

Voting matters

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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

Adriana Caballero Pérez

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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

DISSERTATION

to obtain the degree of Doctor at the Maastricht University,
on the authority of the Rector Magnificus,
Prof.dr. Pamela Habibović
in accordance with the decision of the Board of Deans,
to be defended in public
on Wednesday, 11th January 2023, at 10:00 a.m.

by

Adriana Caballero Pérez

Supervisors:

Professor dr. Lisa Waddington

Professor dr. Mark Priestley, University of Leeds (United Kingdom)

Co-supervisor:

Dr. Marcus Meyer-Erdmann

Assessment Committee:

Professor dr. Fons Coomans (Chairman)

Professor dr. Andrea Broderick

Dr. Eliza Varney, Keele University (United Kingdom)

Dr. Ignacio Campoy Cervera, Universidad Carlos III de Madrid (Spain)

Professor dr. Jaap Hage

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Executive summary

The present work is part of a larger research project, the Disability Advocacy Research in Europe (DARE) programme. The goal of the DARE programme is to train the next generation of researchers in the field of disability rights to advance the rights of persons with disabilities as expressed in the Convention on the Rights of Persons with Disabilities (CRPD).

This study adopts an evidence-based approach and a mixed research design to explore the *de facto* realisation of the right to vote by persons with disabilities, or the ‘opportunity’ to enjoy this right on an equal basis with others. To date, this has been a relatively unexplored topic of research, but the study ‘Voting Matters’ aims to bridge this gap. The focus of the study is on exploring the link between the provision and use of electoral-assistive devices (e.g., easy-to-read voter education guides and tactile ballot guides) by voters with disabilities and the positive obligations of States Parties under international human rights instruments, and primarily Article 29(a) CRPD. This study, which is a contribution to the research in the field of political participation of persons with disabilities, has led to the following key findings.

This study demonstrates the use of assistive technology in elections as a measure for achieving greater accessibility in the voting environment. The study is pioneering in that it identifies available and emerging electoral-assistive devices that can be used to assist voters with disabilities throughout the electoral cycle.

The legal interpretation of relevant international human rights law provisions, and primarily Article 29(a) CRPD, revealed that anti-discrimination prohibitions applicable in the context of voting are only effective when implemented alongside equality measures. One of these measures is the provision of electoral-assistive devices, which remove flaws in the voting environment that make certain aspects inaccessible for those with disabilities.

After having comprehensively interpreted Article 29(a) CRPD, this study moves from investigating the ‘law in books’ to studying the ‘*law in action*’: mainly, the ‘*CRPD in action*’. It analyses how Article 29(a) CRPD has been implemented through law, policy, and practice in England and Spain. The analysis is based on the experiences of a small sample of voters with disabilities and election officials. The study demonstrated that implementation of Article 29(a) CRPD can be enhanced or constrained not only by national legislation and policy instruments but also by the practices of relevant social actors. These practices include people’s understanding of disability itself.

The study concludes that addressing the voids in law, policy, and national electoral system practices identified in this research would increase the chance of Article 29(a) CRPD’s

successful implementation in England and Spain. Therefore, this study contributes to our greater understanding of how Article 29(a) CRPD has been implemented in practice in these two countries. Nevertheless, the issues raised by this study's interpretative data analysis may also prove relevant to other countries.

Acknowledgments

My deepest gratitude to all the great research participants whom I have had the pleasure of knowing. I am extremely lucky to have had such a great opportunity for learning about participation of persons with disabilities in elections from the experiences of several people with disabilities and election officials, as well as the relevant reflections of human and disability rights defenders from England and Spain.

Achieving the goal of completing this research started with the help of key people in my life. These include Professors Marisol Moreno-Angarita (Universidad Nacional de Colombia) and Gerard Quinn (UN Special Rapporteur on the rights of persons with disabilities). They taught me to love disability human rights research.

I would also like to express my sincere gratitude to the consortia of academic partners and non-academic beneficiaries of the Disability Advocacy Research in Europe (DARE). By joining a network of legal and social scientific human and disability rights defenders, DARE has provided me with the opportunity to boost my personal and career prospects. I am so fortunate to have been a research fellow at two partners of DARE: the International Foundation for Electoral Systems (IFES) and the University of Leeds (School of Sociology and Social Policy). My many discussions with these organisations' experts on electoral processes and disability policy shaped my understanding of this research. I am committed to continuing in doing my utmost to honour the efforts made by DARE's partners to train me (and my other 13 DARE Early-Stage Researcher colleagues) in disability human rights research.

Certainly, my sincere appreciation also belongs to my supervisors, Professors Lisa Waddington and Marcus Meyer from Maastricht University, Professor Mark Priestley from the University of Leeds, and Senior Global Advisor Virginia Atkinson from IFES. I could not have had a better group of supervisors for my research. Thank you all for your patience, motivation, and immense knowledge.

In addition to my supervisors, I would also like to thank the members of my assessment committee: Professor Fons Coomans, Andrea Broderick, and Jaap Hage from Maastricht University, as well as Dr Eliza Varney, Senior Lecturer in Law, School of Law, Keele University (UK) and Dr Ignacio Campoy Cervera, Advisory Member of the Royal Board of Disability and Senior Lecturer with tenure at the Universidad Carlos III de Madrid (Spain). Thank you for taking the time to review my research. It would not have been possible for me to accomplish this research without your insightful comments.

Acknowledgments

My special thanks also go to Licette Poll for her kindness and hard work as Secretary to the Maastricht Graduate School of Law, Faculty of Law, Maastricht University.

Finally, this research is dedicated to all brave women, including my mother and sister who pursue their goals. I hope my work in finishing this research serves as an inspiration to other women that want to attain academic goals, and particularly those women coming from the Global South.

Este libro está dedicado a todas las mujeres valientes que, como mi mamá y hermana, alcanzan sus metas. Espero que mi esfuerzo para terminar este libro inspire a otras mujeres a alcanzar sus metas académicas, y especialmente a las mujeres del Sur Global.



Chapter I

Introduction

1. Background to the study¹

Voting independently and secretly are two well-established principles and necessary elements for maintaining democratic integrity.² Full citizenship rights of persons with disabilities³ include, *inter alia*, the right to vote secretly.⁴ International human rights law, and particularly Article 29(a) of the United Nations Convention on the Rights of Persons with Disabilities (CRPD, 2006), has enumerated the right to vote of persons with disabilities on an equal basis with others. This provision sets out the obligation for States Parties to ensure that all persons with disabilities can effectively exercise a secret and independent ballot through, among others, positive measures, such as the provision of assistive devices and new technologies.

In general, assistive devices refer to any item, piece of equipment, or product system that is used to increase, maintain, or improve individuals' functional performance.⁵ This study adopts a legal perspective, an evidence-based approach, and a mixed research design to explore the provision and use of assistive devices by voters with disabilities. It argues that providing such devices, and particularly electoral-assistive devices⁶, e.g., magnifiers, easy-to-read voter education materials or tactile ballot guides, is a legal obligation under the CRPD for achieving greater accessibility in the voting environment (where appropriate). The conceptual framework on electoral-assistive devices can be found in chapter II of this study.

Following the adoption of the CRPD, a debate has arisen in several States Parties focusing on the States' compliance with the obligation to guarantee the *de jure* realisation of the right to vote of persons with disabilities by enacting pertinent constitutional or legislative provisions which recognise the right of persons with disabilities to vote on an equal basis with others.⁷ Instead, this study focuses on the *de facto* realisation of the right to vote by persons with

1 This study has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No. 814249.

2 Lionel E Fredman, *The Australian Ballot: The Story of an American Reform* (Michigan State University Press 1968).

3 This study is based on the UN Convention on the Rights of Persons with Disabilities (CRPD). Accordingly, it employs the CRPD terminology: 'persons with disabilities'. Other related terms are also used in the literature available in the field.

4 Jenny Morris, 'Citizenship and Disabled People: A Scoping Paper Prepared for the Disability Rights Commission' (2005).

5 Sandra Alper and Sahoby Raharinirina, 'Assistive Technology for Individuals with Disabilities: A Review and Synthesis of the Literature' (2016) 21 *Journal of Special Education Technology* 47.

6 This study uses the term 'electoral-assistive devices' to refer to assistive devices provided to persons with disabilities in the context of voting by national electoral authorities.

7 János Fiala-Butora, Ashely Stein and Janet Lord, 'The Democratic Life of the Union: Toward Equal Voting Participation for Europeans with Disabilities' (2014) 55 *Harvard International Law Review* 71; Krzysztof Pater, *Real Rights of Persons with Disabilities to Vote in European Parliament Elections. Information Report. SOC/554* (European Economic and Social Committee 2019).

disabilities, or the ‘opportunity’ to enjoy this right on an equal basis with others. It argues that making electoral-assistive devices available for use by persons with disabilities is an important positive measure for abolishing discrimination and the multiple barriers that persons with disabilities face when attempting to vote in elections. The legal analysis of the provision of electoral-assistive devices can be found in chapters III (international human rights instruments) and IV (relevant European legal framework) of this study.

The exclusion of persons with disabilities from voting is promoted directly by law, physical obstacles which hamper the exercise of an active participation in democratic societies, or indirectly by discriminatory practices.⁸ Fiala-Butora and others,⁹ Toplak,¹⁰ Barclay,¹¹ Combrinck,¹² Kopel,¹³ and Ryan and others¹⁴ agree that political exclusion of persons with disabilities is embedded in a paternalistic or protective approach towards them. These authors explore how discriminatory practices against voters with disabilities are influenced by the medical discourse, which represents persons with disabilities as passive citizens.¹⁵ Meekosha and Dowse¹⁶ assert that persons with disabilities as passive citizens are considered as undermining democracies. This results in persons with disabilities being segregated to the realm of passivity and lack of agency. As excluded persons, persons with disabilities are denied the opportunity of being an ‘active citizen’ and exercising their voting rights.¹⁷

8 Andrés Guzmán and Adriana Caballero, ‘Participation of Persons with Disabilities in Political Life. A Content Analysis of Recent Literature (1997-2019)’ (2021) 61 *Revista Estudios Políticos* 154.

9 Fiala-Butora, Stein and Lord (n 7).

10 Jurij Toplak, ‘Voting Is Every EU Citizen’s Right, Regardless of Disability’ (*Euractiv*, 2020) <<https://www.euractiv.com/section/eu-elections-2019/opinion/voting-is-every-eu-citizens-right-regardless-of-disability/>> accessed 14 February 2022.

11 Linda Barclay, ‘Cognitive Impairment and the Right to Vote: A Strategic Approach’ (2013) 30 *Journal of Applied Philosophy* 146.

12 Helene Combrinck, ‘Everybody Counts: The Right to Vote of Persons with Psychosocial Disabilities in South Africa’ (2014) 2 *African Disability Rights Yearbook* 75.

13 Charles Kopel, ‘Suffrage for People with Intellectual Disabilities and Mental Illness: Observations on a Civic Controversy’ (2017) 17 *Yale Journal of Health Policy, Law, and Ethics* 209.

14 Trevor Ryan, Andrew Henderson and Wendy Bonython, ‘Voting with an “Unsound Mind”? A Comparative Study of The Voting Rights of Persons with Mental Disabilities’ (2016) 39 *UNSW Law Journal* 1038.

15 Guzmán and Caballero (n 8), 164.

16 Helen Meekosha and Leanne Dowse, ‘Enabling Citizenship: Gender, Disability and Citizenship in Australia’ (1997) 57 *Feminist Review* 49.

17 Guzmán and Caballero (n 8), 164.

Moreover, Schur,¹⁸ Lord and others,¹⁹ Appelbaum,²⁰ Atkinson and others,²¹ and G.M. van Hees and others,²² agree that, in general, persons with disabilities encounter barriers to vote in elections, including inaccessible voting materials. This increases the risk of low voter turnout among persons with disabilities.²³

Use of Assistive Technology (AT), understood as the development and application of scientific knowledge, skills, procedures, and policies relevant to the provision, use, and assessment of assistive devices, is one active measure for achieving greater accessibility in the voting environment.²⁴ Yet, the use of AT devices in elections is not often discussed by disability scholars.²⁵ Furthermore, in the available literature, certain *(social) practices*²⁶ by multiple actors, e.g., election officials, that support or restrict the provision and use of electoral-assistive devices by voters with disabilities are underexplored. There is little research, for example, on how well-trained election officials in the use of electoral-assistive devices can ensure a better user experience of voters with disabilities.²⁷ These *(social) practices* which take place within the context of voting are addressed in this study. In doing so, this research aims to fill certain gaps in the literature. It adopts a sociolegal perspective, which combines a legal dogmatic analysis with research methods from social sciences. The research approach of this study is addressed in section 4 of this chapter.

18 Lisa Schur, 'Disability and the Psychology of Political Participation' (1998) 9 *Journal Disability Policy Studies* 4.

19 Janet Lord, Michael Ashley Stein and János Fiala-Butora, 'Facilitating and Equal Right to Vote for Persons with Disabilities' (2014) 6 *Journal of Human Rights Practice* 115.

20 Paul S Appelbaum, "'I Vote. I Count': Mental Disability and the Right to Vote' (2000) 51 *Law & Psychiatry* 849.

21 Virginia Atkinson, Rebecca Aaberg and Staffan Darnolf, 'Disability Rights and Election Observation: Increasing Access to the Political Process' (2017) 35 *Nordic Journal of Human Rights* 375.

22 Suzanne G.M. van Hees, Hennie R Boeije and Iris De Putter, 'Voting Barriers and Solutions: The Experiences of People with Disabilities during the Dutch National Election in 2017' (2019) 34 *Disability & Society* 819.

23 International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI), 'Equal Access: How to Include Persons with Disabilities in Elections and Political Processes' (2014) 1 <<https://www.ifes.org/publications/equal-access-how-include-persons-disabilities-elections-and-political-processes>>.

24 Deirdre Desmond and others, 'Assistive Technology and People: A Position Paper from the First Global Research, Innovation and Education on Assistive Technology (GREAT) Summit' (2018) Taylor & F *Disability and Rehabilitation: Assistive Technology* 1.

25 Delia Ferri, Anthony Giannoumis and Charles Edward O'Sullivan, 'Fostering Accessible Technology and Sculpting an Inclusive Market through Regulation' (2015) 29 *International Review of Law, Computers & Technology* 81.

26 The concept of '(social) practices' that is adopted here is from social practice theorists. See Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (1st edn, Cambridge: Polity Press 1984); Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge University Press 1977).

27 Guzmán and Caballero (n 8), 173.

2. Relevance of the study

The bulk of the academic literature on participation of persons with disabilities in elections concerns barriers faced by persons with disabilities that hinder the exercise of their voting rights.²⁸ These barriers to participate in political life are common for persons with disabilities throughout the electoral cycle.²⁹ G.M. van Hees and others³⁰ and Fiala-Butora and others³¹ agree on two main groups of barriers to voting faced by persons with disabilities: statutory and procedural barriers. Firstly, research on prevailing guardianship laws and policies that bar persons with disabilities from exercising their franchise *de jure* has been carried out since at least the 1990s.³² Lord and others,³³ Grobelaar Du Plessis and Njau,³⁴ Priestley and others,³⁵ Ward and others,³⁶ Atkinson and others,³⁷ Neagoe,³⁸ Appelbaum,³⁹ and the European Union Agency for Fundamental Rights (FRA)⁴⁰ have analysed discriminatory domestic laws that restrict the legal capacity of persons with disabilities in the context of voting. These authors have analysed legislation that excludes persons with disabilities, and particularly persons with intellectual and mental impairments based on the idea that they lack the very personal attribute that the right to vote protects, namely the ability to exercise self-determination regarding the laws and individuals that govern society.⁴¹ Overall, these authors argue that discriminatory laws restricting the legal capacity of persons with disabilities in, *inter alia*, the context of voting

28 *ibid.*, 167.

29 Lord, Stein and Fiala-Butora (n 19); International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 23).

30 G.M. van Hees, Boeije and De Putter (n 22).

31 Fiala-Butora, Stein and Lord (n 7).

32 Guzmán and Caballero (n 8), 167.

33 Lord, Stein and Fiala-Butora (n 19).

34 Ilze Grobelaar Du Plessis and Jehoshaphat Njau, 'Art. 29 Participation in Political and Public Life' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018).

35 Mark Priestley and others, 'The Political Participation of Disabled People in Europe: Rights, Accessibility and Activism' (2016) 42 *Electoral Studies* 1.

36 Andrew Ward, Paul MA Baker and Nathan W Moon, 'Ensuring the Enfranchisement of People with Disabilities' (2009) 20 *Journal of Disability Policy Studies* 79.

37 Atkinson, Aaberg and Darnolf (n 21).

38 Anna Maria Neagoe, 'The Right to Vote of Persons with Disabilities' (2015) 1 *Journal of Law and Administrative Sciences* 715.

39 Appelbaum (n 20).

40 European Union Agency for Fundamental Rights, 'Who Will (Not) Get to Vote in the 2019 European Parliament Elections? Developments in the Right to Vote of People Deprived of Legal Capacity in EU Member States' (2019) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-right-vote-ep-elections-legal-capacity_en.pdf> accessed 19 July 2019.

41 Guzmán and Caballero (n 8), 167.

breach the CRPD. Secondly, Kanter and others,⁴² Bell,⁴³ Schur and others,⁴⁴ and Combrinck⁴⁵ argue that voters with disabilities encounter several procedural barriers to voting, and mainly barriers to accessibility in the voting environment. These include communication barriers that limit access to electoral information throughout the electoral process.⁴⁶ Other authors⁴⁷ have explored other common barriers to voting encountered by voters with disabilities including poorly trained election officials, greater social isolation, lower levels of education and income, and lower feelings of political efficacy.⁴⁸

A briefly elaborated upon aspect of the existing literature is States Parties' legal obligation to provide assistive and new technologies to be used by persons with disabilities to vote under the CRPD.⁴⁹ Much of the recent academic literature which discusses issues related to the right of persons with disabilities to vote ignores this aspect. Of the few publications which directly discuss the issue, IFES,⁵⁰ Aseka-Oluchina,⁵¹ Mercurio,⁵² and McGrew⁵³ refer to the lack of a national system for the provision of AT to persons with disabilities when voting and the lack of uniformity between national and local elections concerning 'electoral-AT'. Nevertheless, little academic research has been conducted on the use of electoral-assistive devices by voters with disabilities. Most sources on this topic are non-academic publications.⁵⁴ The majority of these publications are produced by for-profit companies, and mainly those involved in

42 Arlene Kanter and Rebecca Russo, 'The Right of People with Disabilities to Exercise Their Right to Vote under the Help American Vote Act' (2006) 30 *Mental & Physical Disability Law Reporter* 852.

43 Dorothy M Bell, 'Overcoming the Barriers to Voting Experienced by People with Learning Disabilities' (2001) 29 *British Journal of Learning Disabilities* 122.

44 Lisa Schur, Meera Adya and Mason Ameri, 'Accessible Democracy: Reducing Voting Obstacles for People with Disabilities' (2015) 14 *Election Law Journal* 60.

45 Combrinck (n 12).

46 Atkinson, Aaberg and Darnolf (n 21); Hanna Wass and others, 'Voting While Ailing? The Effect of Voter Facilitation Instruments on Health-Related Differences in Turnout' (2017) 27 *Journal of Elections, Public Opinion and Parties* 503.

47 Benjamin O Hoerner, 'Unfulfilled Promise: Voting Rights for People with Mental Disabilities and the Halving of HAVA's Potential' (2014) 20 *Texas Journal on Civil Liberties & Civil Rights* 90; Lisa Schur, Mason Ameri and Meera Adya, 'Disability, Voter Turnout, and Polling Place Accessibility' (2017) 98 *Social Science Quarterly* 1374.

48 Guzmán and Caballero (n 8), 167-168.

49 *ibid*, 168.

50 International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 23).

51 William Aseka Oluchina, 'The Right to Political Participation for People with Disabilities in Africa' (2015) 3 *African Disability Rights Yearbook* 309.

52 Bryan Mercurio, 'Discrimination in Electoral Law: Using Technology to Extend the Secret Ballot to Disabled and Illiterate Voters' (2003) 28 *Alternative Law Journal* 272.

53 Greg McGrew, 'Assistive Technology for the Voting Process' (2012) 002 <<https://elections.itif.org/reports/AVTI-002-McGrew-2012.pdf>>.

54 Guzmán and Caballero (n 8), 169.

the commercialisation of assistive devices.⁵⁵ Providers of electoral-assistive devices have assessed the technical functionality of certain devices without however exploring the sociolegal implications or the challenges the devices pose to electoral systems and society in general. Furthermore, the understandings and experiences of voters and election officials regarding electoral-assistive devices have been underexplored. In the context of these research gaps, this study explores whether the provision and use of AT devices in elections is a measure to promote equal participation of persons with disabilities. It focuses on the European context, where there is still a need to adopt legislative, administrative, and policy measures to provide voters with disabilities with technological solutions to support them in the context of voting.⁵⁶ The results of this study are primarily focused on England and Spain (at the national level). These countries are addressed in this study in alphabetical order: England (chapter VI) and Spain (chapter VII).

The choice of England and Spain was based on six main reasons: (i) both countries have ratified the CRPD and the Optional Protocol;⁵⁷ (ii) electoral legislation in England and Spain does not link the right to vote to legal capacity; (iii) both countries have regulations to foster the development of AT; (iv) there is an identifiable group of organisations of persons with disabilities (DPOs)⁵⁸ and civil society representatives advocating for political rights of persons with disabilities; (v) the CRPD Committee,⁵⁹ concerning both countries, has recommended to secure the accessibility of voting materials for persons with disabilities; and (vi) the language skills of the researcher. Nevertheless, due to the interpretative rigour in data analysis in this study, issues raised might be relevant in other countries.

This study uses an evidence-based approach. A small sample of persons with disabilities and election officials were research participants. They took part in online interviews (including focus groups and individual interviews) and contributed to the results of this study by sharing their experiences in using existing electoral-assistive devices. The persons with disabilities

55 See for instance Pakflatt, 'Accessible Voting Equipment' (*Election Equipment Solutions*, 2018) <<https://pakflatt.com/products>> accessed 5 November 2020.

56 Aalt Willem Heringa and Hoai-Thu Nguyen, 'Obstacles to Participation in Elections and the Exercise of Voting Rights, inside the E.U. European Parliament' (2020) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658593/IPOL_STU\(2020\)658593_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658593/IPOL_STU(2020)658593_EN.pdf)> accessed 2 June 2020.

57 Spain and the United Kingdom (in this case England) ratified the CRPD, including its Optional Protocol, in 2007 and 2009, respectively.

58 This study is based on the CRPD. Accordingly, it employs the CRPD terminology: 'organisations of persons with disabilities'. Other related terms are also used in the literature available in the field.

