with disabilities to vote secretly and independently, and to participate in political life, education, the labour market, and other aspects of civic life (Caballero-Pérez, 2022, p. 149).

A range of accessible voting materials already exists in the form of voting and technological aids to assist persons with disabilities when voting. These technologies include haptic aids, reading aids, writing aids, visual aids, electronic voting aids,

and other communication aids (Caballero-Pérez, 2022, p. 48). In advancing this discussion, the *ratio legis* of the term “assistive and new technologies” under Article 29(a)(ii) of the CRPD is the obligation to ensure ballot secrecy with the duty to provide accessibility in the voting environment.

Moreover, in accordance with Articles 4(1)(g)(h) and 29(a)(ii) of the CRPD, Colombia has a legal duty to facilitate access to “technologies” that must themselves be accessible. The technologies are intended to improve the capacity of persons with disabilities to, *inter alia*, vote secretly and independently. A systematic interpretation of other CRPD provisions helps to understand the meaning of the term “technology” under Article 29(a)(ii).

The term “technology” appears in several CRPD provisions. Article 2 CRPD defines “technology” as a “means and formats of communication, including accessible information and communication technologies.” Article 4(1)(g) of the CRPD requires Colombia to conduct or promote research and development of new technologies, such as Information and Communication Technologies (ICT), mobility aids, devices, and assistive technologies. Article 4(1)(h) of the CRPD also requires Colombia to provide accessible persons with disabilities with accessible information on assistive devices and systems, including new technologies. Article 21 CRPD, which focuses on freedom of opinion and expression and access to information, requires Colombia to provide information promptly and at no additional cost to people with different disabilities in accessible formats and technologies appropriate to them. Additionally, Article 26 CRPD obliges Colombia to organize and strengthen comprehensive rehabilitation services, including relevant technology. Lastly, Article 32, on international cooperation requires Colombia to facilitate access and share information about accessible and technological aids.

The interpretation of these provisions indicates that the right to access “technology” is a cross-cutting right in the CRPD. The term “technology” is endorsed in Article 29(a)(ii) of the CRPD to ensure equality and the exercise of voting rights by persons with disabilities (Caballero-Pérez, 2022, p. 150). In summary, Colombia has the obligation to provide and support investment, research, and the production of assistive and new (voting) technologies to ensure that persons with disabilities can exercise their right to vote secretly on an equal basis with others under Article 29(a)(ii) of the CRPD.

3.2.3. The Legal Obligation to Ensure the Free Expression of Voters

The principle of free elections is endorsed by the CRPD in Article 29(a)(iii) through the wording “free expression of the will” and complements the right to vote by secret ballot. Article 29(a)(iii) of the CRPD provides:

Article 29(a)(iii) of the CRPD

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

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, (...), inter alia, by

Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice.

According to Article 29(a)(iii) of the CRPD, Colombia has an obligation not to impede the free political expression of persons with disabilities. By including the term “freedom expression” in Article 29(a)(iii), the drafters of the CRPD aimed to protect voters with disabilities from being coerced to vote for or against a specific candidate or list (United Nations, 2005). This article prohibits third parties, such as family members, personal assistants, or polling station officials, from exerting influence to compel voters with disabilities to participate or not participate in elections (Caballero-Pérez, 2022, p. 152).

Article 29(a)(iii) of the CRPD entitles persons with disabilities to decide whether to participate in elections, in accordance with national law and to make informed political decisions without undue influence, violence, threats or coercion in the election results.

Moreover, under Article 29(a)(iii), the CRPD introduces the concept of electoral assistance, which must be allowed when necessary, to ensure the exercise of the right to vote. The right to electoral assistance covers the entire electoral process (Cera, 2017, p. 528). This right has three main aspects:

First, the CRPD grants voters the discretion to ask for assistance when voting.

Second, Article 29(a)(iii) provides that voting assistance shall be provided by a person chosen by the voter, in accordance with their preferences, needs, and expectations (Caballero-Pérez, 2022, p. 155). The term “choice” indicates the principle of respecting the personal autonomy and choice of persons with disabilities.

Third, Article 29(a)(iii) of the CRPD raises the question of the means of providing “voting assistance” in relation to article 12 (dealing with equality before the law). The term “*inter alia*” indicates that the voting initiatives listed in subparagraphs (i), (ii) and (iii) are illustrative and not exhaustive. The potential positive obligations of Colombia under Article 29(a)(iii) are therefore broad and could include the provision of an accessible environment to ensure the freedom of expression of

persons with disabilities when voting. In this context, voting assistance could go beyond personal assistance and include assistive devices and new technologies, such as screen readers and electronic voting machines with touch screens, where necessary.