59 CRPD Committee, *Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland*, CRPD/C/GBR/CO/1, 03 October 2017, para 61; CRPD Committee, *Concluding observations of the Committee on reports submitted by States Parties under article 35 of the Convention*, CRPD/C/ESP/CO/1, 19 October 2011, para 48; CRPD Committee, *Concluding observations on the combined second and third periodic reports of Spain*, CRPD/C/ESP/CO/2-3, 13 May 2019, para. 55(a).

who took part in this study were members of DPOs from England and Spain. These DPOs work in different regions of both countries advocating for human rights of millions of persons with long-term impairments living in their countries.⁶⁰ The results discussed in this study are based on data collected from 42 research participants in total. Therefore, the research findings cannot be generalised. Ethics clearance through the Ethical Review Committee Inner City Faculties (ERCIC) at Maastricht University was received to ensure this study was conducted in a responsible and ethically accountable way (ERCIC # 165_11_12_2019).

3. Research objectives

This study seeks to provide an empirically grounded theoretical account of the provision and use of electoral-assistive devices by persons with disabilities as a means of achieving accessibility in the voting environment. As such, the study has four main aims: (1) it explores existing and emerging electoral-assistive devices, both within and outside Europe, as examples of AT devices that States Parties can make available for use by persons with disabilities at the local level; (2) it identifies and analyses States' legal obligations concerning the provision of electoral-assistive devices resulting from international human rights law, and primarily Article 29(a) CRPD, which serves as the legal basis to analyse States Parties' compliance with the CRPD; (3) it analyses the compliance of England and Spain with international legal obligations, and primarily Article 29(a) CRPD, through an analysis of legal and policy instruments to ensure the access of voters with disabilities to electoral-assistive devices; and (4) it explores experiences of voters with disabilities and election officials from England and Spain in using electoral-assistive devices to ascertain how national legal and policy instruments are implemented in practice, and what measures concerning accessibility of voting materials are recommended to enhance persons with disabilities' participation in elections.

Considering the objectives described above, the following two central research questions have been formulated:

Under international law, what legal obligations do States Parties have to make electoral-assistive devices available for use by persons with disabilities? How do practices within electoral systems in England and Spain support or constrain the use of electoral-assistive devices?

These overarching questions encompass the following sub-questions:

60 Office for National Statistics, 'Improving Disability Data in the UK (2021 Update)' (*Disability facts and figures*, 2021) <<https://www.gov.uk/government/statistics/disability-facts-and-figures/disability-facts-and-figures>> accessed 16 July 2022; Instituto Nacional de Estadística (INE), 'Encuesta Sobre Discapacidades, Autonomía Personal y Situaciones de Dependencia' (*Encuesta 2020*, 2020).

- a. What are the available and emerging electoral-assistive devices that can be used to assist persons with disabilities to vote secretly and independently?
- b. What is the legal duty of States Parties under the CRPD and other relevant international human rights instruments regarding the provision of electoral-assistive devices to be used by persons with disabilities?
- c. To what extent do England and Spain comply with relevant obligations set out in international law, and primarily the CRPD, to ensure access to electoral-assistive devices by persons with disabilities?;
- d. What are the experiences of voters with disabilities and other key stakeholders from England and Spain in using electoral-assistive devices? To what extent do those experiences influence the decision to vote by persons with disabilities?

This study collected data to allow for a comprehensive explanation of how the right of persons with disabilities to vote can be ensured, *inter alia*, through the provision and use of AT solutions. It is a contribution to the body of knowledge and is based on an innovative theoretical and methodological approach. This approach involves interdisciplinary research and an empirical approach to understand the implementation of the CRPD. A description of the legal-analytical and empirical research methods employed in this study can be found in chapter V.

4. Research approach

This study supports the idea that in legal studies, the method to obtain and analyse research material depends on the theoretical approach and, most importantly, on the concept of law accepted in the research.⁶¹ In other words, the concept of (international) law adopted in a legal study inspires its theoretical approach, which guides the process of planning, collecting, and exploring the research material. The theoretical framework of this study is discussed below.

4.1. Theoretical framework

This study draws on a dynamic conception of law that emerges from seeing the law as the product of society that is in a permanently evolving process of change.⁶² Law is thus not

61 Jaap Hage, 'The Method of a Truly Normative Legal Science' in Mark Van Hoecke (ed), *Methodologies Of Legal Research: Which Kind of Method for What Kind Discipline?* (1st edn, European Academy of Legal Theory Series Hart Publishing 2011).

62 Elizabeth Mertz, 'Introduction New Legal Realism: Law and Social Science in the New Millennium' in Elizabeth Mertz, Stewart Macaulay and Thomas W. Mitchel (eds), *The New Legal Realism: Translating Law-and-Society for Today's Legal Practice* (Cambridge University Press 2016).

‘static’; it changes alongside the changes in society over time. This is the ‘realist concept of law’⁶³ that favours interdisciplinary and empirical research.⁶⁴ It is precisely under this ‘realist concept of law’ that it is possible to understand how social actors use new social developments as ‘triggers’ for ongoing improvement of the law.⁶⁵ Indeed, there are paradigm shifts that confirm how law is a social process embedded in the social sciences and humanities. For instance, the CRPD set a paradigm shift for disability by moving towards recognition of persons with disabilities as rights holders, using a social-contextual model of disability, and by establishing a disability-human rights framework that understands disability as a human rights issue.⁶⁶ These changes in the law concerning disability are possible because (international) law is created and used instrumentally. It plays a role in economic, legal, and cultural globalisation processes through catalysing, stabilising, or destabilising.⁶⁷

The ‘realist concept of law’ inspires the theoretical approach used in this study: New Legal Realism (NLR). Garth and Mertz⁶⁸ argue that NLR is an evolving school of thought which is accepted as a relevant theoretical standpoint to improve a ‘constructive relationship between law and the social sciences’. It is a specific legal epistemology encompassing how law obtains meaning, is practised, and changes over time.⁶⁹ Elizabeth Mertz refers to NLR as a ‘big tent’ perspective to transcend limitations on knowledge.⁷⁰ Mertz asserts: *‘New Legal Realist work offers the possibility of an integrative effort that reaches not only across disciplines but across people and legal systems.’*⁷¹ As a legal theory, the main concern of NLR is to discover the meaning of law based on its impact at the point of delivery.⁷² In so doing, NLR takes doctrine seriously and moves from ‘law in books’ to investigate ‘law in action’, which means

63 For a comprehensive explanation of the ‘realistic concept of law’ see Stewart Macaulay, ‘New Legal Realism: Unpacking a Proposed Definition’ (2016) 6 UC Irvine Law Review 149; Hanoch Dagan and Roy Kreitner, ‘The New Legal Realism and The Realist View of Law’ (2018) 43 Law & Society Inquiry 528 <doi: <https://doi.org/10.1111/lsi.12319>>.

64 Adriana Caballero-Pérez, ‘New Legal Realism: A Promising Legal Theory for Interdisciplinary and Empirical Research about the “Law-in-Action”’ (2022) 16 Novum Jus 209.

65 Dagan and Kreitner (n 63).

66 Gerard Quinn and Theresia Degener, ‘The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability’ (2002); Rosemary Kayess and Phillip French, ‘Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8 Human Rights Law Review 1 <doi:10.1093/hrlr/ngm044>.

67 Caballero-Pérez (n 64).

68 Bryant Garth and Elizabeth Mertz, ‘Introduction: New Legal Realism at Ten Years and Beyond’ (2016) 6 UC Irvine Law Review 122 <doi: <https://scholarship.law.uci.edu/ucilr/vol6/iss2/3>>.

69 Caballero-Pérez (n 64).

70 Mertz (n 62), 22-27.

71 *ibid.*, 22.

72 Macaulay (n 63).

focusing on the gap between the law in the legal texts (or doctrinal materials) and, *inter alia*, the concrete actions by public officials, e.g., election officials.⁷³

In this study, NLR underpins the analysis of the ‘law in action’ (or the ‘CRPD in action’), meaning specifically how Article 29(a) CRPD is implemented in practice. There are two main features of an NLR approach that inspired this study. Firstly, NLR promotes interdisciplinarity and empiricism in analyses of compliance.⁷⁴ In doing so, NLR highlights the relevance of paying attention to both doctrine and social science. An NLR approach addresses the legal obligations of States Parties under the CRPD and the international and domestic legal institutions that play a role in the implementation of the CRPD. Additionally, NLR recognises that implementation of the law at the local level depends on different factors. Some of these factors include the self-determination or *agency* of voters with disabilities and election officials (*actors*), these people’s understandings of disability itself and the CRPD norms, and multiple *practices* within national electoral systems affecting how the CRPD ‘works’ once it reaches the lives of persons with disabilities.⁷⁵ By embracing the wide range of social science theories, epistemologies, and research methods, it was possible to give an accurate picture of how Article 29(a) CRPD is truly implemented. Thus, an NLR approach in this study offered the possibility of an integrative effort in disability research that reached not only across disciplines but also across persons with disabilities and even different legal systems.

Secondly, NLR is committed to constructive analysis of States’ compliance with law.⁷⁶ This is the pragmatist (or problem-solving centred) dimension of NLR.⁷⁷ Viewed in this light, NLR encourages disability scholars to pursue action-oriented research with a pragmatic emphasis. Thus, the reason for adopting an NLR approach in this study was to provide actors within national electoral systems with a clear understanding of legal and social practices that influence Article 29(a) CRPD implementation. By revealing the problems arising from social systems that affect the implementation of Article 29(a) CRPD specifically, an NLR approach helps social systems to be aware of problems and to solve them. In doing so, NLR uses the study of law to improve the living conditions of persons with disabilities.⁷⁸

73 ‘*Law in action*’ and ‘*living law*’ are two terms that arose from the Legal Realism approach. They both correspond to the notion of how law works or operates on the ground. See Roscoe Pound, ‘The Scope and Purpose of Sociological Jurisprudence’ (1911) 25 *Harvard Law Review* 140 <doi: <https://doi.org/10.2307/1324392>>; Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (4th edn, Transaction Publishers, New Brunswick and London 2009).

74 Ino Augsberg, ‘Some Realism About New Legal Realism: What’s New, What’s Legal, What’s Real?’ (2015) 28 *Leiden Journal of International Law* 457 <doi: <https://doi.org/10.1017/S0922156515000229>>.

75 Caballero-Pérez (n 64)

76 Gregory Shaffer, ‘The New Legal Realist Approach to International Law’ (2015) 28 *Leiden Journal of International Law* 189 <doi: <https://doi.org/10.1017/S0922156515000035>>.

77 Caballero-Pérez (n 64), 226.

78 *ibid.*

The features of an NLR approach mentioned above were operationalised in this study through the following key research concepts: legal obligation, compliance with international law, and (social) *practices*. These concepts are discussed below.

4.1.1. Legal obligation

The term ‘obligation’ derives from the Latin *obligationem*, or ‘an engaging or pledging’, literally ‘a binding’.⁷⁹ It is referred to as a ‘bond’ with conditions, with a penalty for nonfulfillment.⁸⁰ In international law, the topic of obligation is easily confused with the issue of compliance.⁸¹ Conceptually, the source of an obligation is a ‘fundamentally ethical question’⁸² since international law is taken as an ‘ethical category’. Such a category is characterised as ‘legal’ or ‘moral’. In accordance with viewing the law as an ‘ethical category’, the search for obligation in international law is the search for a theory of why States should act according to a given set of international norms. Goldsmith and Posner⁸³ argue that the issue of obligation is preliminary to the question of compliance. This means that before answering the questions of whether and how States comply with international law, the question of how international law becomes the source of any obligation ought to be addressed. In this regard, scholars have argued that international law emerges either from some accepted ‘rule of recognition’⁸⁴ or from an authoritative decision-making process.⁸⁵ Different consequences arise from each

79 Oxford Dictionary, ‘Obligation’ (*Online Etymology Dictionary*, 2020) <<https://www.oxfordlearners-dictionaries.com/definition/english/obligation>> accessed 24 April 2020.

80 Katherine Vorderbruggen, ‘A Rules-Based System? Compliance and Obligation in International Law’ (*E-International Relations*, 2018) 1 <<https://www.e-ir.info/2018/10/09/a-rules-based-system-compliance-and-obligation-in-international-law/>> accessed 19 March 2020.

81 Markus Burgstaller, *Theories of Compliance with International Law* (Martinus Nijhoff Publishers 2005); Vorderbruggen (n 80); Eduardo M Peñalver, ‘The Persistent Problem of Obligation in International Law’ (2000) 36 Cornell Law Faculty Publications 271.

82 Peñalver (n 81).

83 Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (Oxford University Press 2005).

84 In H.L.A. Hart’s words ‘in any legal system, the rule of recognition is a master “meta-rule” underlying any legal system that defines the common identifying test for legal validity (i.e., what counts as law) within that system.’ See HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press-Oxford University Press 1994).

85 Richard A Falk, ‘Casting the Spell: The New Haven School of International Law’ (1992) 104 The Yale Law Journal 1991.

one of these theories.⁸⁶ Overall, either consent-based theories or legal validity theories can explain the source of an obligation in international law. However, such theories do not explain whether or not a State complies with its international legal obligations.⁸⁷ In other words, there are conceptual and technical differences between the source of obligation and compliance with international law. In addition, the States' duties under an international law must be clearly interpreted and outlined before assessing States' compliance with such duties.

In this study, the point of departure regarding the legal obligations of States Parties to the CRPD was Article 29 CRPD. It is important, however, to point out that not all the duties of States Parties under Article 29 CRPD were included within the scope of this research. Parts of Article 29, namely 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 organisations and forming DPOs were excluded from the scope. This study focuses on the States' obligation to ensure the right of persons with disabilities to vote by means of adopting positive measures, namely providing ATs as endorsed in paragraph (a) of Article 29 CRPD.

4.1.2. Compliance with (international) law

The concept of '*compliance*' with international law is not a free-standing concept; it derives meaning and utility from different theoretical backgrounds.⁸⁸ Coomans and Ruíz,⁸⁹ Fisher,⁹⁰ and Mitchell⁹¹ agreed that the term '*compliance*' means a state of conformity or identity between an actor's behaviour and a specified rule. Contemporary research projects grounded in a constructive relationship between law and the social sciences use '*compliance*' as one of

86 On one hand, the most proposed rule of recognition and theory of obligation in international legal scholarship is State consent. See Louis Henkin, *International Law: Politics, Values and Functions—General Course on Public International Law* (Martinus Nijhoff Publishers 1989); Michael J Perry, *The Idea of Human Rights: Four Inquires* (Revised edn, Oxford: Oxford University Press 2000); Peñalver (n 81); On the other hand, it is argued that laws emerge from the international authoritative decision-making process. See Fernando R Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Transnational Publishers 1988); Andrew Guzman, 'A Compliance-Based Theory of International Law' (2002) 90 California Law Review 1823.

87 Tesón (n 86); Peñalver (n 81).

88 Harold Hongju Koh, 'Why Do Nations Obey International Law?' (1997) 106 The Yale Law Journal 2599.

89 Fons Coomans and Miguel Ruiz Díaz-Reixa, 'Effectiveness of the ICESCR Complaint Mechanism—An Analysis and Discussion of the Spanish Housing Rights Cases' in Claire Boost and others (eds), *Myth or Lived Reality: On the (In)Effectiveness of Human Rights* (Springer 2021).

90 Roger Fisher, *Improving Compliance with International Law* (University Press of Virginia 1981).

91 Ronald Mitchell, 'Regime Design Matters: Intentional Oil Pollution and Treaty Compliance' (1994) 48 International Organization 425.

the central concepts to study the effects and significance of law.⁹² Overall, ‘compliance with international law’ refers to explanations for whether, how, and why States and other subjects of international law ‘obey’ international law in some cases and not in other cases.⁹³

What ‘motivates’ States to comply with Article 29(a) CRPD? Why should or do States comply with Article 29(a) CRPD norms? These are questions from contemporary sociolegal studies on compliance⁹⁴ that exceed the scope of the present study, which focuses on discussing the extent to which England and Spain comply with international legal obligations, and mainly Article 29(a) CRPD through law and policy, and in practice. Thus, ‘compliance’ as a research concept was one of the most central issues in this study.

4.1.3-Practices (within national electoral systems)

The concept of ‘*practices*’ that is adopted in this study was drawn from social practice theorists, and particularly Anthony Giddens.⁹⁵ ‘*Practices*’ commonly refers to everyday actions and the way these are typically and habitually performed in a society or system, such as in an electoral system.⁹⁶ Giddens developed a theory (*structuration theory*) to focus the analysis of ‘practices’ on the *actor (agency)-structure* relationship.⁹⁷ The focus on these two additional concepts, actor (or *agency*) and *structure*, as components of ‘practices’, hints at the theoretical approach embraced throughout this study. The concepts of *agency* and *structure* are briefly explained next.

Firstly, ‘*agency*’, in Giddens’ theory, refers to human action. Agency does not refer to the intentions actors have in doing things but to their capability of doing those things in the first place.⁹⁸ In Giddens’ theory, this means that *agency* is not synonymous with free will. Owing to the fact that each agent has the capability to reflect on their own and everyone else’s behaviour, actors make practical and normative judgments among alternative possible trajectories of action in response to emerging demands, dilemmas, and ambiguities of evolving

92 Beth Elise Whitaker, ‘Compliance among Weak States: Africa and the Counter-Terrorism Regime’ (2010) 36 *Review of International Studies* 639; Richard Perkins and Eric Neumayer, ‘Do Membership Benefits Buy Regulatory Compliance?’ (2007) 8 *European Union Politics* 180; Vorderbruggen (n 80).

93 Guzman (n 86).

94 Vorderbruggen (n 80); Burgstaller (n 81); Goldsmith and Posner (n 83).

95 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 53).

96 Andreas Reckwitz, ‘Toward a Theory of Social Practices. A Development in Culturalist Theorizing’ (2002) 5 *European Journal of Social Theory* 243, 249.

97 Anthony Giddens, ‘A Reply to My Critics’ in D Held and J. Thompson (eds), *Social Theory of Modern Societies: Anthony Giddens and his Critics* (Cambridge University Press 1989); Anthony Giddens, *The Consequences of Modernity* (Stanford University Press 1990).

98 Laura Ahearn, ‘Agency’ (2000) 9 *Journal of Linguistic Anthropology* 12; Giddens, ‘A Reply to My Critics’ (n 53).

situations.⁹⁹ Voters with disabilities, who have not voted in previous elections, for example, might decide whether to vote or not in new elections depending on new measures in place for achieving accessibility, such as the provision of electoral-assistive devices. As such, ‘agency’, as an analytical concept, yielded useful results for this study which understands voters with disabilities as ‘actors’, meaning as agents with the ‘capability’ of doing things, such as voting.

Secondly, ‘structures’, in Giddens’ theory, include traditions, moral codes, and meanings attached to legal norms and human actions, such as voting. These ‘structures’ are not an external frame; they exist only ‘virtually’ and in actors’ memory, which they use when they act.¹⁰⁰ By this, Giddens means that ‘structures’ are a process; they do not exist at any point in time and space. ‘Structures’ emerge in an actor’s memory and are uncovered only when actors reflect discursively on a previous action.¹⁰¹ This was a key element to operationalise the concept of ‘structures’ through qualitative research methods, namely interviews, that solicit narrative accounts by actors about their experiences in using electoral-assistive devices.

Considering the elaborations on ‘agency’ and ‘structure’ described above, Giddens proposes that just as an individual’s autonomy is influenced by ‘structure’, ‘structures’ are maintained and adapted through the exercise of ‘agency’. The interface at which an actor meets a ‘structure’ is termed ‘structuration.’¹⁰² In Giddens’ words, ‘structuration’ means ‘*the structuring of social relations across time and space, in virtue of the duality of structure.*’¹⁰³ In the structuration process, the reciprocal interaction between *actors* and *structures* shape *practices* and explains the ‘*law in action*’. In this study, the concept of *practices* is further elaborated in chapters VI and VII, where the researcher analyses to what extent the implementation of Article 29(a) CRPD in England and Spain depends on human actions on the ground, and beyond, but also including, compliance through law and policy. To accomplish this, the researcher incorporated the concepts of legal obligation, compliance with international law, and social practices as elaborated above.

99 Mustafa Emirbayer and Ann Mische, ‘What Is Agency?’ (1998) 103 *American Journal of Sociology* 962.

100 Anthony Giddens, ‘The Time-Space Constitution of Social Systems’, *Social Theory: Roots and Branches* (Roxbury 2003).

101 Reckwitz (n 96).

102 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 53).

103 *ibid*, 376.

5. Methodological framework

This section briefly explains the research methods used in this study. These methods were based on the theoretical framework described above. Moreover, the combination of methods in this study is based on the idea of Coomans and others¹⁰⁴ that there is no ‘preferred research method’ for carrying out research in the field of human rights. The authors assert that a combination of methods, ‘if expertly employed’, may produce more reliable results.¹⁰⁵

This section is divided into three parts. The first part explains this study’s mixed method design concerning: electoral-assistive devices inventory; the legal dogmatic analysis; and the analysis of the experiences of research participants. The second part identifies potential sources of bias in the research and describes actions adopted by the researcher to minimise any inaccuracies. The last part of this section identifies the research’s limitations.

5.1. Mixed research methods

5.1.1. Scoping literature review

The first step in this study involved identifying and illustrating the available and emerging electoral-assistive devices for the protection of the right of persons with disabilities to vote on an equal basis with others. This conceptual framework with illustrative examples demonstrated the importance of the utilisation of AT in elections for achieving greater accessibility in the voting environment. A scoping literature review was used in this study to carry out this comprehensive inventory.¹⁰⁶ Further elaboration on the scoping review protocol followed when doing the inventory, and the results can be found in chapter II of this study. Notably, a scoping review was an appropriate methodology for this study given the novelty of the area of electoral-assistive devices; the diverse disciplinary location of existing literature; and the need for a comprehensive and systematic picture of research activity and gaps. A scoping review was thus employed in this study to address the first sub-question of this study: *what are the available and emerging electoral-assistive devices that can be used to assist persons with disabilities to vote secretly and independently?*

Based on the scoping review findings, and after having illustrated the already existing electoral-assistive devices to support voters with disabilities when voting, it was methodologically

104 Fons Coomans, Fred Gunfeld and Menno Kamminga, ‘Methods of Human Rights Research: A Primer’ (2010) 32 Human Rights Quarterly 179.

105 *ibid.*, 184.

106 Hilary Arksey and Lisa O’Malley, ‘Scoping Studies: Towards a Methodological Framework’ (2005) 8 International Journal of Social Research Methodology 19.

possible to proceed to the next step: the identification and analysis of States' obligations under international human rights law instruments. This part of the study mainly concerned Article 29(a) CRPD regarding the provision of these devices, according to a legal dogmatic analysis.

5.1.2. Treaty interpretation

Treaty interpretation is a research method used to determine what an international rule requires from the moment it came into existence, and to make sense of what the rule requires at the moment of its application.¹⁰⁷ This study applied treaty interpretation to identify the legal obligations of England and Spain concerning the unit of analysis of this study: provision and use of electoral-assistive devices under international law, and primarily Article 29(a) CRPD. In applying treaty interpretation, the second sub-question of this study was addressed: *what is the legal duty on States Parties under the CRPD and other relevant international human rights instruments regarding the provision of electoral-assistive devices to be used by persons with disabilities?*

To answer this question, this study followed the pre-established rules set forth by the Vienna Convention on the Law of Treaties (or 'VCLT') (Articles 31 and 32).¹⁰⁸ Further elaboration on the established VCLT rules of treaty interpretation and its results can be found in chapter III of this study. The interpretation of the provisions of international law, and in particular of Article 29(a) CRPD, was the foundation for the analysis of States Parties' compliance with their obligations. Furthermore, in chapter IV, the researcher addressed the relevance of Article 29(a) CRPD for the interpretation of Article 3 of Protocol No. 1 to the European Convention on Human Rights (ECHR) (addressing voting rights) when specifically applying this provision to the situation of persons with disabilities. She also succinctly examined the CRPD as an instrument of European Union (EU) law regulating certain voting rights of EU citizens. The resulting analysis is part of the legal basis for the assessment of compliance of England and Spain with their legal obligations under human rights instruments.

5.1.3. Normative legal analysis

This study assessed the extent to which England and Spain comply with their international obligations, and particularly under Article 29(a) CRPD through law and policy by relying on a normative legal analysis. Briefly, doctrinal research is used to describe the law in the light of coherence of the law, and to make prescriptions about how a factual or social scenario

107 Pierre D'Argent, 'Sources and the Legality and Validity of International Law: What Makes Law "International"?' in Samantha Besson, Jean D'Aspremont and Séverine Knuchel (eds), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2017).

108 United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969.

ought to be interpreted (normative results).¹⁰⁹ The normative legal analysis aimed to partially address the third sub-question of this study: *To what extent do England and Spain comply with relevant obligations set out in international human rights instruments, and primarily the CRPD to ensure access to electoral-assistive devices by persons with disabilities?*

To answer this question, the normative legal analysis employed several relevant sources of national legislation and policy developments as explained in detail in chapter V of this study. Furthermore, the legal analysis was partially guided by the 2021 ‘Bridging the Gap’ human rights indicators on the CRPD developed by the UN Office of the High Commissioner for Human Rights.¹¹⁰ These indicators were used by the researcher to provide prescriptive guidance on the core elements of Article 29(a) CRPD. Efforts were also made to strike a balance between incorporating cross-cutting rights, e.g., Articles 9 (accessibility) and 12 (equal recognition before the law) CRPD, and assessing the measures adopted by England and Spain regarding these rights, while keeping the focus on Article 29(a) CRPD. By means of a legal analysis, it was possible to assess the extent to which both countries comply with Article 29(a) CRPD through law and policy. Nevertheless, the theoretical framework of this study, as indicated above, highlights the importance of assessing the practical implementation of the law (the ‘*law in action*’). Thus, the provision and use of the existing electoral-assistive devices in England and Spain had to be examined through the experiences of local actors, and mainly voters with disabilities and election officials. This was done through using a participatory research method: semi-structured interviews with research participants.

5.1.4. (Online) semi-structured interviews

A semi-structured interview is a qualitative research method that allows the interviewer to ask open-ended questions of an interviewee.¹¹¹ A detailed overview of the implementation process of the semi-structured interviews employed in this study can be found in chapter V. Semi-structured interviews were used in this study to address two sub-questions: the third sub-question (partially) indicated above, and the fourth sub-question, which has an emphasis on individual experiences and meanings: *what are the experiences of voters with disabilities and other key stakeholders from England and Spain in using electoral-assistive devices? To what extent do those experiences influence the decision to vote by persons with disabilities?*

109 Mark Van Hoecke, ‘Legal Doctrine: Which Method(s) for What Kind of Discipline?’ in Mark Van Hoecke (ed), *Methodologies Of Legal Research: Which Kind of Method for What Kind Discipline?* (Hart Publishing 2011).

110 The Bridging Gap Project, ‘EU-OHCHR Bridging the Gap I: Human Rights Indicators for the Convention on the Rights of Persons with Disabilities in Support of a Disability Inclusive 2030 Agenda for Sustainable Development’ (*European Union*, 2021) <<https://bridgingthegap-project.eu/crpd-indicators/#TheProcess>> accessed 4 April 2021.

111 Nigel King, Christine Horrocks and Joanna Brooks, *Interviews in Qualitative Research* (2nd edn, SAGE Publications, Ltd 2019).

Online semi-structured interviews in the form of individual and focus groups interviews were useful to answer the above questions for two reasons: firstly, both forms of semi-structured interviews allow the researcher to solicit narrative accounts of individual experiences.¹¹² This feature of semi-structured interviews is important for this study because, as the theoretical approach set out above illustrates, when actors reflect discursively on their actions, they uncover their understandings of the structural factors determining their practices. Secondly, individual and focus groups interviews are appropriate methods for recognising individuals as ‘active partners’ in the research process.¹¹³ As such, in this study, persons with disabilities are taken as actors who have the capability to reflect on the use of electoral-assistive devices when voting and to make recommendations for change. Accordingly, a non-representative group of voters with disabilities and election officials from England and Spain were research participants (n=42). The interview questionnaire used in the interviews with participants was based on the findings of the analysis of compliance by England and Spain with Article 29(a) CRPD and addressed the specific existing electoral-assistive devices in these two countries. The scope and depth of discussions in this study consist of those voting experiences elaborated upon by participants. Notably, the findings based on the contributions of the participants have added value for identifying the range of recommendations for England and Spain proposed in the concluding part of this study (chapter VIII).

5.2. Research bias

Overall, bias in research is any trend or deviation from the truth in data collection, data analysis, interpretation, and publication that can cause false conclusions.¹¹⁴ In this study, the researcher identified some potential sources of bias and adopted actions to limit them. For example, during the recruitment of participants, certain persons with disabilities and election officials were more likely to be willing to participate than others, depending on different factors, such as type of impairments and access to internet and computer devices. Thus, to ensure that participants with disabilities were as heterogeneous as possible, the researcher employed a purposive sample technique to identify and select potential participants through DPOs. Criterion sampling was used as a strategy to ensure variation, i.e., a heterogeneous group. DPOs were classified per target population: persons with long-term physical, mental,

112 Mary F Hoffman and Renee L Cowan, ‘Be Careful What You Ask For: Structuration Theory and Work/Life Accommodation’ (2010) 61 *Communication Studies* 205.

113 Rob Imrie and Marion Kumar, ‘Focusing on Disability and Access in the Built Environment’ (1998) 13 *Disability & Society* 357; Thilo Kroll, Rosaline Barbour and Jennifer Harris, ‘Using Focus Groups in Disability Research’ (2007) 17 *Qualitative Health Research* 690.

114 Ana-Maria Šimundić, ‘Bias in Research’ (2013) 23 *Biochem Med (Zagreb)* 12; John S Gardenier and David B Resnik, ‘The Misuse of Statistics: Concepts, Tools, and a Research Agenda’ (2002) 9 *Accountability in Research* 65.

intellectual, or sensory impairments. During the recruitment, where possible, the researcher secured the participation of at least two persons per type of impairment per country in the study. Furthermore, accessible recruitment materials and information sheets about the project were personalised according to individual needs, when necessary. These materials were useful to provide potential participants with an explanation about the research and the interview's format to enable them to make an informed decision, as explained in detail in chapter V of this study.

Furthermore, as this study recruited primarily volunteer participants from DPOs, it was also very likely that persons with disabilities who do not have contact with these organisations were missed in the recruitment phase. To reduce this selection bias, the researcher asked local publicly recognised disability advocates to also contribute to recruitment. Once advocates agreed to cooperate with the recruitment of participants, the researcher provided them with the information materials to be distributed at their discretion. This strategy increased the possibility to reach potential participants who were not members of DPOs.

Another potential bias in this study involved interviewer bias. This bias refers to the human error of consciously or unconsciously holding a preconceived judgment about the interviewee that negatively or positively influences the researcher's assessment of the interviewee's responses, making the interview less objective and, hence, not successful.¹¹⁵ In this regard, use of semi-structured interviews, including an established interview guide, was useful for the researcher. The interview guide described a list of topics the researcher asked of all participants. This limited the possibility of avoiding questions due to the researcher's emotional reaction to the interviewee. Moreover, the use of a videoconference platform (Zoom) helped to identify interview bias, since the researcher's non-verbal behaviour was monitored in real time and simultaneously with the participant's behaviour. Thus, Zoom's video service was used to control the interview process and find bias eventually introduced by the researcher's reactions in the interviews.

Regarding a questionnaire bias, the questions used in the interviews were based on a comprehensive legal analysis of relevant domestic law and policy. The questions were also framed with care and sensitivity to human rights concerns. Moreover, the questionnaire framing was shared with experts in the field on disability rights and electoral matters before conducting the interviews. When conducting the interviews, including four pilot interviews, the author stuck to the wording on the questionnaire and asked the questions in the most uniform manner possible. All requests for amendments raised during the questionnaire pilot interviews were introduced in the final interview guide. Moreover, to control bias in coding and

115 CA Moser, 'Interview Bias' (1951) 19 *Review of the International Statistical Institute* 28, 30-32.

data interpretation,¹¹⁶ questions corresponded to the coding process, e.g., individual questions were used for each type of existing electoral-assistive device, which in turn were coded individually. As such, the coding operation reduced the great range and variety of responses to some degree of uniformity. Also, it controlled the use of a too broad classificatory scheme, i.e., the over-standardisation of responses, as well as inaccurate coding to avoid distortions as explained in chapter V.

Lastly, bias could have been introduced in this study by neglecting the original findings and interpreting them in favour of the researcher's beliefs.¹¹⁷ Therefore, researcher's conclusions were drawn from the range of observed data without extrapolation or overgeneralisation to the entire general population of England and Spain so as to avoid bias.

5.3. Research limitations

There are certain research limitations in this study as follows:

In the legal-analytical and empirical research part, findings and conclusions were drawn from research participants from England and Spain. As such, this study was not focused on the entire United Kingdom of Great Britain and Northern Ireland (UK). It confined itself to discussing implementation of relevant electoral law and policy that apply in England in accordance with Article 29(a) CRPD. This was due to the infeasibility of an empirical analysis of all four individual countries constituting the UK.¹¹⁸

Findings and conclusions were drawn from the legal analysis of relevant legislation and policy regulating the right to vote of persons with disabilities at the national level, and particularly at general elections. As the researcher did not explore in detail local elections in England (e.g., local council elections) or in Spain (e.g., elections to regional parliaments of the autonomous communities), results cannot be generalised to these elections. The finish date for this research was 30 June 2022. Any subsequent relevant legal or policy development adopted by England or Spain to implement Article 29(a) CRPD was therefore not analysed in this study.

Furthermore, this study was only exploratory, i.e., hypotheses were not tested. The empirical findings and conclusions presented in this study were from a small sample population (42 participants in total) from England and Spain. The results cannot therefore be generalised to

¹¹⁶ Clarifying answers inevitably requires judgment, opening potential for bias to occur especially when replies have ambiguous meaning or are on the borderline between two codes. See *ibid*, 30-32.

¹¹⁷ Šimundić (n 114).

¹¹⁸ The four individual countries constituting the UK are England, Scotland, Wales, and Northern Ireland.

other persons with disabilities, election officials, or the general population. Moreover, the researcher did not adopt a comparative perspective between England and Spain to assess the implementation of Article 29(a) CRPD in these two countries. Further comparative research needs to be carried out to illustrate comparisons across the countries. This might require quantitative and qualitative analysis, as well as a research framework for assessing any potential increase in participation of persons with disabilities in elections after the adoption of relevant national legislation and policy.

Lastly, it must be noted that the grant provider of this study was the European Commission (Grant agreement n°814249) through DARE (Disability Advocacy Research in Europe). DARE was a Marie Skłodowska-Curie Innovative Training Network. This study was based on the guidelines and policy set by the DARE project and Maastricht University. As such, this study was not influenced in any way by the sponsoring organisation.

6. Structure of the study

This study is divided into eight chapters as follows:

The present chapter contains an introduction to this study.

Chapter II comprises a non-exhaustive inventory of electoral-assistive devices, following a scoping literature review protocol. The inventory sheds light on potential AT solutions that can support persons with disabilities when voting. The objective of chapter II is therefore to analyse and illustrate available and emerging assistive devices that States can make available to be used by voters with disabilities to achieve greater accessibility in the voting environment.

Chapter III contains a legal interpretation of relevant international human rights law provisions including Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) and, primarily, Article 29(a) CRPD. The overall aim of chapter III is to identify and analyse the legal obligations of States Parties under these instruments pertaining to the provision of electoral-assistive devices to be used by persons with disabilities to vote. The focus is on a comprehensive interpretation of Article 29(a) CRPD according to the rules of treaty interpretation contained in the VCLT. Chapter III provides thus a comprehensive legal basis for the assessment of compliance of England and Spain with Article 29(a) CRPD obligations by setting out what those obligations are. As such, chapter III outlines the link between the obligations of Article 29(a) CRPD (namely, to ensure accessible voting materials, protect the secrecy of the ballot, and guarantee the free expression of the will of persons with disabilities as voters) and positive measures, such as providing AT devices.

Chapter IV of this study provides a brief interpretation of relevant European legislation regulating the right to vote in the context of persons with disabilities, primarily Article 3 of Protocol No.1 to the ECHR. Chapter IV also examines the CRPD as an instrument of EU law. The resulting analysis is part of the legal basis for the assessment of compliance of England and Spain with their obligations under human rights law, and mainly Article 29(a) CRPD.

Chapter V of this study provides a comprehensive explanation of this study's approach to qualitative data collection and data analysis, primarily addressing the empirical part of the study (semi-structured interviews). Research methods explained in chapter V were applied by the researcher to carry out a comprehensive analysis of compliance by England and Spain with Article 29(a) CRPD through law and policy, and in practice.

Chapters VI and VII of this study contain the analysis of the compliance by England and Spain with Article 29(a) CRPD. The aim of these chapters is twofold. Firstly, to identify whether relevant English and Spanish laws and policies are in compliance with Article 29(a) CRPD and to identify any lacunae. Secondly, to assess the degree to which electoral-assistive devices, as provided for by domestic law and policy, are actually available to, and used by, voters with disabilities based on research participants' experiences. Accordingly, both chapters VI and VII describe the experiences of individuals who participated in this study through (online) semi-structured interviews. The focus is on practices taking place within national electoral systems that support or constrain the use of electoral-assistive devices by voters with disabilities as described by research participants.

Lastly, chapter VIII contains a summary of main findings and conclusions based on the research carried out for this study. Chapter VIII also provides recommendations for the implementation of Article 29(a) CRPD in England and Spain, based on findings which emerged from this study.



Chapter II

Electoral-assistive devices:
conceptual framework and
inventory

1. Introduction

This chapter provides an examination of this research project's topic: the provision and use of assistive technology (AT) devices by persons with disabilities to vote. Desmond and others,¹¹⁹ define AT as *'the development and application of organized knowledge, skills, procedures, and policies relevant to the provision, use, and assessment of assistive products.'* Briefly, assistive devices are usually defined in the available literature as any item, piece of equipment, or product system, that is used to increase, maintain, or improve individuals' functional performance.¹²⁰ The concept of AT and AT devices will be discussed in section 3 below. The legal dogmatic analysis of the provision of AT in elections can be found in chapters III and IV of this study.

In the context of voting, assistive devices already exist to assist voters with disabilities, e.g., easy-to-read voter education guides, tactile ballot guides, and electronic voting machines using screen enlargement applications. These assistive devices and systems are also referred to in the literature on this topic as 'accessible voting',¹²¹ 'voting AT',¹²² 'electoral-assistive tools',¹²³ 'AT for voters',¹²⁴ 'AT in the polling place',¹²⁵ or other related terms. For clarification purposes, this chapter uses the term 'electoral-assistive devices' to refer to AT devices provided to persons with disabilities in the context of voting by national electoral authorities, including those already in place and prototypes (emerging). This chapter also differentiates the concept

119 Deirdre Desmond and others, 'Assistive Technology and People: A Position Paper from the First Global Research, Innovation and Education on Assistive Technology (GREAT) Summit' (2018) Taylor & F Disability and Rehabilitation: Assistive Technology 1, 1.

120 Alper and Raharinirina, 'Assistive Technology for Individuals with Disabilities: A Review and Synthesis of the Literature', (2106) 21 Journal of Special Education Technology 47; World Health Organization, 'Assistive Technology' (2018) <https://www.who.int/health-topics/assistive-technology#tab=tab_1> accessed 17 September 2020.

121 U.S. Election Assistance Commission, 'Research in Accessible Voting Report' (2014) <[http://ted.seller.com/documents/resumefiles/other publications/Research on Accessible Voting Complete Final Report.pdf](http://ted.seller.com/documents/resumefiles/other%20publications/Research%20on%20Accessible%20Voting%20Complete%20Final%20Report.pdf)>; EBU European Blind Union, 'AVA – Accessible Voting Awareness-Raising' (*Report on the Accessibility of Elections for Blind and Partially Sighted Voters in Europe*, 2018) <<http://www.euroblind.org/newsletter/2018/november/en/ava-accessible-voting-awareness-raising-report-accessibility-elections>> accessed 5 November 2020.

122 Greg McGrew, 'Assistive Technology for the Voting Process', retrieved from <https://elections.itif.org/reports/AVTI-002-McGrew-2012.pdf>.

123 International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 23).

124 Guide Dogs of Hawaii (NGO), 'Assistive Technology for Voters' (2016) <<http://guidedogsofhawaii.org/assistive-technology-for-voters/>> accessed 5 November 2020.

125 Whitney Quesenberry and Jennifer Sutton, 'Assistive Technology in the Polling Place: Current and Emerging Technology (A White Paper for the EAC-NIST Human Factors Public Working Group)' (2016) <https://www.researchgate.net/publication/338684746_Assistive_Technology_in_the_Polling_Place_Current_and_emerging_technology>.

‘electoral-assistive device’ from ‘personal-assistive device’¹²⁶ and confines itself to discussing the former. This is due to the infeasibility of conducting an inventory of all personal AT devices or assistive services¹²⁷ used by persons with disabilities and provided through health insurance coverage or private funding. The present inventory also does not cover voters’ experiences in using all AT devices listed in this chapter. Chapters VI and VII of this study address research participants’ experiences in using those specific electoral-assistive devices available in England and Spain.

By means of a scoping literature review, as explained in section 2 below, the present chapter provides a non-exhaustive inventory of electoral-assistive devices used in elections to assist persons with disabilities specifically in performing electoral-related activities. To do so, it addresses the following sub-research question:

What are the available and emerging electoral-assistive devices that can be used to assist persons with disabilities to vote secretly and independently?

This chapter is divided into seven sections. Following this introduction, section 2 describes the scoping review methodology used to conduct the inventory. Section 3 provides an overview of the conceptualisation of the ‘electoral cycle approach,’ with an emphasis on the main electoral-related activities which involve voters’ direct participation, such as voter education. Moreover, it addresses the concept of AT and the ‘technological perspective’ (classification of high, medium, and low technology). Section 4 presents an analysis of current electoral-assistive devices. Each device is presented according to the following four criteria: its use in the electoral cycle; target population; classification as low or high-tech (technological perspective); and application (i.e., how the devices can be used). Based on the scoping review, a brief overview will be given of unit cost, opportunities, and challenges related to the use of AT in the context of voting. Examples of relevant ATs are also given in this section. Section 5 discusses new and emerging ATs following the same four criteria used in section 4. Section 6 discusses the main technological trends confirmed by the scoping review. It also highlights some areas for further knowledge development and utilisation. Lastly, section 7 offers some primary conclusions.

126 Personal assistive devices cover a broad range of products including wheelchairs. World Health Organization (n 2).

127 The term ‘AT service’ refers to any service that directly assists an individual with a disability in the use of an AT. For a comprehensive explanation of ‘AT services’. See Alper and Raharinirina (n 2).

2. Methodology

This chapter follows a scoping review protocol to appraise the literature to carry out a comprehensive inventory and analysis of electoral-assistive devices. The scoping review methodology is helpful for analysing a broadly covered topic to appraise the literature and identify key concepts, theories, evidence, or research gaps comprehensively and systematically.¹²⁸ A scoping review encompasses both empirical and conceptual research (published and unpublished) and grey literature. In this study, the novelty of the area of electoral-assistive devices, diverse disciplinary locations of existing literature, and the need for a comprehensive and systematic overview of prior research and any remaining gaps, made a scoping review an appropriate methodology to answer the sub-research question indicated above.

2.1. Design

The scoping review protocol followed existing guidelines for scoping reviews in health and social research methodology with particular attention to Arksey and O'Malley's¹²⁹ review framework and their optional consultation element. Accordingly, the protocol followed in this chapter included a consultation exercise via online interviews and an exchange of emails with experts in accessibility and electoral matters from the International Foundation for Electoral Systems (IFES), CommCISO®, European Disability Forum (EDF), Plena Inclusión Spain, ONCE Spain, Asociación de Profesionales de la Rehabilitación de Personas con Discapacidad Visual (Spain), the UK Government's Accessibility Working Group, the UK Cabinet Office, and WebRoots Democracy from the UK. Contributors provided the researcher with additional references to potential studies and other relevant literature to include in the review.

2.2. Data sources and eligibility

The following databases were searched: Ebsco All, Web of Science, and Google Scholar. These databases were identified by the researcher with the help of a librarian from Maastricht University using a journal indexing system. The search covered peer-reviewed articles published between January 2010 and December 2021. Other sources of literature which enhanced the comprehensiveness of the search included grey literature sources (e.g., Open

128 Pamela Cacchione, 'The Evolving Methodology of Scoping Reviews' (2016) 25 *Clinical Nursing Research* 115; Andrés Guzmán and Adriana Caballero, 'Participation of Persons with Disabilities in Political Life. A Content Analysis of Recent Literature (1997-2019)' (2021) 61 *Revista Estudios Políticos* 154.
129 Hilary Arksey and Lisa O'Malley, 'Scoping Studies: Towards a Methodological Framework' (2005) 8 *International Journal of Social Research Methodology* 19.

Grey and Google Chrome web browser), technology databases (European Assistive Technology Information Network 'EASTIN'), and Wikipedia Corpus. The researcher drew on voting AT terminology to construct operational search terms for electoral-assistive devices. The relevant documents included in this scoping review were published in English or with available English translations. Two main criteria were used for exclusion of articles. Firstly, articles reporting findings or with content not related to the objectives of the review. Secondly, articles with insufficiently informative results, e.g., editorial reviews.¹³⁰

2.3. Study evaluation and synthesis

In the screening process, the researcher followed three stages. First, titles of articles were reviewed. Second, titles and abstracts were reviewed using the inclusion and exclusion criteria as described above (sub-section 2.2.) Third, the full text of articles was screened to comprehensively assess if these articles met the inclusion and exclusion criteria established by the researcher. In addition, a sample of articles (n=5) was double-checked by another early-stage researcher from the Disability Advocacy Research in Europe (DARE) Project to confirm compliance with eligibility criteria of the scoping review. In the extraction process of relevant information about articles, the researcher developed a specific framework for this review (i.e., an Excel sheet). This framework included standard bibliometric data and relevant aspects of the articles.