Lastly, Article 29(a)(iii) of the CRPD, in accordance with the principle of free suffrage and Article 12 CRPD, requires Colombia to provide voter education to help voters with disabilities develop the skills necessary to use the various forms of voting assistance, including technological aids. Colombia must also provide training in disability rights to election officials ensuring them can appropriately assist persons with disabilities during voting, as mandated by Article 29(a) of the CRPD.

4. Conclusions

This article presented the substantive framework of the legal obligation set out in Article 29(a) of the CRPD, whereby the voting rights of Colombian voters with disabilities are protected. As mentioned above, Colombia is obliged to provide accessible voting materials to voters with disabilities according to Article 29(a) (i) of the CRPD. The provision of these materials is essential to enable persons with disabilities to fully and effectively participate in elections. The legal interpretation of Article 29(a)(i) and the related CRPD provisions presented in this article concludes that the obligation to provide accessible voting materials is crucial to eliminate discriminatory barriers. This proactive approach also aims to create opportunities to achieve *de facto* equality and structural change within the Colombian electoral system.

For the purpose of this article, it is concluded that one of the specific measures that Colombia could take to fulfill its obligation to ensure accessibility in the voting environment is to provide “technical voting aids” to persons with disabilities. This is required under Articles 29(a)(i), 4(1)(g)(h), and 9(2) of the CRPD. The CRPD notes that these voting aids include magnifying glasses, tactile ballot guides, electronic voting systems with screen reader applications, or easy-to-read voter information guides). In this regard, the CRPD gives discretion to Colombia and other contracting states. Colombia could certainly take several other positive measures to achieve substantive and transformative equality in the electoral context. Regarding voting technology, it is concluded that Colombia, like many other countries, may have concerns about implementing electronic voting systems. This is due to concerns over security risks, susceptibility to manipulation, lack of transparency, and issues related to accessibility and inclusiveness. Moreover, the development of a comprehensive legal and regulatory framework to address issues such as data privacy, cybersecurity, and electoral integrity. Colombia may face challenges in navigating legal complexities and ensuring compliance with international standards and norms regarding elections.

The article also points out that secrecy of the ballot is a fundamental legal element of the right to vote on equally with others. Article 29(a)(ii) of the CRPD goes beyond the formal recognition of the right to a secret ballot. According to Article 29(a)(ii) of the CRPD, Colombia is obliged to protect and ensure the right of all persons with disabilities to a secret ballot. It also noted that Article 29(a)(ii) overlaps with other relevant CRPD provisions, including Articles 2, 4, 19, 20, 21, and 32. A systematic interpretation of these CRPD norms led to the conclusion that the CRPD aims to guarantee an environment in which persons with disabilities can obtain a secret ballot by introducing affirmative action measures.

Furthermore, the article argued that the principle of free elections is enshrined in Article 29(a)(iii) of the CRPD. According to Article 29(a)(iii) of the CRPD, Colombia has a legal obligation not to impede the free expression of political opinions and choices of persons with disabilities. Colombia must also ensure that persons with disabilities can make informed and free political decisions and express them on an equal basis with others. The right of persons with disabilities to freely express their opinions as voters consists of at least three elements. Firstly, it is closely linked to the recognition of the legal capacity of persons with disabilities under Article 12 of the CRPD (which deals with equal recognition before the law) read in conjunction with Article 29(a)(iii) of the CRPD. The fulfilment of this duty is a precondition for the effective exercise of the right to vote. Secondly, in accordance to Article 29(a)(iii) and Articles 2, 4(1)(g), 9(2)(e) and (f), 12, and 21 of the CRPD, Colombia must identify information and communication barriers in the voting environment and remove them. Thirdly, Colombia must provide electoral assistance to persons with disabilities, where necessary, and at their request, in accordance with Article 29(a)(iii) of the CRPD. As mentioned above, the inclusion of the term "*inter alia*" at the end of paragraph (a) indicates that the voting initiatives listed in sub-paragraph (iii) are illustrative, not exhaustive. Thus, the means and tools of electoral assistance may include live and technological support.

In summary, the CRPD obliges Colombia to ensure equal electoral opportunities for persons with disabilities. The Convention provides opportunities for voters with disabilities by addressing the structural and systemic nature of discrimination experienced by voters with disabilities when voting, and promotes the transformation of hidden social practices that deny voters with disabilities the effective and full exercise to vote. In particular, the CRPD obliges Colombia to adopt, *inter alia*, legislative, political, administrative, financial, educational, and social measures to eliminate existing barriers in the electoral environment. This involves the allocation of public resources for the research, design, and implementation of technical voting aids, as well as determining the adequacy or "timeliness" of measures developed and implemented by Colombia to comply with Article 29(a) of the CRPD.

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