2.4. Results

From 1,688 records identified through database searching, the researcher reviewed 103 full articles and retained 90 for this scoping review (see Annex 1). Of the (n=90) sources for final review, only one article was published in 2010, the other 89 were published between 2011 and 2021. Most publications (61.1%) were from the US (n=55), with 22.2% (n=20) of the primary studies being conducted in Europe, and the remainder 16.7% (n=15) in other countries including Australia, India, Canada, and South Africa. More than a third (n=38) of the publications were grey literature published on websites (42.2%), 16 were journal articles (17.8%), 12 were official reports (13.3%), 7 were book chapters (7.8%), and the remaining 17 (18.9%) were working papers, theses, newspaper and magazine articles, conference proceedings, books, or patents. The majority (n=65) of the published research explored electronic voting technology. Information regarding challenges for national electoral authorities in procurement and use of AT devices is heterogenous in the literature (i.e., the information is not always included

¹³⁰ The extraction of information from an editorial review is difficult, due, among other factors, to the possible incompleteness of the source index.

in the sources). In the case of emerging technologies, unit cost information is scarce in the literature. Both available and emerging electoral-assistive devices categories and extracted characteristics were organised thematically using deductive thematic analysis. In the next section, the conceptual framework guiding the appraisal of the literature is explained.

3. Conceptual framework

3.1. Electoral cycle approach

According to IFES,¹³¹ the electoral cycle approach provides a framework for analysis of electoral processes (see Figure 1). The electoral cycle approach explains elections as cycles composed of integrated building blocks, with different stakeholders interacting and influencing each other.¹³² Overall, the electoral cycle is divided into three overlapping periods: the pre-electoral period, the electoral period, and the post-electoral period.

Firstly, the pre-electoral period relates to the planning of an election. It includes four main actions: planning (budget and funding, staff recruitment, logistics and security, and procurement); training (procedures development and operational training for election officials); information (voter education, stakeholder liaison, and observer's accreditation); and registration (party registration and voter registration). Secondly, the electoral period consists of four main activities: candidate nominations; campaign (gatherings, debates, and media access); voting (ballot papers printing and distribution, casting ballots, and managing voters' complaints); and results (counting, announcing official results, managing complaints, and appeals). Lastly, the post-electoral period focuses on assessing election implementation. It involves three main actions: review (audits and evaluations); legal or policy reform proposals; and strategy (networking, voter registration update, and professional development).

Direct voters' participation in the above three periods is discussed below.

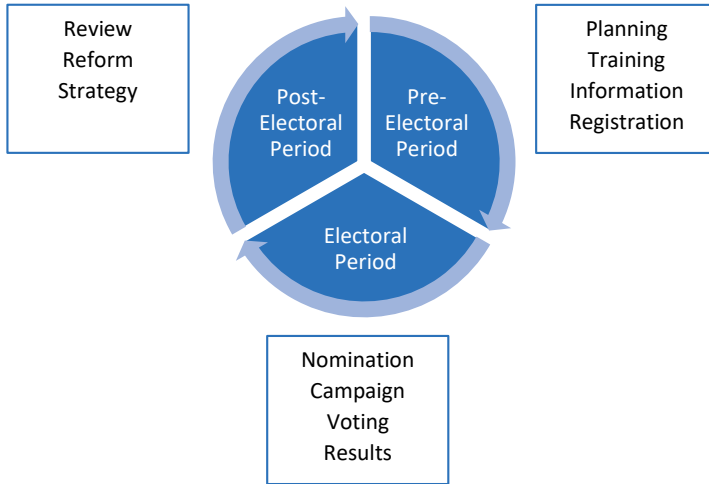
131 International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI), 'Equal Access: How to Include Persons with Disabilities in Elections and Political Processes' (2014) 1 <<https://www.ifes.org/publications/equal-access-how-include-persons-disabilities-elections-and-political-processes>>, 36.

132 Janet Lord, 'Accessible ICTs and the Opening of Political Space for Persons with Disabilities' in Jonathan Lazar and Michael Ashley Stein (eds), *Disability, Human Rights, and Information Technology* (University of Pennsylvania Press 2017), 30.

3.2. Voters' (direct) participation in the electoral cycle

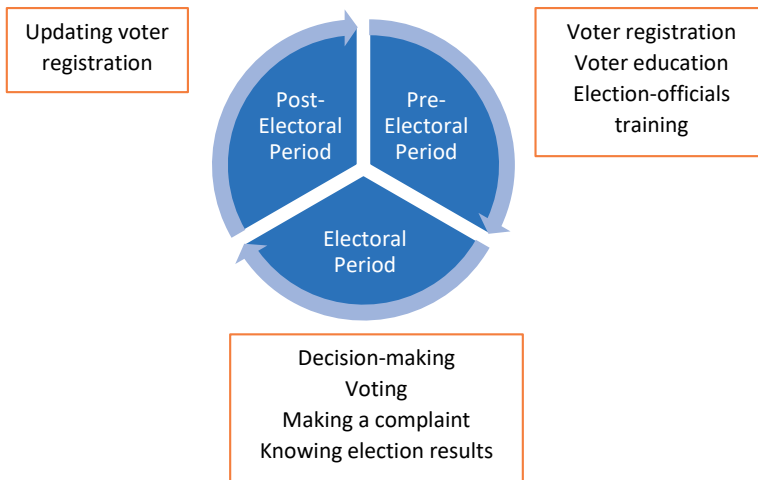
Following guidelines by experts in the field, this section discusses a non-exhaustive list of electoral cycle activities in which voters with disabilities participate directly (see Figure 2).

Figure 1. Electoral-cycle approach



(Image adapted from introductory texts)

Figure 2. Various electoral-related activities demanding voters' direct participation



(Image adapted from introductory texts)

3.2.1. Pre-electoral period activities

In the pre-electoral period, voters participate directly in at least three main activities. First, voter registration involves the requirement that a person who otherwise eligible to vote must register on an electoral roll, which is usually a prerequisite for being entitled to vote.¹³³ In some jurisdictions, voters are required to update their voting registration details when they change residence (e.g., the UK).¹³⁴ In other jurisdictions, e.g., Spain, a national electoral enrolment office uses nationals/residents' changes of age, address, or other personal data, from other government offices to automatically update voter details. In most cases, after getting registered, eligible voters receive a letter (or poll ID card) through the mail or email services informing them of the date, time, and local polling place. To be able to register as voters, persons with disabilities require inclusive voter registration services.¹³⁵

Second, education in support of the electoral process is known as 'voter education' where a voter is the primary target.¹³⁶ It is usually offered by the State itself to avoid political partisan bias. Børhaug¹³⁷ argues that an appropriate voter education programme provides voters with knowledge regarding relevant issues, such as voter registration and filling out ballots. Moreover, voter education initiatives must focus on the needs of voters with disabilities, and provide them with information on how to use existing electoral-assistive devices to vote.¹³⁸

Third, election official's training and information refers to the building of understanding and practical skills of different election officials (with or without disabilities) in relation to electoral processes.¹³⁹ Inadequate training of poll workers might lead to the exclusion of voters with disabilities in practice.¹⁴⁰ Moreover, poll workers must be trained on how to assist disabled voters to use existing electoral-assistive devices.

133 Susan Harrington, 'Voter Registration' (2014) 30 Alaska Business 8.

134 Stephanie B Goldberg, 'Voter Registration' (1993) 79 ABA Journal 87.

135 International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 13).

136 Project ACE. The Electoral Knowledge Network, 'Preventing Election-Related Violence' (*Training and Information*, 2015) <<http://aceproject.org/ace-en/topics/ev/prevention-and-mitigation/ev301/training-and-information>> accessed 19 October 2020.

137 Kjetil Børhaug, 'Voter Education' (2005) 14 Utbildning & Demokrati 51.

138 International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 13).

139 Project ACE. The Electoral Knowledge Network, 'Preventing Election-Related Violence' (n 18).

140 International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 13), 45.

3.2.2. Electoral period activities

In the electoral period, voters participate in at least four main activities. First, voters have the right to make an informed political choice. According to Bruter,¹⁴¹ different forms of electoral organisation, including availability and accessibility of electoral information influence voters' decision-making processes. Moreover, studies have shown that the lack of information in accessible formats during debates and political campaigns is one of the first barriers voters with disabilities face in their voting experience.¹⁴²

Second, in a representative democracy, voting is the method by which the electorate appoints its representatives to government, and by which the elected representatives make decisions.¹⁴³ In a direct democracy, voting is the method by which the electorate directly makes decisions e.g., turn bills into laws.¹⁴⁴ National voting systems vary among countries and use distinct voting methods.¹⁴⁵ The most common voting method by the electorate uses paper ballots on which voters mark their preferences (e.g., UK elections and Senate elections in Spain).¹⁴⁶ Voters can also vote by selecting a ballot of a political party they wish to vote for and putting it into an envelope before placing the envelope in the ballot box (e.g., General Elections in Spain). Other countries, such as Estonia, use electronic ballots.¹⁴⁷ Third, voters have the right to make a voting-related complaint. Complaint processes are a means to contribute to the integrity on an election.¹⁴⁸ These processes must be accessible and non-threatening to facilitate reporting by all voters, including persons with disabilities, of violations of voting rights,. Fourth, letting everyone know election results on time is a part of the transparency process. IFES asserts that because of inaccessible media, voters with disabilities face obstacles to know election results.¹⁴⁹ Accordingly, national electoral authorities are required to provide media providers with recommendations on accessibility issues when disseminating election results.

141 Michael Bruter, 'Electoral Ergonomics: Three Empirical Examples of the Interface between Electoral Psychology and Design' (2019) 9 *Societies* 1.

142 Virginia Atkinson, Rebecca Aaberg and Staffan Darnolf, 'Disability Rights and Election Observation: Increasing Access to the Political Process' (2017) 35 *Nordic Journal of Human Rights* 375; Lord (n 14).

143 Wikipedia Corpus, 'Voting' <<http://corpus.byu.edu/wiki/>> accessed 17 September 2020.

144 *ibid.*

145 Rita Simon and Vassia Gueorguieva, *Voting and Elections the World Over* (Lexington Books 2009); Douglas J Amy, *Behind the Ballot Box: A Citizen's Guide to Voting Systems* (Praeger Publishers 2000).

146 *Ibid.*, 35-42 and 63-70.

147 Christopher Mann and Genevieve Mayhew, 'Voter Mobilization Meets E-Government: Turnout and Voting by Mail From Online or Paper Ballot Request' (2015) 14 *Journal of Political Marketing* 352; Kristjan Vassil and others, 'The Diffusion of Internet Voting. Usage Patterns of Internet Voting in Estonia between 2005 and 2015' (2016) 33 *Government Information Quarterly* 453.

148 Project ACE. The Electoral Knowledge Network, 'Making a Complaint' (*Electoral Integrity*, 2015) <<http://aceproject.org/ace-en/topics/ei/eie/eie02>> accessed 19 October 2020.

149 International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 13).

3.2.3. Post-electoral period activities

In the post-electoral period, unless civil data or an actual civil registry is used as the basis for the State to update voters' registration, individuals and national electoral authorities have the joint responsibility to update the register of voters who have moved residence or whose status has changed.¹⁵⁰ Well-designed voter registration processes and tools are critical to ensure integrity in producing an accurate, reliable, and up-to-date voter's register.

After having examined the electoral cycle approach, the next section examines the term AT as an additional part of the conceptual framework of this inventory.

3.3. Assistive technology (AT)

Some authors¹⁵¹ define AT as part of the wider concept of Information and Communication Technology (ICT). According to the Harmonised European Standard (EN) 301 459,¹⁵² ICT is defined as '*technology, equipment, or interconnected system [...] for which the principal function is the creation, [...] interchange, transmission, reception, or broadcast of data or information.*' Examples of ICT include telecommunications products, computers, digital and interactive television, software applications, and, as already mentioned, AT.¹⁵³ Other authors have described AT as a means to circumvent environmental barriers,¹⁵⁴ reduce reliance on families or caregivers,¹⁵⁵ and increase social and political participation of persons with disabilities.¹⁵⁶ For the present purposes, the CRPD does not define AT but refers to 'ATs' in

150 Project ACE. The Electoral Knowledge Network, 'Voter Registration' (*Electoral Integrity*, 2015) <<http://aceproject.org/ace-en/topics/ei/eif/eif06/default>> accessed 19 October 2020.

151 Mohammad Afshar Ali, Khorshed Alam and Brad Taylor, 'The Mediating Effect of Information and Communication Technology Usages on the Nexus Between Assistive Technology and Quality of Life Among People with Communication Disability' (2020) 23 *Cyberpsychology, Behaviour, and Social Networking* 338; Stephen Macdonald and John Clayton, 'Back to the Future, Disability and the Digital Divide' (2012) 28 *Disability & Society* 1.

152 ETSI; CENELEC; & CEN, *EN 301 459 v2.1.2 (2018-08): Accessibility Requirements for ICT Products and Services* (European Telecommunications Standards Institute 2018) <https://www.etsi.org/deliver/etsi_en/301500_301599/301549/02.01.02_60/en_301549v020102p.pdf>.

153 European Platform for Rehabilitation, 'Assistive Technologies and ICT' (*Our Expertise*, 2019) <<https://www.epr.eu/our-expertise/assistive-technologies-and-ict/>> accessed 21 October 2020.

154 Macdonald and Clayton (n 33); Louise-Bender Pape and J Kim Weiner, 'The Shaping of Individual Meanings Assigned to Assistive Technology: A Review of Personal Factors' (2002) 15 *Disability Rehabilitation* 5.

155 Helen Hoenig, Donald H Taylor and Frank A Sloan, 'Does Assistive Technology Substitute for Personal Assistance Among the Disabled Elderly?' (2003) 93 *American Journal of Public Health* 330.

156 Desmond and others (n 1); World Wide Web Consortium (W3C), '[DRAFT] Basic Glossary for WAI Documents' (*WAI Working Groups and Interest Groups*, 2020) <<https://www.w3.org/WAI/lexicon/#equiv>> accessed 13 October 2020; Alper and Rahariririna (n 2).

plural. This is a term that covers AT and AT devices and systems. For example, Article 2 CRPD defines communication by using some AT related terms. It provides as follows:

*Communication includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.*¹⁵⁷

In this study, the researcher refers to a general definition of ICT such as those included in the European Standard EN 301 459.¹⁵⁸ Furthermore, the researcher endorses the idea of AT as part of ICT. This approach provides a better understanding of how some electoral devices and services combine two or more ICTs, including ATs. For example, an electronic voting system might work through a computer connected to the Internet and may include ATs such as a screen reader, screen magnifier, or a voice recognition software. Similarly, a tactile ballot guide can include a CD or a digital file from portable USB drives with aural information to assist voters to vote by post or at polling stations. The concept of assistive device is addressed below.

3.3.1. (Electoral) assistive device

The International Classification of Functioning, Disability and Health (CIF),¹⁵⁹ which is the World Health Organization (WHO) framework for measuring health and disability at both individual and population levels, defines an ‘assistive product and technology’ as ‘*any product, instrument, equipment, or technology adapted or specially designed for improving the functioning of a person with a disability.*’¹⁶⁰ Similarly, AT manufacturers and providers¹⁶¹ use the term ‘assistive device’ (and related terms such as ‘assistive product’) to refer to any item, piece of equipment, product, system, or software, whether acquired commercially off the shelf, modified, or customised, that is used to increase, maintain, or improve an individual’s functioning and independence and thereby promote their wellbeing. This broad terminology means that a wide range of products are eligible for inclusion in an inventory of AT used in elections.

157 UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Article 2.

158 ETSI; CENELEC; & CEN (n 34).

159 World Health Assembly, ‘Resolution WHA 54.21 International Classification of Functioning, Disability and Health’ (*Agenda item 13.9*, 2001) <https://apps.who.int/gb/archive/pdf_files/WHA54/ea54r21.pdf> accessed 29 September 2021.

160 World Health Organization (n 2).

161 Desmond and others (n 1); World Wide Web Consortium (W3C), ‘[DRAFT] Basic Glossary for WAI Documents’ (n 38); Assistive Technology Industry Association (ATIA).

In this chapter, the researcher classified electoral devices and systems as AT if they are intended to increase, maintain, or improve an individual's functional performance; are provided to the public or at polling stations by national electoral authorities; their use is under some measure of control by the voter; and there is a level of meaningful interaction by the end-user with the device/system.¹⁶² This therefore excludes ICTs used in elections over which the voter has no control or interaction with, e.g., election tabulation software. Exceptionally, this chapter includes ICTs used to train election officials, which may not meet the strict definition of an 'assistive device'. These technologies are included in the inventory if they support election officials (including persons with disabilities) to improve their work during elections to address effectively the needs of voters with disabilities.

Lastly, it is noteworthy that the decision to use electoral-assistive devices, and particularly high technology, raises social and security concerns. This topic is not addressed in detail in this study for two reasons. First, the researcher followed a scoping review protocol to address a specific sub-research question, as described above. The sub-research question provided an area to focus on regarding the broad topic of electoral-assistive devices. Second, this scoping review confirmed that information regarding social and security challenges for national authorities in the implementation of AT devices is scarce in the literature. However, the researcher recognises that States face several affordability, sociocultural, and security challenges for implementing certain electoral-assistive devices to be used by persons with disabilities when voting. For example, Macdonald and Clayton¹⁶³ argue that ICT might create new forms of disabling barriers because of the digital divide. Similarly, Foley and Ferri¹⁶⁴ illustrate the ways that technology can result in new forms of social exclusion. Such exclusion can be the results of formal processes, for example, the discursive practices around AT devices at schools, where AT is matched prescriptively to students with 'special needs' or simply 'impairments'.¹⁶⁵ Moreover, Foley and Ferri¹⁶⁶ argue that exclusion can also be subtler, for example, when technological solutions privilege specific ways of being or a 'normal' and 'capable' user.

In this study, the researcher supports the idea that national electoral authorities must critically review the premised assumption that technology is always positive and 'wanted' by all persons with disabilities. In addition, the respect of cultural values and social expectations about technology is necessary to recognise that implementing technological voting solutions is not

162 Assistive Technology Industry Association (ATIA) (n 43).

163 Macdonald and Clayton assert that the 'digital divide' is the gap that exists between those who have access to and use of ICT and those who do not. Those on the 'wrong' side of this divide are characterised by their already disadvantaged positions, which is commonly the case of persons with disabilities. See Macdonald and Clayton (n 33).

164 Alan Foley and Beth Ferri, 'Technology for People, Not Disabilities: Ensuring Access and Inclusion' (2012) 12 *Journal of Research in Special Educational Needs* 192.

165 *ibid*, 192.

166 *ibid*.

exempt from creating new forms of disabling barriers. Furthermore, the security of any voting method, whether paper-based or electronic, is critical to ensuring trust and confidence in the election outcome.¹⁶⁷ Studies show that both electronic and paper ballots (in person or by mail) are vulnerable to elections fraud.¹⁶⁸ In elections, both security and accessibility principles are crucial for enabling voters with disabilities to vote securely and independently, as stated by WebRoots Democracy in the UK.¹⁶⁹ This means that States should consider that holding accessible voting methods integrating ATs to a much higher standard than current paper ballots might limit real possibilities for persons with disabilities to take part in elections.

Next, classification of assistive devices is explained from a technological perspective.

3.4. Technological perspective

According to the Organisation for Economic Co-operation and Development (OECD),¹⁷⁰ AT devices are classified based on direct research and development (R&D) intensity and R&D embodied in a device. Technology providers use this technological perspective to classify their ATs products as low or high tech.¹⁷¹ Overall, the operation of low-tech devices is mechanical (i.e., manually), without a power source (i.e., non-electrically), simple, easily understandable, and cheap. Conversely, operation of high-tech devices is power source dependent, complex, and expensive. This technology-intensity classification is however relative.¹⁷² Individual countries may have slightly different classifications, even though they use the same method.¹⁷³ Therefore, many manufacturers use different indicators (and not only R&D intensity) to classify their products as high, medium-high, medium-low, or low-tech.¹⁷⁴ In this chapter, a

167 WebRootsDemocracy, 'The Cratos Principles: An Essential Guide to Assessing Online Voting Systems for Use in Elections' (2020) <<https://webrootsdemocracy.org/2020/04/02/webroots-democracy-publishes-the-cratos-principles/>>, 21.

168 Brennan Center for Justice, 'Debunking the Voter Fraud Myth' (*Ensure Every American Can Vote*, 2017) <<https://www.brennancenter.org/our-work/research-reports/debunking-voter-fraud-myth>> accessed 6 November 2020; Justin Levitt, *The Truth About Voter Fraud* (Brennan Center for Justice (New York University School of Law) 2007).

169 WebRootsDemocracy (n 49), 6-13.

170 OECD, 'Directorate for Science, Technology and Innovation' (*Science, technology and innovation policy*, 2020) <<https://www.oecd.org/sti/>> accessed 15 October 2020.

171 European Parliament, 'Assistive Technologies for People with Disabilities. Part II, Current and Emerging Technologies' (*EPRS European Parliamentary Research Service. Scientific Foresight Unit (STOA)*, 2018) <<https://op.europa.eu/en/publication-detail/-/publication/d657a81b-184c-11e8-ac73-01aa75ed71a1/language-en>> accessed 23 September 2020.

172 Science and Technology Policy (STP) Division. OECD, 'ISIC Rev. 3 Technology Intensity Definition.' (*Classification of manufacturing industries into categories based on R&D intensities*, 2011) <<https://www.oecd.org/sti/ind/48350231.pdf>> accessed 15 October 2020.

173 *ibid.*

174 Assistive Technology Industry Association (ATIA) (n 43).

technological perspective is adopted to classify AT in elections as low-, medium-, or high-tech according to authors.

In the following section, the resulting inventory of currently available electoral-assistive devices is presented.

4. Available electoral-assistive devices

This section provides an overview of currently available electoral-assistive devices to assist voters with disabilities. These devices are divided into the following six groups: (i) haptic aids; (ii) reading aids; (iii) writing aids; (iv) visual aids; (v) electronic voting aids; and (vi) other communication aids. Each device is presented according to its use in the electoral cycle, target population, and application (i.e., how the device can be used). A brief discussion on unit costs (in local currency and at the time of writing) and challenges of using AT in elections is included as elaborated by authors. Examples of devices used in different countries include public domain images or links. References to authors are included in the footnotes of each section. The inventory below does not follow any order of priority.

4.1. Haptic aids

4.1.1. Voting instructions or voter slips formatted in Braille

Use in the electoral cycle	Voter education and voting.
Target Population	Voters with visual impairments (and deafblind persons) who know Braille code.

Application:

The Braille system is a *haptic aid* (or ‘pertaining to the sense of touch’ or ‘tactile’).¹⁷⁵ It involves tactile sensations, i.e., information generated and transmitted by different types of receptors, mechanoreceptors (receptors on skin deformation), and proprioceptive receptors (receptors on muscle length and force, and joint angle). In its simplest form, Braille is a tactile code for most languages (one letter is represented by one symbol). Persons with visual (and hearing) impairments might learn the Braille system to read and write. In elections, a voter’s guide or voting instructions formatted in Braille can provide voters with the information and

¹⁷⁵ Hirotsugu Kaga and others, ‘Haptic Search in Divided Areas: Optimizing the Number of Divisions’ (2017) 59 Japanese Psychological Research 144.

tools they need to cast their ballot.¹⁷⁶ National electoral authorities have also introduced other materials written in Braille to assist voters, for example, Braille voting ballot papers (although not highly recommended to preserve ballot secrecy) and voter slips that have voter's name, ID number, and information on polling station or booth number.¹⁷⁷

Examples:

- During the 2020 U.S. elections, the Election Assistance Commission distributed more than 25,000 Braille voting rights cards. The cards provide voters with information on the voting process.

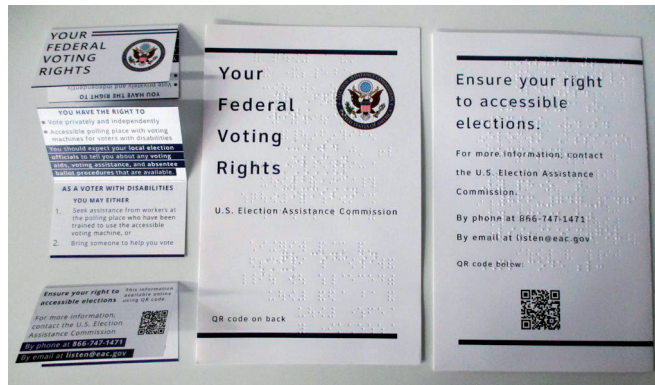


Image at <https://www.eac.gov/election-officials/voting-accessibility>

¹⁷⁶ International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 13); World Blind Union, 'Blind People and Accessible Voting' (2014) <www.worldblindunion.org/resources/documents> accessed 26 October 2020.

¹⁷⁷ U.S. Election Assistance Commission, 'Voting Accessibility' (*Voters*, 2018) <<https://www.eac.gov/voters/voting-accessibility>> accessed 3 November 2020.

- In 2019 Lok Sabha (India) elections, the Election Commission introduced Braille voter slips for the first time along with electronic voting machines with stickers that have perforations to help voters with visual impairments to read. Information is written in Braille and in black and white on the voter slip.



Image at <https://www.firstpost.com/politics/assembly-elections-2021-braille-voter-slips-to-be-provided-for-visually-impaired-electors-all-you-need-to-know-9434661.html>

More information at <https://www.indiatoday.in/mail-today/story/ec-comes-up-with-braille-voter-slips-evms-with-stickers-1498976-2019-04-11>

- Since 2011, in Spain, voters with visual impairments who know how to read and write Braille can receive at home or at polling stations a kit containing a set of large envelopes. There is one envelope for each party running in the elections to the Congress of Deputies. Envelopes are labelled accordingly in Braille and in print and contain a standard ballot paper. Inside the kit, there is also a smaller standard envelope (as used by all voters). Voters place their selected ballot paper in the standard envelope. Voters also receive voting instructions in Braille. The kit's unit price varies depending on the type of elections: € 64.36 (General Elections), € 35.22 (Spanish regional elections), and € 30.25 (European Parliament Elections).¹⁷⁸

¹⁷⁸ Information provided by Mr. Luis Palomares Nájera. Head of the Information and Accessibility Unit. ONCE Spain. Email from 15 December 2020 addressed to the author.



Images at <https://m.europapress.es/epsocial/igualdad/noticia-normalidad-cuertas-elecciones-todas-personas-discapacidad-podido-votar-2019110211200.html> & <http://madrilanea.com/2019/11/07/escoger-sin-ver-votar-sin-mirar/>

Discussion:

Braille documents are medium-low tech devices. Braille materials can be produced for US\$1 per print page (minimum charge is US\$5); US\$0.75 per page if more than one copy is needed; US\$6 per bind of each volume; and US\$100 additional fee if original items need to be scanned from hard copy.¹⁷⁹

Voting items formatted in Braille give people independence when reading and writing, as well as understanding signage in public spaces. Braille may thus be useful for voting processes as it is meant for providing various materials, including voting instructions, in an accessible format. Some aspects to consider when implementing electoral information in Braille format include the following: not all blind and visually impaired people use Braille code;¹⁸⁰ printing Braille is very time-consuming and there are many cases where access is not feasible to all types of written information;¹⁸¹ and the decline in users of Braille may constitute an upcoming educational reality in several countries.¹⁸²

179 American Council of the Blind, 'Producers of Braille Documents' (*Braillelt.com*, 2020) <<https://www.acb.org/producers-braille-documents#:~:text=Braille materials can be produced,than one copy is needed.>> accessed 12 November 2020.

180 Sight Scotland, 'Braille Facts' (*Braille*, 2018) <<https://sightscotland.org.uk/articles/information-and-advice/braille-facts>> accessed 12 November 2020.

181 Vassilios Argyropoulos and others, 'An Investigation of Preferences and Choices of Students with Vision Impairments on Literacy Medium for Studying' (2019) 37 *British Journal of Visual Impairment* 154, 155.

182 *ibid.*, 155.

4.1.2. Tactile Ballot Guide (‘tactile voting device’, ‘stencil’, or ‘ballot template’)

Use in the electoral cycle	Voting
Target Population	Voters with dyslexia, visual impairments, fine motor issues, or low literacy, and deafblind persons.

Application:

A tactile ballot guide enables a voter to independently mark the ballot.¹⁸³ A tactile ballot guide is usually a lightweight plastic/hard cardboard device that can be reused several times by multiple voters when marking their ballot papers and in multiple elections. A standard tactile ballot guide is flat with raised ridges along three sides to hold a ballot paper firmly in place.¹⁸⁴ The right front of the tactile ballot guide must have clear and non-decorative lettering, good colour contrast, and use large print, Braille, or raised letters or dots (if Braille literacy is low), and the cut-out sections are usually indicated with a black border to assist people to find where to mark their vote. Commonly, the right front forms a flap, under which the ballot paper is to be inserted. Some tactile ballot guides have adhesive to adhere to the ballot paper to prevent slippage. Once the voter inserts the ballot paper and aligns it with the very top of the tactile ballot guide, the cut-out windows on the flap contain the marking blocks on the ballot paper where the voter’s mark must be made.

Examples:

- In 2021 Armenian general elections, blind voters used a tactile ballot guide to vote secretly. The tactile ballot guide was made of cardboard. It consisted of folders formatted in Braille. Voters took out the ballot paper of their political choice from the folders to cast their votes. Voters also received a Braille list of all political parties competing in the polls as well as voting procedures in Braille.¹⁸⁵

183 International Foundation for Electoral Systems (IFES), ‘Tactile Ballot Guides’ (2017).

184 DW, ‘Is It Hard for Blind People to Vote in Germany?’ *Top Stories* (Berlin, 13 August 2020) <<https://www.dw.com/en/is-it-hard-for-blind-people-to-vote-in-germany/a-54552536>>; Pakflatt, ‘Accessible Voting Equipment’ (*Election Equipment Solutions*, 2018) <<https://pakflatt.com/products>> accessed 5 November 2020.

185 EBU European Blind Union (n 3).



This image was shared by Dr Anthony Bowyer, Europe and Eurasia Advisor at IFES. (Consultation exercise)

- Ireland implemented tactile ballot guides for the first time in 2018 for presidential elections and a referendum.¹⁸⁶ Tactile ballot guides were manufactured by Pakflatt® (from the UK).¹⁸⁷ In presidential elections, besides using the tactile ballot guides, voters could also call a free phone number to listen to a list of electoral candidates. This recording was also available to be listened to at any time, including at home, at the polling station, and in the polling booth. Voters could also find a list of candidates on the Electoral Commission's website.

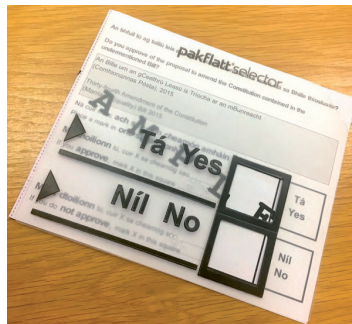


Image at <https://www.ncbi.ie/all-you-need-to-know-about-the-tactile-ballot-paper-template/>

- At federal elections, in Germany, blind voters who know Braille can use a tactile ballot guide in Braille to vote. Voters can also request to receive an audio ballot paper at home to guide them when using the tactile ballot guide to vote.

186 EBU European Blind Union, 'Accessible Voting in Ireland' (*Publications and Resources*, 2018) <<http://www.euroblind.org/newsletter/2019/june/en/accessible-voting-ireland>> accessed 5 November 2020.

187 Pakflatt (n 66).

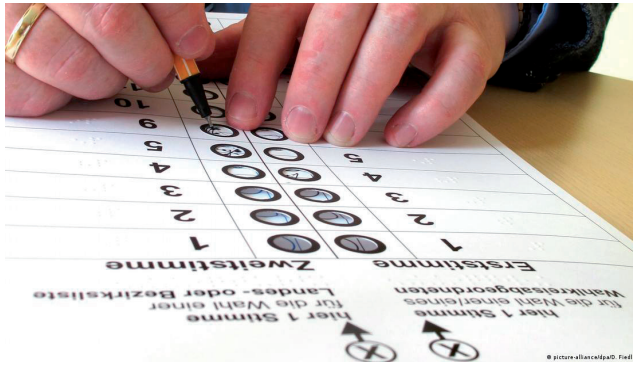


Image at <https://www.dw.com/en/is-it-hard-for-blind-people-to-vote-in-germany/a-54552536>

Discussion:

(No public price information is available on tactile ballot guide manufacturers' websites, such as Pakflatt® (UK) <https://pakflatt.com/products/tvd>). According to IFES,¹⁸⁸ developing a tactile ballot guide is generally not expensive. Nevertheless, it requires advance planning as the tactile ballot guide and the ordinary official ballot must be designed at the same time.

Tactile ballot guides are medium-low tech devices that, in principle, provide independence to voters by enabling them to mark their ballots. According to the European Blind Union,¹⁸⁹ the usefulness of a tactile ballot guide may be limited as it does not allow striking, adding, or reordering candidates as is sometimes required from voters, depending on the type of elections. Authors¹⁹⁰ also affirm that, in some cases, even with a tactile ballot guide, voters still require assistance to read the names of candidates on the standard ballot paper. It is thus common that voters are forced to ask poll workers about the order in which the names of the candidates appear on the ballot paper. Such practice can compromise ballot secrecy. Accordingly, when making tactile ballot guides available to be used by voters, it is advisable to include a Braille, large print, or aural format guide on the order in which the names of the parties/candidates appear on the ballot paper so that voters can cast their ballots independently. Authors¹⁹¹ also suggest that adequate production of tactile ballot guides depends on finishing production of the devices at least 30 days before an election day, doing it centrally by one provider, and

¹⁸⁸ International Foundation for Electoral Systems (IFES) (n 65).

¹⁸⁹ EBU European Blind Union (n 3).

¹⁹⁰ Blind SA, 'Voting Aid for Voters with Disabilities and Special Needs' (*Blog*, 2019) <<https://blindsa.org.za/2019/05/03/voting-aid-for-voters-with-disabilities-and-special-needs/>> accessed 26 October 2019; World Blind Union (n 177).

¹⁹¹ Blind SA (n 72); International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 13).

having a unified national ballot template, which is more difficult in the case of local, city, or municipal elections.

IFES highlights the relevance of working collaboratively with DPOs of persons with visual impairments to develop a tactile ballot guide according to people's needs and expectations.¹⁹² It also strongly recommends the use of tactile ballot guides rather than tactile ballots that are ballots which have Braille or tactile symbols printed directly on the ballot. Although (Braille) tactile ballots are electoral-assistive devices, such devices might increase the risk of 'electoral traces' specifically for voters with disabilities who use a tactile ballot to vote.¹⁹³ Electoral traces are any physical, digital, or social evidence of a voter's choices in an election.¹⁹⁴ From this perspective, the use of tactile ballot is not recommended in this study.

4.2. Reading aids

4.2.1. Easy-to-read electoral information

Use in the electoral cycle	Voter education, training of election officials, and making an informed political choice.
Target Population	Persons with intellectual or mental impairments, with reading or writing difficulties, language learners, or those who prefer easily written documents.

Application:

Easy-to-read format is a more accessible style of language.¹⁹⁵ According to the Victorian Electoral Commission (Australia),¹⁹⁶ easy English uses clear and simple language: one idea per sentence, short sentences, direct language, and minimum punctuation. Readers are usually addressed as 'you' and manuscripts include pictures or photographs to add meaning to the text.

¹⁹² International Foundation for Electoral Systems (IFES) (n 65).

¹⁹³ *ibid.*

¹⁹⁴ Wolter Pieters, 'Combatting Electoral Traces: The Dutch Tempest Discussion and Beyond' in P Ryan and B Schoenmakers (eds), *E-Voting and Identity. Vote-ID. Lecture Notes in Computer Science*, vol 5767 (Springer 2009) <https://doi.org/10.1007/978-3-642-04135-8_11>.

¹⁹⁵ Lord (n 14); WebRootsDemocracy, 'Inclusive Voting' (2017) <<https://webrootsdemocracy.org/inclusive-voting/>>.

¹⁹⁶ Victorian Electoral Commission, 'Easy English Guides on Voting' (*Learn to vote*, 2020) <<https://www.vec.vic.gov.au/voting/learn-to-vote/easy-english-guides-on-voting>> accessed 29 September 2021.

Some voters need easy-to-read information on elections, political party manifestos, candidates, and campaign events to make an informed political choice.¹⁹⁷

Examples:

- Mencap and the UK Electoral Commission have published several easy-to-read guides for voters with a learning disability. These guides provide voters with information about elections taking place across the UK including what voting is, and highlight important dates that voters need to remember for the elections.

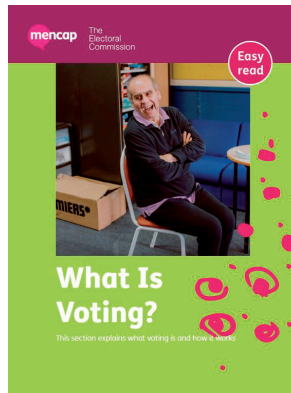


Image at <https://www.mencap.org.uk/get-involved/campaign-mencap/elections/guides-voting>

- In Spain, the standards UNE 153101EX ‘Easy to Read Guidelines and Recommendations for Drawing Up Documents’ and UNE 153101EX ‘Guide in Easy-to-Read for Validators of Documents’ were published in 2018.¹⁹⁸ Following these standards, in the 2019 General Elections, within #MyVoteCounts campaign, Plena Inclusión published some documents in easy-to-read format, including voter education guides.¹⁹⁹ Some of these publications were released in collaboration with the State.

197 Plena Inclusión, ‘¿Votar Es Fácil o Difícil?’ (*#MiVotoCuenta*, 2019) <<http://mivotocuenta.es/wp-content/uploads/2019/01/Cuestionario-Mi-voto-cuenta-2019-1.pdf>> accessed 23 June 2020.

198 UNE. Normalización Española, ‘Norma Técnica Sobre Lectura Fácil’ (*CTN 153/GT1*, 2018) <<https://revista.une.org/4/primera-norma-tecnica-sobre-lectura-facil.html>> accessed 25 October 2020.

199 Plena Inclusión Ministerio del Interior & Ministerio de Sanidad Consumo y Bienestar Social, ‘Manual Para Participar En Una Mesa Electoral. Elections Generales Noviembre de 2019.’ (*#MiVotoCuenta*, 2019) <<https://plenainclusionceuta.org/2019/10/01/manual-participar-una-mesa-electoral/>> accessed 24 June 2020.



Image at <http://mivotocuenta.es/programas/>

More information at <https://plenainclusionceuta.org/2019/10/01/manual-participar-una-mesa-electoral/> <http://mivotocuenta.es/programas/>

- In Australia, the Victorian Electoral Commission released the application ‘Voters Voice’ for the 2018 Victorian State election. It communicates voter education information in both easy English and Australian sign language.

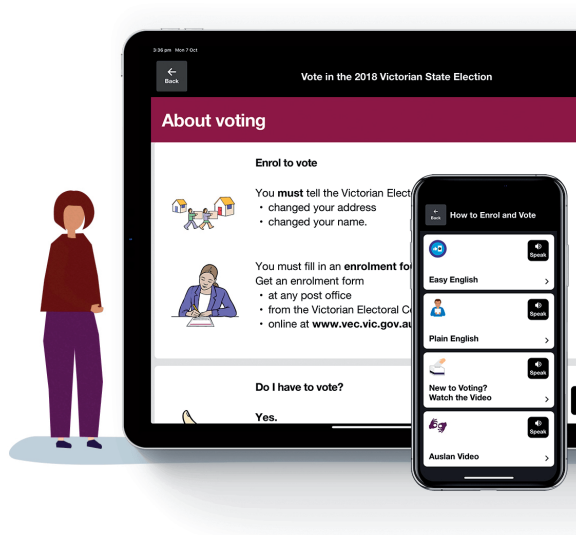


Image at <https://www.conducthq.com/work/vec-voters-voice-accessible-election-app/>

Discussion:

Overall, developing easy-to-read documents involves low-tech systems. According to the ‘Easy Read Company’ from the UK, a service of easy read translation costs from £79 per A4 page of Easy Read.²⁰⁰ Authors²⁰¹ refer to the need of building partnerships between DPOs, electoral authorities, and political parties when designing electoral documents in alternate and accessible formats. These authors also mention the importance of making easy-to-read documents available to voters prior to the opening of the early or postal vote window, as well as following local standards and guidelines on drawing up easy-to-read documents.

4.3. Writing aids**4.3.1. Signature guides and hand stamps**

Use in the electoral cycle	Voter registration, voting, and updating voter register.
Target Population	Voters with visual or physical impairments that compromise fine motor skills, attention issues, or hand tremors.

Application:

Signature guides and stamps are used in elections that require the voter to sign a document, make a mark, or write down numbers.²⁰² A signature guide is a plastic frame that helps the user to keep their writing in a straight line with letters at an even height. The user writes within a rectangular cut-out window of the device. By simply placing a signature guide on a document, where the voter needs to sign and holding it in place, a voter can sign a form where needed. Moreover, the contrast between the thick signature guide frame and the paper the voter needs to write on makes handwriting easier.

200 The Easy Read Company, ‘Easy Read Translation’ (*Easy Read Translation service*, 2020) <<http://www.easyreadcompany.co.uk/easy-read-translation/>> accessed 10 November 2020.

201 Plena Inclusión & Ministerio del Interior, ‘Guía de Accesibilidad. Elecciones Generales 10 de Noviembre de 2019’ (*#MiVotoCuenta*, 2019) <http://www.elecciones.mir.es/generales10N2019/almacen/pdfs/1-TripticolecturafacilEG2019_es.pdf> accessed 24 June 2020; The Electoral Commission, ‘Elections for Everyone: Experiences of People with Disabilities at the 8 June 2017 UK Parliamentary General Election’ (2017) <https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Accessibility-report-call-for-evidence.pdf> accessed 8 July 2020.

202 EBU European Blind Union (n 3); Guide Dogs of Hawaii (NGO) (n 6).

Hand stamps are used to sign any election document (e.g., signature stamp) or impress a marking on a paper. In some elections, according to the European Blind Union,²⁰³ stamps may be easier to operate than a pen and allow the voter to manually choose a candidate, for example.

Examples:

- In the UK, returning officers allow voters who use a signature guide to use it to vote at a polling station. The UK Royal National Institute of Blind People (RNIB) offers for purchase a signature guide on its website <https://shop.rnib.org.uk/black-white-signature-guide.html> for £1.20 (incl. VAT/unit cost).



Image at <https://shop.rnib.org.uk/black-white-signature-guide.html>

- In Oregon, U.S., State elections law²⁰⁴ sets forth that it is legal for a voter with a disability to use a signature stamp or other indicator of the person's signature to sign any election document.

More information at <https://www.oregonlaws.org/ors/246.025.html>

203 EBU European Blind Union (n 3).

204 Legislative Counsel Committee, 'Oregon Revised Statutes (ORS) 246.05-2020. Vol.6/Chapter 246' (*Administration of Election Laws; Vote Recording Systems*, 2019) <<https://www.oregonlaws.org/ors/246.025.html>> accessed 20 November 2020.

- In Moldova, voters are required to mark their ballot with a stamp with the inscription ‘Votat’ (‘Voted’ in English).²⁰⁵ On the ballot paper, there is a small circle with 15mm diameter next to each candidate or party to apply the stamp.²⁰⁶ The stamp is available to all voters, including persons with disabilities.



Image at https://www.ipn.md/ro/peste-43-de-mii-de-romani-din-republica-moldova-7965_1069494.html

Discussion:

Signature guides and stamps are low-tech devices. Providing these devices to voters in elections can be done at a relatively low cost. For example, MaxiAids²⁰⁷ manufactures a regular signature guide (black or red plastic and 4 x 2.2 x 0.1 inches) available on Amazon.com for US\$6.99 (incl. taxes/unit). Imprint 360 manufactures a heavy self-inking rubber stamp, with a 9/16” x 1-1/2” impression size and laser engraved for clean and precise imprints, which is available on Amazon.com for US\$9.75 USD (incl. taxes/unit).²⁰⁸ The European Blind Union (EBU) recommends making signature guides and stamps available to voters with visual impairments to assist them to fill out a ballot and sign documents where appropriate.²⁰⁹

205 EBU European Blind Union (n 3).

206 *ibid.*

207 MaxiAids, ‘Low Vision Products & Tools for the Blind’ (*Catalog*, 2020) <<https://www.maxiaids.com/>> accessed 11 November 2020.

208 <https://www.amazon.com/Imprint-360-AS-IMP1011-Commerical-Self-Inking/dp/B01DAKFXXCG> accessed 11 November 2020.

209 EBU European Blind Union (n 3).

4.3.2. Easy-to-grip devices

Use in the electoral cycle	Voter registration, voting, and updating voter register.
Target Population	Voters with physical impairments that compromise fine motor skills or hand tremors.

Application:

Easier-to-grip devices are writing instruments with innovative and comfortable grip designs that provide an efficient combination of softness and support for the hand and arm.²¹⁰ Overall, these devices are made of silicone for an ergonomic experience and good weight balance. Voters who have difficulty writing due to fine motor skills issues or hand tremors may find writing grips convenient and enable them to easily position the tip of the pen/pencil on the ballot paper.²¹¹

Example:

- The ‘RingG-Pen Ultra Grip Support for Writing and Art Tools®’ is manufactured by Grandee Corporation. It costs US\$15.35 (excl. taxes/unit cost) on Amazon.com.²¹² It is a solid and steady grip that ensures stable pen gripping.



Image at <https://www.amazon.com/RinG-Pen-Ultra-Support-Writing-Tools/dp/B00OGUFH2Q?th=1>

210 International Foundation for Electoral Systems (IFES) & National Democratic Institute (NDI) (n 13); Lord (n 14); McGrew (n 4).

211 The Information Technology & Innovation Foundation, ‘50 Ideas for More Accessible Elections’ (2012) <<http://www2.itif.org/2012-fifty-ideas-accessible-elections.pdf>>.

212 <https://www.amazon.com/RinG-Pen-Ultra-Support-Writing-Tools/dp/B00OGUFH2Q?th=1> accessed on 16 November 2020.

Discussion:

Easy-to-grip devices are low-tech products. Electoral authorities can provide voters with easy-to-grip devices at a relatively low cost. For example, in the Netherlands, Grippers.Inc²¹³ offers different types of grippers to purchase such as regular grip pen (€ 1.03 incl. taxes/unit when ordering 10 units); ring-pen (€ 4.45 incl. taxes/unit when ordering 10 units); and foam grippers (€0.60 incl. taxes/unit when ordering 10 units). These writing aids are affordable devices that may assist voters when signing or filling in documents.

4.3.3. Writing slant boards and tablet easels for ballot booth

Use in the electoral cycle	Voting
Target Population	Voters with physical impairments (including wheelchair users) and those who prefer sitting positions to read and write.

Application:

Writing slant boards and tablet easels are devices made of resistant acrylic or wood. Overall, these devices are set on a surface/desk and are helpful to improve the reading surface or hand position when writing.²¹⁴ Slant boards are elevated at 20 to 30 degrees while desk easels have a much steeper angle (about 60 degrees).²¹⁵ Some boards are adjustable and have clips at the top to hold individual papers securely. Both slant boards and tablet easels can reduce eye fatigue and improve body posture, as well as comprehension.

213 Grippers, 'Grippers-Santpoort' (*Writing-aids*, 2020) <<http://www.grippers.nl/en/>> accessed 11 November 2020.

214 Quesenbery and Sutton (n 7).

215 Jennifer Dodge, 'Fine Motor Tools' (*School-ot*, 2015) <[http://www.school-ot.com/fine motor tools.html](http://www.school-ot.com/fine%20motor%20tools.html)> accessed 29 September 2021.

Examples:

- The ‘Ergonomic Writing Slant Board®’ manufactured by Adapt-Ease Inc costs €39.79 (incl. VAT/unit price) on Etsy.com.²¹⁶



Image at <https://www.amazon.com/Adapt-Ease-Ergonomic-Writing-Slant-Board/dp/B01BTZKSBU>

Discussion:

Writing slant boards and tablet easels are affordable and low-tech devices that can be installed on a ballot booth’s surface. These adjustable devices facilitate reading and writing by voters by providing voters with a variation of height and angle options. According to the U.S. Election Assistance Commission,²¹⁷ voters might use a slant board to read and mark their ballot papers more comfortably. This applies mainly to those voters who have needs regarding viewing documents or arm support when writing.

4.3.4. Adjustable polling booth

Use in the electoral cycle	Voting
Target Population	Voters with physical impairments (including wheelchair users) and those who prefer ergonomic sit-to-stand booths to read and write.

Application:

A polling booth is a compartment with one open side in which one voter at a time stands or even sits to mark their ballot paper. An accessible polling booth is specially designed with wide surfaces and height-adjustable legs and wrist rest.²¹⁸ A voter can position the booth’s table at a convenient height to enable them to mark their ballot, whether sitting or standing.

²¹⁶ <https://www.etsy.com/es/listing/488827171/adaptar-ease-ergonomic-writing-slant> accessed on 11 November 2020.

²¹⁷ U.S. Election Assistance Commission (n 59).

²¹⁸ Pakflatt (n 66).

These devices also protect ballot secrecy and provide voters with a more comfortable physical experience.

Examples:

- The ‘Franklin V/4 Polling Booth®’ is manufactured by Pakflatt. It is a four-compartment booth that can be set up with two, three, or four compartments to suit the space available. All compartments are accessible to wheelchair users, or those who need to sit while casting their ballots. The voter can also choose which table height is most suitable for their needs. (No cost information is available on the Internet)



Images at <https://pakflatt.com/case-studies/a-solution-for-the-us-market>

- The ‘HCP Select Deluxe Voting Booth’ is manufactured by ElectionSource®. The booth is designed for wheelchair users. The device has a large writing surface that can easily accommodate voting paper materials, an Optical Scan paper ballot, or an LED Light Assembly installed. It costs US\$226.0 (excl. taxes/unit).



Images at <https://electionsource.com/collections/accessibility-voting-booths/products/hcp-select-deluxe-voting-booth-with-handicap-legs-led-lights>

Discussion:

Overall, accessible polling booths are medium-tech devices that might reduce voters' physical fatigue when voting. These devices also accommodate wheelchair users and offer them a wide and stable platform when reading and marking their ballots. Cost information is scarce in the literature.

4.4. Visual Aids***4.4.1. Lighting; large-print format; and magnifying devices***

Use in the electoral cycle	Voting
Target Population	Voters with visual impairments (low vision), attention difficulties, and those who prefer magnifying texts or optimal lighting when reading/writing.

Application:

Some voters may be challenged by the size of ballot text and reading conditions inside the polling booth, such as lack of lighting and glare.²¹⁹ These individuals' functional performance can be improved by providing voters with visual aids, such as artificial and adjustable lighting above the ballot booth, large-print ballot paper copy and keyboard stickers on electronic voting machines; magnifiers (that work in real time and capture the ballot image to enlarge the text to the desired magnification), and video magnification, e.g., a closed-circuit television (CCTV) with magnification features.²²⁰ These visual aids aim at maximizing lighting conditions and the remaining sight of people with low visual impairments.

219 Lord (n 14); ElectionSource, 'Voter Accessibility' (*Voting Equipment*, 2020) <<https://electionsource.com/collections/voter-accessibility>> accessed 5 November 2020.

220 World Blind Union (n 177); Quesenbery and Sutton (n 7); Guide Dogs of Hawaii (NGO) (n 6).

Examples:

- *Lighting:*

‘The V4 Franklin Booth Light®’ is manufactured by Pakflatt.²²¹ It has 13 LED bulbs powered by 4 x AA batteries that provides 50 hours of good quality light locally.



Image at <https://inclusionsolutions.com/product/flexible-clip-on-voting-booth-light-pack-of-4/>

- *Large-print ballot paper copy:*

In the UK, under Rule 29(3A) of Schedule 1 of the Representation of the People Act 1983,²²² every polling station must display a large print copy of the ballot paper in a well-lit area where voters can easily see it before being issued their ballot paper.

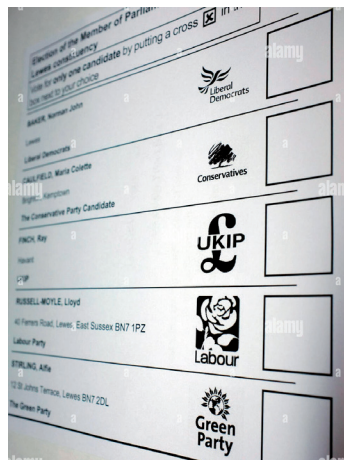


Image at <https://www.alamy.com/stock-photo-the-candidate-options-on-postal-vote-ballot-paper-for-the-2015-uk-81995018.html>

221 Pakflatt (n 66).

222 The UK Parliament, The Representation of the People Act 1983.

- *Magnifying devices:*

- In Australia, magnifying glasses (hand-held) are a common device used by voters and poll workers at polling stations.



Image at <https://www.homesciencetools.com/product/magnifier-double-lens-5x-10x/>

- The 'Magnibar with Tracker Line®' is manufactured by ElectionSource.²²³ It is a magnifying and tracker line device that helps voters not to lose their place when reading the ballot paper. The 'Magnibar with Tracker Line' costs US\$13.0 (excl. taxes/unit).



Image at <https://electionsource.com/collections/voter-accessibility/products/magnibar-with-tracker-line?variant=32371741360208>

²²³ ElectionSource (n 101).

- The 'Magnifying Illuminated-Support®' (known as 'MI-S' pronounced 'my eyes') is a freestanding magnifier for improving focus on and legibility of paper ballots. It was documented by the Research in Accessible Voting (RAV) project supported by the U.S. Election Assistance Commission.²²⁴

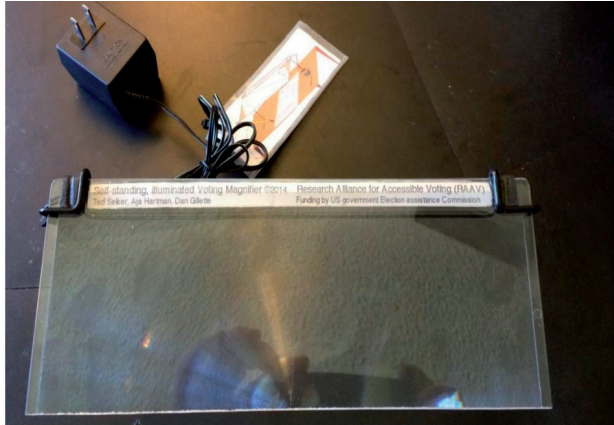


Image at <http://ted.selker.com/documents/resumefiles/other%20publications/Research%20on%20Accessible%20Voting%20Complete%20Final%20Report.pdf>

Discussion:

Technology level of visual aids varies. There are low-, medium-, and high-tech devices available in the market. Prices are also different based on devices' features as the following additional examples indicate:

- **Lighting:**

TaoTronics® offers (on Amazon.com) an LED desk lamp, dimmable with four colour modes and five brightness levels, which is touch control and angle adjustable for € 32.99 (incl. VAT/unit). This kind of desk lamp is a high-tech device.

- **Large-print ballot paper copy:**

In the UK, printing one A0 big display poster may cost £33.00 (excl. VAT/unit) according to Alocalprinter®.²²⁵ This is a low-tech device.

²²⁴ U.S. Election Assistance Commission (n 59).

²²⁵ <https://www.alocalprinter.co.uk/cheap-a1-and-a2-posters> accessed on 12 November 2020.

- **Magnifiers:**

Hand-held magnifiers are low-tech devices. RS Pro® manufacturer offers the ‘RS PRO Pocket Magnifying Glass’ (5 x Magnification, 70mm Diameter) for €4.54 (excl. VAT/ unit), and the ‘RS PRO Illuminated Pocket Magnifying Glass’ (that includes illumination switched on by rotating handle) for €11.59 (excl. VAT/unit).²²⁶

A stand-alone magnifier might be a medium- or high-tech device that offers a better user experience, since the voter does not need to hold the magnifier. Brightech® offers (on Amazon.com) the ‘Brightech LightView Pro Flex Magnifying Lamp’ for US\$34.99 (excl. taxes/unit). This is a stand-alone magnifier, clamp table, and desk lamp energy-saving LED. Overall, there are portable and affordable options of visual aids in the market.

4.5. Electronic voting aids (integrating ATs)

Electronic voting technology (or ‘e-voting’) refers to the use of electronic means to cast or count ballots and covers the core of the electoral process: the casting and counting of the votes.²²⁷ E-voting systems can be categorised based on their use, whether in person at the polling station through Electronic Voting Machines (EVM) or remotely via telephones, computers connected to the Internet, and mobile applications.²²⁸ Most e-voting systems include functions for marking ballots, vote recording, data encryption, data transmission to servers, and consolidation and tabulation of election results.²²⁹ Overall, e-voting systems must comply with national regulations stipulated by electoral law and electoral authorities’ guidelines and certain principles such as security, privacy, and accessibility.²³⁰ Next, some specific e-voting systems are briefly discussed, mainly those using AT.

226 RS PRO, ‘RS PRO Pocket Magnifying Glass’ (2020) <[https://nl.rs-online.com/web/p/magnifying-glasses/5285335?cm_mmc=NL-PLA-DS3A-_-google-_-CSS_NL_NL_Test_%26_Measurement_Whoop-_\(NL:Whoop%21\)+Magnifying+Glasses-_-5285335&matchtype=&pla-422677275058&gc-lid=CjwKCAiA17P9BRB2EiwAMvwNyGsO3RAF19uQGkspdd89FYVco1g](https://nl.rs-online.com/web/p/magnifying-glasses/5285335?cm_mmc=NL-PLA-DS3A-_-google-_-CSS_NL_NL_Test_%26_Measurement_Whoop-_(NL:Whoop%21)+Magnifying+Glasses-_-5285335&matchtype=&pla-422677275058&gc-lid=CjwKCAiA17P9BRB2EiwAMvwNyGsO3RAF19uQGkspdd89FYVco1g)> accessed 12 November 2020.

227 International Institute for Democracy and Electoral Assistance IDEA, ‘Introducing Electronic Voting: Essential Considerations’ (2011) <<https://www.idea.int/publications/catalogue/introducing-electronic-voting-essential-considerations>>.

228 Maina Olembo and Melanie Volkamer, ‘E-Voting System Usability: Lessons for Interface Design, User Studies, and Usability Criteria’ in Saqib Saeed and Christopher Reddick (eds), *Human-Centered System Design for Electronic Governance* (Information Science Reference 2013).

229 *ibid.*

230 Wikipedia Corpus, ‘Electronic Voting’ (2020) <<http://corpus.byu.edu/wiki/>>.

4.5.1. Electronic Voting Machines (EVMs)

Use in the electoral cycle	Voting
Target Population	Voters with disabilities, low literacy, and those who prefer accessible User Interfaces (UIs)

Application:

The three most common EVMs are:

- *Paper-based and optical scan paper ballot systems:*

These systems use hand-marked paper ballots and different optical scan systems.²³¹ Voters can, for example, mark their ballot paper and scan it with an optical scan system, or election officials can scan the ballot paper during the tallying process using an optical scanner, a bar code, or a QR code scanner. A QR code is a type of bar code that can be read easily by a digital device and which stores information as a series of pixels in a square-shaped grid.²³²

- *Direct recording electronic (DRE) systems:*

DRE systems employ computers that record votes directly in the computer's memory.²³³ UIs can incorporate touchscreens, dials, or mechanical buttons. Some DRE systems are also equipped with Voter-Verified Paper Audit Trail (VVPAT) printers, which produce paper records that can be preserved to be tabulated in case of an audit or recount.²³⁴ A VVPAT can also be cryptographic (visual or mathematical) or auditory.

- *Ballot-marking devices (BMDs):*

A BMD allows for the electronic presentation of a ballot, electronic selection of candidates, and the production of a human-readable paper ballot but does not make any other lasting record of the voter's selections.²³⁵ Therefore, some BMDs combine physical and digital voting methods

231 Smartmatic, 'About Smartmatic' (*About*, 2018) <<https://www.smartmatic.com/about/>> accessed 5 November 2020.

232 Bar codes or QR codes are a representation of the ballot selections. See for instance Olembo and Volkamer (n 110).

233 Ballotpedia. Navigating 2020 Election Changes., 'Voting Methods and Equipment by State' (*Election Help Desk*, 2020) <https://ballotpedia.org/Voting_methods_and_equipment_by_state> accessed 22 October 2020.

234 Project ACE. The Electoral Knowledge Network, 'Paper Audit Trail in E-Voting' (*Ace Facilitators*, 2011) <<http://aceproject.org/electoral-advice/archive/questions/replies/916640412>> accessed 24 October 2020.

235 GAO. United States Government Accountability Office., 'Voters with Disabilities: Observations on Polling Place Accessibility and Related Federal Guidance' (2017) <<https://www.gao.gov/products/GAO-18-4>>.

in a single machine known as ‘ballot boxes with vote tabulation capabilities’.²³⁶ An election official issues a paper ballot to the voter. After marking the ballot paper, the voter takes it to the tabulator (some paper ballots may have open-source bar codes or QR code summarising all choices to facilitate tabulation).

The operable parts of an EVM usually consist of several discrete components, each raising discrete accessibility features, such as labels and instructions, displays, keypads, and touchscreens.²³⁷ EVMs integrating AT offer different output interfaces (e.g., headphones and screen readers) with some input stimuli interfaces (e.g., switches, screen, and speaker system).²³⁸ Voters can use EVMs with talking boards (using text-to-speech technology), Braille signage, alternative UIs to create customised switches (e.g. paddle or a sip-and-puff device), or audio sessions.²³⁹ For example, a voter can operate a BMD by using a ‘sip-and-puff’ device, which is a mouth-held straw with which the voter issues switch commands (e.g. hard puff/sip and soft puff/sip) to provide signals or instructions to the BMD. The same voting machine can provide the voter with an audio session. The audio session guides the voter through ballot casting with instructions on how to use the machine and aural confirmation of voters’ selections. In such cases, an election official might select the proper audio ballot on the device to initialise the voting session. At the end of the audio voting process, the voter is prompted to review the choices selected one last time and to confirm the selections. Next, the device makes an audible sound to alert the election official that the audio vote has been completed. Lastly, the election official prompts the tabulator to accept the ballot, and a paper receipt is printed and placed in the ballot box by the voter. In summary, AT is used to specially adapt operable parts of EVMs to be used by voters with disabilities. Moreover, software technology is also available to enable voters with disabilities (and all voters in general) to access UIs.

236 Canadian Intellectual Property Office, ‘System, Method and Computer Program for Vote Tabulation with an Electronic Audit Trail’ (*Canadian Patent Application 2466466 Patent No. US 8,195,505 B2* 2012/06/05, 2012) <<https://patentimages.storage.googleapis.com/43/f8/c8/0b625106f3b8e9/US8195505.pdf>> accessed 24 October 2020.

237 Piers Gooding, Arstein-Kerslake and Eilionoir Flynn, ‘Assistive Technology as Support for the Exercise of Legal Capacity’ (2015) 29 *International Review of Law, Computers & Technology* 245; Makeuseof.com, ‘How Electronic Voting Works: Pros and Cons vs. Paper Voting’ (*Technology Explained*, 2019) <<https://www.makeuseof.com/tag/how-electronic-voting-works/>> accessed 24 October 2020; Patrick Howell O’Neil, ‘New “Secure” Voting Machines Are Still Vulnerable -Because of Voters’ (*MIT Technology Review. Election 2020*, 2020) <<https://www.technologyreview.com/2020/01/08/130972/new-secure-voting-machines-are-still-vulnerablebecause-of-voters/>> accessed 24 October 2020.

238 Candice Hoke, ‘Voting Technology and the Quest for Trustworthy Elections’ in Benjamin Griffith (ed), *America Votes!: A Guide to Modern Election Law and Voting Rights* (1st edn, American Bar Association 2012); Schur, Ameri and Adya (n 47).

239 McGrew (n 4); Rebecca Ruiz, ‘How People with Disabilities Are Kept from Voting -and What You Can Do about It: Accessible Voting Machine’ (*Mashable*, 2018) <<https://mashable.com/article/how-to-vote-disability-barriers/?europe=true>> accessed 26 October 2020.

Examples:

- Dominion Voting manufactures ‘Imagecast Precinct®’. It is a voice output voting machine used in some states in the U.S. It is designed for use by voters who are blind or have low vision.²⁴⁰ It has an LCD touchscreen with an alternative audio and tactile interface using off-the-shelf headphones, and it includes a display for accessible interactive voter review of the ballot. Voters navigate an audio version of their ballot and confirm their selections, which are stored electronically or marked on a printed paper ballot.



Image at <https://www.dominionvoting.com/imagecast-precinct/>

- Election Systems & Software, Inc. manufactures ‘Automark®’ which is a voice output and switch adapted machine used in some states of the U.S.²⁴¹ ‘Automark®’ is a touchscreen EVM with adjustable on-screen font sizes and voice output for voters with visual impairments, and a sip-and-puff tube as switch device for voters with physical impairments, particularly upper extremity disabilities. It also offers a multi-lingual UI including Braille system. In case of a mis-marked ballot, the voter may spoil the ballot, obtain a new one, and restart the voting process.



Image at <https://verifiedvoting.org/election-system/ess-automark/>

240 Network of Care, ‘Polling Place Accessibility’ (*Voting Machines*, 2018) <<https://losangeles.networkofcare.org/veterans/assistive/list.aspx?indexingterms=voice-output-voting-machine-0>> accessed 28 October 2020.

241 *ibid.*

- Hart Intercivic manufactures the ‘Eslate Disabled Access Unit®’ (DAU eSlate Model 5000).²⁴² It is a voice output and switch-accessible voting machine. It is designed for use by voters who are blind or have low visual impairments or who have severe physical or upper extremity disabilities. This voting machine has interfaces for head movement; a paddle device (‘Jelly Buttons’), and sip-and-puff switches. It also includes an audio ballot reader and audible signals for confirmation of a voter’s selection.



Images at <https://www.hartintercivic.com/wp-content/uploads/HartProductCatalog.pdf>

Discussion

EVMs with AT integrated are high-tech devices. Price information on EVMs is limited in the literature. As indicated above, Hart Intercivic manufactures the ‘Eslate Disabled Access Unit®’. In its 2018 product catalogue,²⁴³ Hart Intercivic indicates that the standard DAU eSlate® costs US\$ 2,860,000 (excl. taxes/unit). The price includes one standard DAU eSlate®, one standard DAU Booth®, two instruction placards, one battery pack, one set of headphones, and one audio card. These same items plus a Verifiable Ballot Option (VBO), which automatically creates a paper audit trail, cost US\$ 3,740,000 (excl. taxes) in total. A pair of Jelly Switches for DAU eSlate® is an accessory that costs US\$ 183.70 (excl. taxes/unit).

In 2019, the Open-Source Election Technology Institute (OSET Institute) published a cost analysis of voting equipment from Georgia (US).²⁴⁴ The report indicates that if most voters mark their ballot papers and one BMD is available at each polling station for voters with disabilities, the estimated total cost of machines and maintenance for 10 years, starting in 2020, is US\$12 per voter (US\$84 million total). The estimate is US\$29 per voter (US\$203 million

242 Hart Intercivic, ‘Hart Voting System. Product Catalog.’ (*Product Catalog 2018*) <<https://www.hartintercivic.com/wp-content/uploads/HartProductCatalog.pdf>> accessed 28 October 2020.

243 Products ID: 1001-767-U; 1002-130-U; & 1001-364. See *ibid*.

244 Edward Perez and Gregory Miller, ‘Georgia State Election Technology Acquisition: A Reality Check’ (*OSET Institute Briefing*, 2019) <<https://www.documentcloud.org/documents/5766827-OSET.html>> accessed 3 November 2020.

total) if all voters use BMDs, including US\$0.10 per ballot paper. This total sum includes hardware, software, and support such as: polling station scanner (US\$5,800-unit cost), central scanning device (US\$40,000 unit cost), election management software (US\$50,000 unit cost per state), and technical onsite support for election day (US\$4,700 unit cost). Other costs included are annual maintenance and software licence fees.

The advantages of making these devices available in elections can be roughly summarised as follows: faster vote counting (votes are counted as they are cast), higher voter engagement (EVMs allow for greater flexibility and accessibility for voters), and long-term expenses decrease (a reduction in human resources needed for elections, as well as polling locations).²⁴⁵ The disadvantages of EVMs include: electronic hacking risks (results of an election can be altered through physical tampering or a remote attack over the Internet), digital fraud (there might be a data breach that affects voter identification processes), manufacturer bias (private companies may prefer to keep their source code locked away, which threatens fair and unbiased voting. This is clearly an issue of compliance with domestic laws regulating the procurement of EVMs.), and high initial costs (this includes procuring voting machines, maintenance, and installation, testing the infrastructure, as well as securing the premises). These aspects must be assessed carefully by local electoral authorities. Authors indicate that a good practice when implementing e-voting systems is to test the devices functioning and certify them in compliance with standards.²⁴⁶ Lastly, in implementing EVMs, the International Institute for Democracy and Electoral Assistance (IDEA) asserts that ‘special attention should be paid to a realistic calculation of the total cost of ownership, including all costs of storage, maintenance, upgrading, and operating of the system over several electoral cycles’.²⁴⁷

4.5.2. Vote-by-phone system

Use in the electoral cycle	Voter registration and voting.
Target Population	Voters with disabilities, low literacy, and those who prefer getting assistance by phone to vote.

Application:

The vote-by-phone system is a remote electronic voting system and allows for voter registration and casting of ballots.²⁴⁸ When these systems are adapted to include accessible UIs or special assistance, they can be categorised as assistive products/systems. Such systems

²⁴⁵ Makeuseof.com (n 238).

²⁴⁶ Hoerner (n 47); Ruiz (n 240).

²⁴⁷ International Institute for Democracy and Electoral Assistance IDEA (n 228).

²⁴⁸ Wikiwand W, ‘Electronic Voting in the United States’ (2016) <http://www.wikiwand.com/en/Electronic_voting_in_the_United_States> accessed 3 November 2020.

can work through personal assistance or Interactive Voice Response (IVR). An IVR system is a technology that allows humans to interact with a computer-operated phone system. It is usually a call centre software feature that allows callers to select from a menu of automated prompts to be routed to the most appropriate resource.

The telephone voting system uses a PIN code and responds to input via spoken responses and/or buttons on a telephone keypad. Vote-by-phone systems allow voters to complete a ballot remotely (e.g., at home) and use their own telephones which are configured with any accessible features needed.²⁴⁹ This voting system can be a useful tool to provide voters with a more private and comfortable voting experience. In some elections, voters can also go to polling stations to access telephone equipment to vote. In such cases, telephones include ATs such as screen displays; Braille signage; large-print keypads; hands-free functioning; headphones; or sip-and-puff devices. These devices might improve voters' functional performance when voting.

Examples:

- In Oregon, U.S. voters can contact their County Election Office by calling a hotline. Voters can get assistance to register to vote, vote their ballot, and return their ballot by phone. There is a special teletypewriter (TTY) for voters with hearing impairments. More information is available at <https://sos.oregon.gov/voting/Pages/disabilities.aspx>
- In Australia, voters can call a dedicated phone number to vote. According to the European Blind Union,²⁵⁰ blind voters can call to register to vote and receive a unique ID. They use the ID to anonymously call into a call centre. The call centre operator reads out the ballot and manually records the vote with a second person supervising the vote. This ballot is then treated as a normal absentee vote. More information is available at <https://www.austelect.com/voting-media/telephone-voting/>

Discussion:

Vote-by-phone systems are high-tech platforms and use high-tech equipment (at polling stations). Price information of these systems is scarce in the literature. To illustrate, a telephone with large keys, direct shortcuts with images, volume knob, and compatible with hearing aids that can be used at polling stations is the 'Doro Phone Easy 331 PH®' by OneDirect. It costs €37.50 (incl. VAT/unit). In the U.S., a call centre outsourcing can cost between US\$25 and

249 Danae Holmes and Philip Kortum, 'Vote-by-Phone: An Investigation of a Usable and Accessible IVR Voting System' (2016) 6 *Journal of Accessibility and Design for All* 102.

250 EBU European Blind Union (n 3).

US\$65 per hour for each customer service representative.²⁵¹ Other costs include training, phone systems, office supplies, fees, and commissions. Final costs also depend on many additional factors such as expected call volume, duration of calls, availability 24/7, and type of support (human assistance or IVR systems), among others.

In general, vote-by-phone may be an option to enhance political participation of all voters, including voters with disabilities. Notably, voting by phone must be accessible and secure to provide voters with a comfortable and reliable voting method.

4.5.3. Online-voting systems

Use in the electoral cycle	Voting
Target Population	Voters with disabilities, voters being outside their countries, and all voters with Internet access.

Application:

Online voting systems are an alternative to implementing e-voting systems.²⁵² These systems operate in different ways. They can use remote locations accessed through any Internet capable device or traditional polling stations with electronic devices connected to the Internet.²⁵³ In most cases, online voting systems transfer the votes via ICT, and mainly the Internet to a central counting server. The system usually consists of a web-based platform and a designated period prior to an election day when voters can log into the official online voting system to vote, using an ID card and a PIN in some cases.²⁵⁴ Voters can use their computers, public computers (e.g., at libraries), tablets, or mobile devices. Once all the information is verified, voters are given access to the voting options. When integrating ATs, online voting systems

251 Cloud Task, 'How Much Does It Cost to Outsource a Call Center?' (*Blog*, 2019) <<https://www.cloudtask.com/blog/how-much-does-it-cost-to-outsource-a-call-center#>> accessed 12 November 2020.

252 Wikiwand W (n 249); Makeuseof.com (n 238); Hoke (n 239).

253 John R Patrick, *Election Attitude: How Internet Voting Leads to a Stronger Democracy (It's All About Attitude)* (Attitude LLC 2016); Graham Pierce, James Jackson and Sarah Swierenga, 'Enhancement of Accessible Mobile Voting Systems' (*Accessible Voting Research Program. Michigan State University*, 2014) <<https://uarc.msu.edu/research-and-services/research-projects/voting-accessibility/accessible-mobile-voting-enhancement>> accessed 28 October 2020.

254 E-estonia, 'E-Estonia (e-Governance)' (*i-Voting*, 2020) <<https://e-estonia.com/solutions/e-governance/i-voting>> accessed 23 October 2020; Dimitrios Zissis and Dimitrios Lekkas, 'Securing E-Government and e-Voting with an Open Cloud Computing Architecture' (2011) 28 *Government Information Quarterly* 239; Micha Germann, 'Making Votes Count with Internet Voting' [2020] *Political Behavior: Springer* <<https://link.springer.com/article/10.1007/s11109-020-09598-2>>.

allow voters to personalise UIs through accessibility options.²⁵⁵ For example, voters can select a large font size ballot paper, mark their ballot paper by touching a screen, and get an audible trail.

Examples:

- In Estonia, since 2005, ‘i-Voting’ is a system that allows all voters, including voters with disabilities, to cast their ballots from any Internet-connected computer anywhere in the world.

Estonia has achieved accessibility to all government websites.²⁵⁶ In the online voting system, voters identify themselves with a smart national ID card (an ID card equipped with a computer-readable microchip) or a ‘mobile ID’, which is an authentication channel using mobile phones with specific SIM cards introduced in the country in 2011. Once authenticated, the voter casts their vote through a platform that sends their vote to a central database. The UI offers setting accessibility options to voters, such as changing display size and font size, magnification, and contrast options. The vote is digitally signed (inner ‘envelope’) and inserted in another virtual and signed ‘envelope’ (outer one) that contains the identification of the voter and the session log. To mitigate coercion or intimidation risks, the country allows voters to log on the system and vote as many times as they want during an early voting period (normally up to six days). Each vote cast by a voter cancels the last one. This means voters have the option of changing their votes later. Voters can also cast an early ballot paper. Moreover, on an election day, it is possible to vote at polling stations using ballot papers. The last ballot cast is the only one considered valid for the official tally.

More information is available at: <https://e-estonia.com/solutions/e-governance/i-voting/>

- ‘iVote®’ from New South Wales (Australia) is a standard website that works on computers, mobile devices, and tablets. It was developed by the Spanish company ‘ScytI’. The system has universal design, supports nine types of screen reader, and does not require any add-ons. The online voting system is available to voters with disabilities and others under special circumstances. Potential voters must apply to the New South Wales Electoral Commission to vote by iVote®. They can vote online and set the UI to their personal needs. After submitting their votes, voters receive a receipt and a QR code to verify their vote through the iVote mobile application or the iVote website.

More information is available at <https://www.elections.nsw.gov.au/Voters/Other-voting-options/iVote-online-and-telephone-voting>

255 Olembo and Volkamer (n 110).

256 CRPD Committee, *Concluding observations on the initial report of Estonia*, CRPD/C/EST/CO/1, 5 May 2021, paras 4, 6 and 20.

Discussion:

Authors suggest that online voting systems can deliver more accessible, transparent, secure, and cost-effective elections for national electoral authorities.²⁵⁷ These systems can be used in computers, phones, and tablets in conjunction with blockchain, cloud or hybrid computing and advanced cryptography to deliver efficient and credible electoral processes.

Online voting systems with integrated AT are high-tech systems. Cost analysis information is scarce in the literature. To illustrate, a 2017 research study by Krimmer among others²⁵⁸ at Tallinn University of Technology (Estonia), analysed costs (correlated with administrative resources invested) per vote of voting methods used in Estonia. The authors found that ‘i-Voting’ was the most efficient voting channel in cost per voter (€2.32) in the country, followed by election day voting (€4.37). According to Krimmer and others,²⁵⁹ advance voting at Ordinary Voting District Committees is the less cost-efficient channel (€20.41).

Other sources of information²⁶⁰ indicate that the ‘i-Voting’ system in Estonia saves the country over 11,000 working days per election since 2005. In Australia, Conduct®²⁶¹ designed another online voting system called ‘Voter Voice’ for the Victorian Electoral Commission (Australia). According to Conduct®, since 2018, when ‘Voter Voice’ was released, there has been an estimated AU\$1M (more than €600,000) savings from removing hardcopies of the communication board and hiring Australian Sign Language interpreters to work in elections.

Advantages of making online voting methods available in elections can be roughly summarised as follows: (i) increasing overall voter participation, including persons with disabilities and new generations (e.g. millennials and Generation Z); (ii) saving voters’ time (including time to go to polling stations and waiting in line to vote); (iii) significant decrease in voter errors for ICT users; (iv) opportunity to set UIs based on individual’s needs; (v) using familiar technology and personal AT by voters with disabilities; and (vi) saving election costs once

257 Foresight Democracy and Minsait, ‘Online Voting’ (*Online Voting Webinar*, 2021) <<https://www.foresight.events/online-voting>> accessed 20 May 2020.

258 Robert Krimmer and others, ‘How Much Does an I-Vote Cost? Cost Comparison per Vote in Multi-channel Elections in Estonia’ (*Tallinn University of Technology. Ragnar Nurkse Department of Innovation and Governance*, 2017) <https://www.e-vote-id.org/wp-content/uploads/2018/10/How-much-does-an-e-vote-cost_2.pdf> accessed 13 November 2020.

259 *ibid.*

260 E-estonia (n 136).

261 Conduct, ‘Victorian Electoral Commission’ (*Our Work. Enabling equality at the ballot box*, 2018) <<https://www.conducthq.com/work/vec-voters-voice-accessible-election-app/>> accessed 27 October 2020.

systems are implemented.²⁶² Disadvantages of online voting systems include: (i) potential for undue influence or ballot tampering; (ii) increase in voter errors for non-ICT users; (iii) reduction in the sense of community due to exclusion from standard voting practices; (iv) reduction in the public visibility of persons with disabilities; and (v) security risks in electronic voting systems.²⁶³

National electoral authorities need to assess the above advantages and disadvantages to implement online voting services. Notably, ICTs aid people in their daily lives, thus online voting systems with accessibility options could be an additional voting method, mainly for those who prefer using ICT.

4.5.4. Other electoral services using web integrating AT

Use in the electoral cycle	Voter education, voter registration, election officials training, making an informed political choice, making a complaint, knowing election results, and updating voter registration.
Target Population	Voters with disabilities and all voters with Internet access who prefer accessible UIs.

Application:

National electoral authorities use the Internet's World Wide Web (the 'web') to display electoral information and make certain electoral services available.²⁶⁴ AT integrated into websites provides users with disabilities with multiple possible options to set UIs including: use with a screen reader; font size and colour contrast features; reading ruler; screen mask (a semi-transparent overlay with focus apertures); dictionary with easy-to-read terms; multiple languages; only text; audio file download option; magnifying glass; and a user guide.²⁶⁵ These

262 Bryan Campbell, Chad Tossell and Michael Byrne, 'Voting on a Smartphone: Evaluating the Usability of an Optimized Voting System for Handheld Mobile Devices' (2011) 55 Proceedings of the Human Factors and Ergonomics Society Annual Meeting 1100; Pierce, Jackson and Swierenga (n 135).

263 Muhammad Adeel Javaid, 'Electronic Voting System Security' (2014) 1 SSRN Electronic Journal 1.

264 Judy Brewer, 'Standards Bodies, Access to Information Technology, and Human Rights' in Jonathan Lazar and Michael Ashley Stein (eds), *Disability, Human Rights, and Information Technology* (University of Pennsylvania Press 2017); Deborah Kaplan, 'Public Funding of Information Technology and Human Rights for People with Disabilities' in Jonathan Lazar and Michael Ashley Stein (eds), *Disability, Human Rights, and Information Technology* (University of Pennsylvania Press 2017); Paul T Jaeger, Brian Wentz and John Carlo Bertot, 'The Intersection of Human Rights, Social Justice, the Internet, and Accessibility in Libraries: Access, Education, and Inclusion' in Jonathan Lazar and Michael Ashley Stein (eds), *Disability, Human Rights, and Information Technology* (University of Pennsylvania Press 2017); Gooding, Arstein-Kerslake and Flynn (n 238).

265 World Wide Web Consortium (W3C), '[DRAFT] Basic Glossary for WAI Documents' (n 38).

features make UIs on the web accessible.²⁶⁶ Making multiple accessibility options available on electoral authorities' websites removes reliance upon any one mode and cognitive mechanism for comprehension.²⁶⁷ For example, the text can be heard instead of seen, audio can be read instead of heard, and images can be described instead of seen. Voters with disabilities may benefit from these conversions to easily access electoral information on the web.

Examples:

- On its website, the Australian Electoral Commission (<https://www.aec.gov.au/>) publishes electoral information in large print, Rich Text Format (RTF), Microsoft Word (DOC), and Portable Document Format (PDF) files. The website also incorporates listening options through ReadSpeaker®, which is a software that allows the text on the website to be read out loud to the user.
- The New South Wales Electoral Commission's website <https://www.elections.nsw.gov.au/> integrates the National Relay Service (NRS). The NRS is a government initiative that allows people who are deaf, hard of hearing, and/or with speech impairments to make and receive phone calls by telephone, web, or teletypewriter (speak and read; type and read; and type and listen). The NRS uses specially trained contact centre staff who convert voice to text or text to voice. They may also convert between Australian Sign Language and English.

Discussion:

Websites with integrated ATs and accessibility features are high-tech systems. WebFX, a U.S. full-service digital marketing agency, asserts that in 2020 the average cost for designing a professional website ranged from US\$1,000 to more than US\$10,000.²⁶⁸ Several factors influence the price of web design such as a website's style, size, and functionality features. According to World Wide Web Consortium (W3C),²⁶⁹ when AT is incorporated from the

266 Register2Vote, 'Voter Registration Online Platform' (*Are you registered to vote?*, 2018) <<https://register2vote.org/>> accessed 6 November 2020; Rune Halvorsen, 'Digital Freedom for Persons with Disabilities: Are Policies to Enhance EAccessibility and EInclusion Becoming More Similar in the Nordic Countries and the US?' in Lisa Waddington and Gerard Quinn (eds), *European Yearbook of Disability Law*, vol 2 (Intersentia Antwerpen-Oxford-Portland 2010).

267 Peter Blanck, 'Web Accessibility for People with Cognitive Disabilities: A Legal Right?' in Jonathan Lazar and Michael Ashley Stein (eds), *Disability, Human Rights, and Information Technology* (University of Pennsylvania Press 2017).

268 WebFX Digital Marketing That Drives Results, 'Web Design Pricing: How Much Does Web Design Cost in 2020?' (*Price Calculator*, 2020) <<https://www.webfx.com/website-design-pricing.html>> accessed 10 November 2020.

269 World Wide Web Consortium (W3C), 'Financial Factors in Developing a Web Accessibility Business Case for Your Organization' (*Web Accessibility Initiative WAI*, 2012) <<https://www.w3.org/WAI/business-case/archive/fin>> accessed 10 November 2020.

beginning of website development, it is often a small percentage of the overall website cost. Similarly, Lazar and Stein²⁷⁰ assert that when web content is designed from the start to be accessible, the expected costs are only 1 to 2 percent of the costs of the overall web design project.

Overall, the web facilitates access to and integration into society of Internet users.²⁷¹ By 2020, more than half (62 percent) of the world's seven billion people used the web.²⁷² According to Forbes,²⁷³ the COVID-19 pandemic pushed up Internet use by 70% above the previous rate. Barriers to web use still exist, but web use has nevertheless increased because of the pandemic. 'New web users' include persons with disabilities and those who are aging, people living in poverty, people reluctant to become web users, and others who face economic, social, educational, and political restrictions on web access.²⁷⁴ In elections, Wicker and Santoso²⁷⁵ explain that the web supports people's freedom of speech and their ability to make political choices. To be accessible for users with disabilities, websites' UIs should be dynamic and interactive. For example, voters may need to set font size or colour contrast features, expand nested menus or drag and drop objects when registering to vote or knowing election results. Moreover, since electoral information changes over time, depending on the type of election as well as periods of the electoral cycle, the scope of electoral authorities' website accessibility encompasses a broad range of functional requirements across types of elections, electoral cycle periods, and users' needs.

Authors²⁷⁶ recommend that government agencies' websites follow accessibility standards to guarantee persons with disabilities' equal access to web content. The W3C accessibility standard that has most frequently been adopted around the world is the Web Content Accessibility Guidelines (WCAG) 2.0.²⁷⁷ In Europe, the Public Sector Web Accessibility

270 Jonathan Lazar and Michael Ashley Stein, 'Introduction' in Jonathan Lazar and Michael Ashley Stein (eds), *Disability, Human Rights, and Information Technology* (University of Pennsylvania Press 2017).

271 Brewer (n 265).

272 Internet World Stats, 'World Internet Usage and Population Statistics 2020 Year-Q2 Estimates' (*Usage and Population Statistics*, 2020) <<https://www.internetworldstats.com/stats.htm>>.

273 Mark Beech, 'COVID-19 Pushes Up Internet Use 70% And Streaming More Than 12%' *Forbes* (25 March 2020) <<https://www.forbes.com/sites/markbeech/2020/03/25/covid-19-pushes-up-internet-use-70-streaming-more-than-12-first-figures-reveal/#64d9db253104>>.

274 *ibid.*

275 Stephen Wicker and Stephanie Santoso, 'Access to the Internet Is a Human Right: Connecting Internet Access with Freedom of Expression and Creativity' (2013) 56 *Viewpoint* 45.

276 Peter Blanck, *EQuality: The Struggle for Web Accessibility by Persons with Cognitive Disabilities* (Cambridge University Press 2014); Peter Blanck, 'The Struggle for Web EQuality by Persons with Cognitive Disabilities' (2014) 32 *Behavioral Sciences and the Law* 4; Jaeger, Wentz and Bertot (n 146).

277 World Wide Web Consortium (W3C), 'Web Content Accessibility Guidelines (WCAG) 2.0' (*W3C Recommendation*, 2008) <<https://www.w3.org/TR/2008/REC-WCAG20-20081211/>> accessed 13 October 2020.

Directive (Directive EU 2016/2102)²⁷⁸ has been in force since 2016 and provides persons with disabilities with better access to websites and mobile apps of public services through creating technical accessibility standards.

4.5.5. Other electoral services provided through mobile applications integrating AT

Use in the electoral cycle	Voter education, voter registration, and updating voter registration.
Target Population	Voters with disabilities, users with memory or attention difficulties, and users of mobile applications who prefer accessible UIs.

Application:

A mobile application is a type of application software designed to run on a mobile device, such as a smartphone or tablet computer.²⁷⁹ AT integrated into mobile applications provides users with alternative content including easy-to-read options, text enlargements, colour contrast, and audio guides, among other options.²⁸⁰ By integrating AT, mobile applications remove reliance on only one mode and cognitive mechanism for comprehension of digital content.²⁸¹

Examples:

- The mobile application ‘Voters Voice®’ (already referred to above in section 4.2) was developed by the independent Australian company ‘Conduct’ and the Victorian Electoral Commission for the 24 November 2018 Victorian State election.²⁸² The application assists voters to understand how to enrol and vote correctly on an election day at polling stations. The central feature of Voters Voice® is the communication board, which works through both Australian sign language (Auslan) and ‘easy English’. It also includes written, audio, and visual information. Users are guided through a dashboard which includes pre-programmed phrases like ‘Can you write it down?’ and ‘Can I help you?’ Users also get alert notifications and reminders of key information. Moreover, the application assists

278 Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies; European Commission, ‘Web Accessibility’ (*Policies*, 2021) <<https://digital-strategy.ec.europa.eu/en/policies/web-accessibility>> accessed 15 April 2021.

279 Techopedia, ‘Mobile Application (Mobile App)’ (*Dictionary*, 2020) <<https://www.techopedia.com/definition/2953/mobile-application-mobile-app>> accessed 11 November 2020.

280 European Parliament, ‘Assistive Technologies for People with Disabilities. Part II, Current and Emerging Technologies’ (n 53).

281 Quesenbery and Sutton (n 7); McGrew (n 4).

282 Conduct (n 143).

voters to find and get directions to their nearest early voting centres and to nearest polling stations on election day.

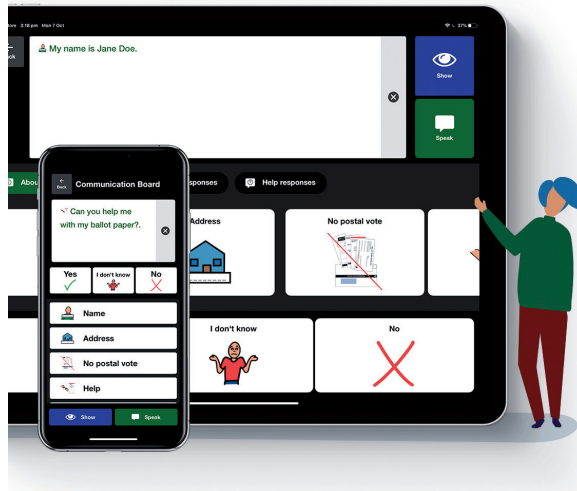


Image at: <https://www.conducthq.com/work/vec-voters-voice-accessible-election-app/>

- ‘Brink Election Guide®’ is a free, nonpartisan election guide application available for iPhone and Android that makes voting information accessible to voters with disabilities.²⁸³ It was designed by Brink Team, Table XI Company, and DBL Ventures Inc. dba Shanidar. ‘Brink Election Guide®’ was used by voters from some states in the U.S. 2016 and 2020 presidential elections. It is a fully accessible tool that provides voters with information regarding voting rights. It uses colour contrast, iconography text, plain language, alt text, and is compatible with personal ATs.

283 Table XI Company, ‘Brink Election Guide: Building Accessible Software with Brink to Help Everyone Vote’ (Brink, 2018) <<https://www.tablexi.com/work/building-accessible-software>> accessed 4 November 2020.

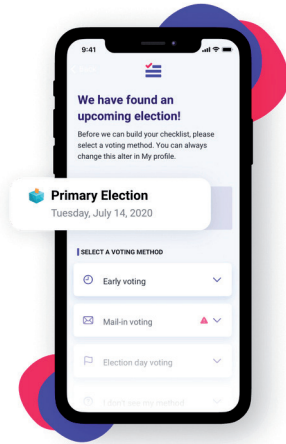


Image from <https://www.brinkapp.co/>

Discussion:

Mobile applications with integrated AT features are high-tech systems. In 2020, in the U.S., mobile application designers suggested the average price of a simple application be between US\$40,000 and US\$60,000.²⁸⁴ The medium complexity application (e.g., integrating some accessibility options) cost is between US\$61,000 and US\$69,000. A complex application (e.g., Google Maps with full accessibility options range) may cost from US\$70,000 to US\$100,000.

According to Techopedia,²⁸⁵ mobile applications are becoming increasingly popular among consumers. Functionality can be available at low cost or even for free to people. Overall, mobile applications allow consumers to hand-pick what their devices can do. Those with AT features generally have a positive impact on persons with disabilities' lives.²⁸⁶ In elections, mobile applications are useful for voters with disabilities to support them when performing certain electoral-related activities, including getting information about their voting rights and the voting process.

284 Altynpara Evgeniy, 'How Much Does It Cost to Make an App in 2020?' (*Cleveroad Blog*, 2020) <<https://www.cleveroad.com/blog/how-much-does-it-cost-to-create-an-app>> accessed 11 November 2020.

285 Techopedia (n 161).

286 European Parliament, 'Assistive Technologies for People with Disabilities. Part IV: Legal and Socio-Ethical Perspectives' (2018); Blanck, 'Web Accessibility for People with Cognitive Disabilities: A Legal Right?' (n 158).

4.6. Other communication aids

4.6.1. SMS technology

Use in the electoral cycle	Voter education and making a complaint.
Target Population	Persons with speech, auditory, language, or memory issues and those who have access to SMS technology.

Application:

Communication support technology (or ‘Augmentative and Alternative Communication’) includes all the ways people share ideas and information without talking. For example, people exchange messages through SMS (short message service). SMS is not an AT *per se*; however, text messaging services through mobile phones can be specially adapted to inform voters with disabilities about voting procedures or facilities, for example a polling place’s location.²⁸⁷ An intermediary service can also facilitate a text-to-voice conversion to be sent to landlines, mainly in hard-to-reach areas or rural areas where the Internet is not available.

Examples:

- In the 2017 Rwandan presidential election, the Rwanda Education Board supported the SMS media programme run by the Rwanda National Association of Deaf Women to make information on, *inter alia*, democracy and elections known to deaf women from rural areas in the country through SMS.²⁸⁸
- In the 2019 Nigerian general election, the National Electoral Commission used SMS technology to allow voters to report any misconduct on election day at their polling places.²⁸⁹

More information at <https://www.pambazuka.org/governance/sms-election-monitoring-nigeria>

287 Janet Lord, Katherine N Guernsey and Joelle M Balfe, *Human Rights. YES! Action and Advocacy on the Rights of Persons with Disabilities* (Nancy Flowers ed, 2nd edn, University of Minnesota Human Rights Center 2012).

288 Lord (n 14).

289 Victor Chidubem Iwuoha, ‘ICT and Elections in Nigeria: Rural Dynamics of Biometric Voting Technology Adoption’ (2018) 53 *African Spectrum* 89.

Discussion:

SMS is a medium-high tech tool. According to the Swiss mobile messaging company ‘Horisen’,²⁹⁰ text messages are a cheap, fast, and efficient communication technology. The company suggests that in marketing, SMS is the most cost-effective method to reach out to a target audience, mainly in comparison to mail, TV, radio, or print media. In elections, SMS is a useful communication channel, which is easy to use, read, and reply to by voters. When integrating assistive services such as screen readers or text-to-voice conversion, SMS technology can positively impact the lives of voters with disabilities, mainly those who are traditionally unreachable because of their geographic location and lack of access to other ICTs, such as TV or Internet.

4.6.2. Video stream including Sign Language Interpretation, video closed captioning, and audio transcription services

Use in the electoral cycle	Making an informed political choice, knowing election results.
Target Population	Persons with hearing impairments, language issues, or those who prefer text/aural guidance.

Application:

The following communication support technologies can be put in place in elections:

- According to the World Wide Web Consortium (W3C), video stream including a sign language interpreter is a technique to allow users who cannot hear or read text rapidly to access synchronised media material.²⁹¹ In elections, one common way to provide sign language presentation of audio information is to embed a video of the sign language interpreter in the video stream.
- W3C explains that captions are ‘equivalent alternatives to graphic material that consist of a text transcript of the auditory track of a video presentation and that is synchronised with the video and auditory tracks.’²⁹² Captions are generally used in television presentation.

290 Horisen, ‘10 Reasons Why You Should Use SMS to Communicate with Customers’ (*Mobile Marketing*, 2018) <<https://www.horisen.com/en/blog/10-reasons-why-you-should-use-sms-to-communicate-with-customers>> accessed 10 November 2020.

291 World Wide Web Consortium (W3C), ‘G54: Including a Sign Language Interpreter in the Video Stream’ (*Techniques for WCAG 2.0*, 2016) <<https://www.w3.org/TR/WCAG20-TECHS/G54.html>> accessed 10 November 2020.

292 World Wide Web Consortium (W3C), ‘Provide Content That, When Presented to the User, Conveys Essentially the Same Function or Purpose as Auditory or Visual Content’ (*Checkpoints for Guideline*, 2000) <<https://www.w3.org/WAI/wcag-curric/chk2-0.htm>> accessed 29 September 2021.

- Transcripts are text-based alternatives for the sounds, narration, and dialogue in an audio clip or an auditory track of a multimedia presentation.²⁹³ According to W3C, in the case of a video, ‘the transcript can also include the description of actions, body language, graphics, and scene changes of the visual track.’²⁹⁴

Including a sign language interpreter, live captioning, and transcripts in the video stream of electoral debates and other political events helps certain voters and enables them to follow and understand information. This facilitates the making of informed political choices and knowing election results.

Examples:

- In the 2020 U.S. presidential elections, the sign language channel DPAN.TV translated the presidential debates into American Sign Language in real time.²⁹⁵



Image at <https://www.pressherald.com/2020/10/06/presidential-debate-raises-profile-of-asl-interpreter-in-maine/>

293 *ibid.*

294 *ibid.*

295 PressHerald, ‘Presidential Debate Raises Profile of Deaf ASL Interpreter in Maine’ (*Kelly Bouchard’s article*, 2020) <<https://www.pressherald.com/2020/10/06/presidential-debate-raises-profile-of-asl-interpreter-in-maine/>> accessed 10 November 2020.

Discussion:

Video streaming, video closed captioning, and audio transcription services are high-tech systems. The National Union of British Sign Language Interpreters recommends a fee of £45,00 per hour for British Sign Language/English fully qualified interpreters.²⁹⁶ Video captioning and transcripts providers usually charge per minute. In the U.S., for example, prices can range from US\$1 per minute to US\$15 per minute according to 3PlayMedia Company.²⁹⁷ These services can be held to different standards, set by a few organisations such as the W3C. Overall, in order to include a video of a sign language interpreter in a video stream, the W3C explicitly recommends ‘making sure that there is a mechanism to play the video stream full screen in the accessibility-supported content technology.’²⁹⁸ The W3C also advise against using a too small interpreter’s video stream to prevent the interpreter from becoming indiscernible. Regarding live captions and interactive transcripts, the W3C recommends including the most accurate and relevant audio information in the captions, as well as avoiding using automatically generated captions that do not meet user needs or accessibility requirements.²⁹⁹

296 National Union of British Sign Language Interpreters, ‘Freelance Fees Guide for Fully Qualified Interpreters (RSLI) and Trainee Interpreters (TSLI) or Equivalent’ (*Quotations for Fees*, 2020) <<https://nubsl.com/guidance/interpreter-fees/>> accessed 10 November 2020.

297 Sofia Enamorado, ‘How Much Does a Closed Captioning Service Cost? (And Why Price Isn’t Everything)’ (*3PlayMedia*, 2020) <<https://www.3playmedia.com/blog/how-much-does-closed-captioning-service-cost/>> accessed 10 November 2020.

298 World Wide Web Consortium (W3C), ‘Including a Sign Language Interpreter in the Video Stream’ (*G54: Important Information about Techniques*, 2018) <<https://www.w3.org/WAI/WCAG21/Techniques/general/G54.html>> accessed 29 September 2021.

299 World Wide Web Consortium (W3C), ‘Captions/Subtitles in Making Audio and Video Media Accessible’ (*Web Accessibility Initiative WAI*, 2020) <<https://www.w3.org/WAI/media/av/captions/>> accessed 10 November 2020.

5. New and emerging assistive technology in elections

New and emerging technologies to assist voters with disabilities can be roughly divided into two groups: (i) haptic technology and (ii) other electronic technology. In the available literature on voting AT, there is a lack of price information on prototypes and emerging devices. Therefore, when discussing each device below, only a few include cost information.

5.1. Haptic technology

5.1.1. Electronic devices to display Braille

Use in the electoral cycle	Voting
Target Population	Voters with visual impairments and deafblind voters who know Braille code.

Application:

Electro-mechanical devices for displaying Braille characters assist the user to read text output and create text.³⁰⁰ These devices usually work through an electronic display with dots that pop up and down to form characters. A standard electro-mechanical device presents Braille characters through round-tipped pins raised through holes in a flat surface.³⁰¹ Other devices can also store text in print code, connect to a computer or any mobile device, be compatible with other AT such as screen readers, allow the user to read any file in print code directly from a secure digital card, and provide the user with file creation and editing functions. At a polling station, for example, a voter could access information in refreshable Braille characters by using an electro-mechanical device.³⁰² When connected to a voting machine, computer, or mobile device, the electronic refreshable display can communicate voting instructions, ballot paper content, and other electoral information in print code by using screen reading capabilities. The voter could also create a ballot paper auditable trail, save it, and/or print it.

300 NCBI. Working for People with Sigh Loss, 'Orbit Reader 20: Making Refreshable Braille More Affordable' (*Technology Explained*, 2018) <<https://www.ncbi.ie/orbit-reader-20-a-low-cost-breakthrough-in-refreshable-braille/>> accessed 27 October 2020.

301 European Parliament, 'Assistive Technologies for People with Disabilities. Part II, Current and Emerging Technologies' (n 53).

302 Pierce, Jackson and Swierenga (n 135); Quesenbery and Sutton (n 7).

Examples:

- American Printing House (APH), Orbit Research, and the Transforming Braille Group LLC developed the ‘Orbit Reader 20®’.³⁰³ It is an electronic refreshable Braille display. The device is equipped with a 20-cell 8-dot display and serves as a self-contained book reader, note-taker, and Braille display through a connection to a computer or smartphone via USB or Bluetooth. The Orbit Reader costs US\$599 (excl. taxes/unit).³⁰⁴



Image at <https://www.ncbi.ie/orbit-reader-20-a-low-cost-breakthrough-in-refreshable-braille/>

- In Colombia, ‘Commciso®’³⁰⁵ is a low-cost electronic refreshable Braille display (US\$170 excl. taxes/unit). It was developed by the engineer Francisco García who leads the project ‘Braille Hands’. The advantage of ‘Commciso®’ over synthetic speech is that it provides direct access to information, offers notetaking, allows the user to check format, spacing, and spelling, and is affordable.



Image shared by Francisco Garcia. ‘Braille Hands’ manager. (Consultation exercise)

303 NCBI. Working for People with Sigh Loss, ‘Orcam Features on RTE’s Nationwide’ (*Technology Explained*, 2019) <<https://www.ncbi.ie/orcam-features-on-rtes-nationwide/>> accessed 27 October 2020.

304 <https://www.ncbi.ie/orbit-reader-20-a-low-cost-breakthrough-in-refreshable-braille/> accessed on 15 November 2020.

305 Proyecto [Project] Braille Hands, ‘Commciso’ (*Deja que el Braille hable por ti*, 2020) <<http://commciso.simplesite.com/>> accessed 17 November 2020.

Discussion:

Electro-mechanical refreshable Braille displays are usually classified as high-tech and expensive devices.³⁰⁶ Nevertheless, there are also new medium-high tech and more affordable products available on the market. Prices vary depending on the underlying technological devices are based on. In elections, this emerging technology might simplify the use of Braille and reduce costs associated with Braille printing.

5.1.2. EVMs with advanced haptic technology

Use in the electoral cycle	Voting
Target Population	Voters with visual impairments and deafblind voters.

Application:

Advanced haptic technology can create an experience by touch (i.e., tactile feedback function) by applying forces, vibrations, or motions to the user. This technology is becoming common in electronic devices (e.g., the Microsoft Surface tablet, automated teller machines (ATMs), and ticketing counters in airports). In elections, e-voting machines could integrate touch panel interfaces that allow the user to easily move, rotate, zoom in and out, and perform other 3D operations on their ballot paper by directly touching and dragging the machine's screen, for example.³⁰⁷

Example:

- Divya and others,³⁰⁸ developed an experimental haptic application to support voters through an electronic voting system. The application uses an easy-to-use touch panel with embedded tactile feedback function (haptic display). The application allows a voter to easily confirm, select, and vote for their preferred candidate without any assistance. The data can be stored in the memory card of an EVM. Elderly and blind participants reported positive user experiences when using the application.

More information is available at <http://ijeee.in/wp-content/uploads/2015/08/IJEEE-1-3.pdf>

306 European Parliament, 'Assistive Technologies for People with Disabilities. Part II, Current and Emerging Technologies' (n 53); NCBI. Working for People with Sigh Loss (n 185).

307 European Parliament, 'Assistive Technologies for People with Disabilities. Part II, Current and Emerging Technologies' (n 53).

308 Byreddy Divya and others, 'An Electronic Voting System for Haptic Touch Screen Interface' (2015) 2 International Journal of Ethics in Engineering & Management Education 1.

Discussion:

Advanced haptic technology applications are high-tech. In elections, a tactile electronic display has the potential to deliver text and graphical information using voters' sense of touch. Voters with visual impairments and deafblind voters could benefit from haptic applications by accessing information through an alternative to visual and auditory means.

5.2. Other electronic technology**5.2.1. EVMs with interactive user interface (UI) and cloud-based technology**

Use in the electoral cycle	Voting
Target Population	Voters with disabilities and those who prefer customised UIs when using EVMs.

Application:

The UI is the point of human-computer interaction and communication in a device.³⁰⁹ It is the way through which a user interacts with a website or mobile application. An interactive UI includes accessibility options. This kind of UI allows the user to create personal profiles that specify how applications should be configured to meet their individual needs e.g., text size, audio volume, and speech rate. Interactive UIs can also be linked to cloud-based technology, where a user's information on settings preferences can be stored as metadata (or computer code). Data storage capabilities, as well as computing power and algorithm design are technological developments used in artificial intelligence (AI) systems.³¹⁰ AI is the simulation of human intelligence processes by machines, especially computer systems. Authors³¹¹ refer

309 Shaneé Dawkins and Sharon Laskowski, 'Cloud-Based Accessibility for Voting Applications' (2015) <<http://dx.doi.org/10.6028/NIST.IR.8047%0A>>; Jennifer Ismirle and others, 'Touchscreen Voting Interface Design for Persons with Disabilities: Insights from Usability Evaluation of Mobile Voting Prototype' (2016) 60 Proceedings of the Human Factors and Ergonomics Society Annual Meeting 780.

310 EA Draffan and Peter Heumader, 'Artificial Intelligence, Accessible and Assistive Technologies' in Klaus Miesenberger and others (eds), *17th International Conference on Computers Helping People with Special Needs* (Springer Link 2020) <<https://link.springer.com/book/10.1007/978-3-030-58796-3>>.

311 European Parliament, *European Framework on Ethical Aspects of Artificial Intelligence, Robotics and Related Technologies* (European Parliamentary Research Service 2020); Marly Van Assen and Ludo Cornelissen, 'Artificial Intelligence' (2020) 13 Cardiovascular Imaging 1172.

to common applications of AI including computer programmes (known as ‘expert systems’), natural language processing, speech recognition, and machine vision.

In this scoping review, AI applications were described for retrieving metadata of users to automatically configure a customised UI. Metadata may be collected during voter registration processes.³¹² By using cloud-based technology, for example, an EVM could retrieve metadata on a user’s preferences and automatically configure a customised ballot UI before an individual begins to vote. The voting machine could thus exchange data with a cloud-based system to download settings and automatically configure complex ballot interfaces, e.g., convert print code to speech code or adjust ballot paper font size. Notably, security, spend, and governance are major challenges for national electoral authorities in cloud computing.³¹³ National authorities must address these challenges to objectively make decisions regarding the provision of computing services in elections, including servers, storage, databases, and software.

Examples:

- ‘Anywhere Ballot®’ is a prototype ballot designed by the Center for Civic Design in Cambridge, Maryland (U.S.).³¹⁴ It is a responsive and web standards-compliant front-end device for ballot marking that is accessible to voters with low literacy or who have mild cognitive impairments. The UI supports multiple setting options. For example, the user can scroll the screen by using a button, scrollbar, or flicking a finger. The user can also access a standard or alternative final ballot interface based on the principles of ‘plain language’ and ‘plain interaction’.

312 Blanck, ‘Web Accessibility for People with Cognitive Disabilities: A Legal Right?’ (n 158); Zissis and Lekkas (n 255); Sarah Swierenga and others, ‘Security Implications for Personal Assistive Technology in Voting’, *HAS 2015. Human Aspects of Information Security, Privacy, and Trust* (Springer Link 2015).

313 International Foundation for Electoral Systems (IFES), ‘Leveraging New Technologies to Make Civic and Electoral Information Accessible to All Tunisians’ (*News*, 2021) <<https://www.ifes.org/news/leveraging-new-technologies-make-civic-and-electoral-information-accessible-all-tunisians>> accessed 27 May 2021.

314 Center for Civic Design, ‘Anywhere Ballot’ (*What if anyone could vote on any device?*, 2015) <<https://civicedesign.org/wp-content/uploads/Anywhere-Ballot-Design-Principles-20150101.pdf>> accessed 3 November 2020.

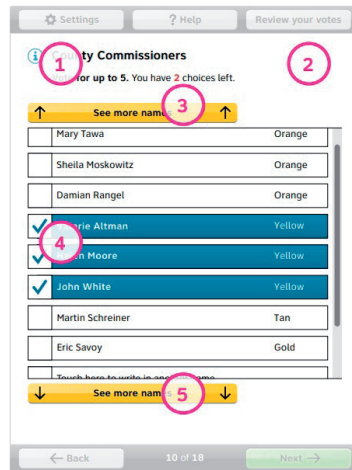


Image at <https://civicdesign.org/wp-content/uploads/Anywhere-Ballot-Design-Principles-20150101.pdf>
 More information at <https://civicdesign.org/wp-content/uploads/Anywhere-Ballot-Design-Principles-20150101.pdf>

- ‘EZ Ballot®’ is a prototype application designed by Kascak among others³¹⁵ to simplify the voting process. It is a linear structure voting interface which allows input through voice, touch, physical buttons, and output via visual, auditory, and tactile feedback. ‘EZ Ballot®’ breaks down the voting process into a series of simple yes or no questions. The voter can select a candidate by answering a single question per page, and by selecting YES or NO touch buttons on the sides of the touchscreen. It also accommodates a range of user’s abilities including settings for audio speed, text size, and contrast features.

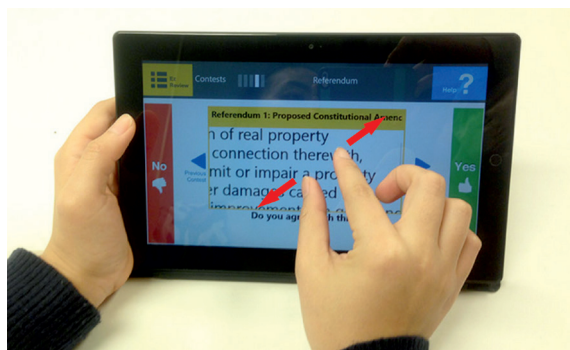


Image from <https://samratambadekar.com/ezballot.html>

315 Ljilja Kascak and others, ‘Universal Design (UD) Guidelines for Interactive Mobile Voting Interfaces for Older Adults’ in M Antona and C Stephanidis (eds), *Universal Access in Human-Computer Interaction: Access to the Human Environment and Culture* (Lecture No, 2015).

- The ‘Next Generation Voting Platform (NGVP)®’ is a prototype developed by the National Institute on Disability and Rehabilitation Research of the U.S. Department of Education.³¹⁶ NGVP is a voting support system with enhanced accessibility capabilities based on the user’s data stored in the cloud. It is a mobile ballot-marking application designed such that voters have the capability to use a customised interface to mark a blank ballot. The NGVP retrieves profile information to automatically adjust the ballot interface. The voter immediately sees or hears changes to the ballot interface based on the configurations in the cloud (text size preferences apply to the visual ballot interface, while audio volume and speech rate apply to the audio ballot interface). The voter can also modify further settings as needed or vote directly with the NGVP adjustments.

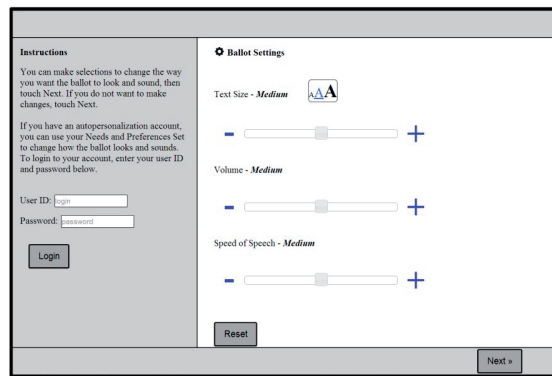


Image at <https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8047.pdf>

Discussion:

Interactive UIs on the web/mobile applications/EVMs are high-tech systems. All voters (with and without disabilities) can use an interactive UI to fill out and submit ballots. In electronic voting systems, interactive UIs can be also supported through cloud computing. In such cases, voting devices can identify the voter’s accessibility needs from the cloud. By accessing data stored in the cloud, voters are not tied to one access configuration, location, device, and form of personal AT. They may enjoy automatically customised UIs, as well as the freedom of web content and mobile application features equally in an information-technology system. Dawkins and Laskowski³¹⁷ suggest that interactive UI with integrated cloud technology is a promising initiative and that its practical use depends on assessing and addressing security features of the electronic systems and cloud technology.

³¹⁶ Dawkins and Laskowski (n 191).

³¹⁷ *ibid.*

5.2.2. Online training platforms for election officials

Use in the electoral cycle	Election officials training
Target Population	Election officials

Application:

Emerging digital training software is included in this inventory as another type of ICT specially designed to train poll workers who are with or without disabilities. Software can include content on voters with disabilities' rights and needs, and can be used to train election officials on how to enhance disabled voters' experience at polling stations.³¹⁸ Overall, digital training is an integrated set of interactive online services that provides trainers and learners with information, interactive tools, and resources to support and enhance education delivery and management.³¹⁹ National electoral authorities might design digital training programmes for election officials through online platforms which present content in a more engaging way. These courses might cover learning, evaluation, and communication modules on voters with disabilities' rights, polling stations' layouts, and accessibility standards. These courses could enhance election officials' performance on an election day.

Examples:

- Harris and others³²⁰ developed a standardised online training programme to provide poll workers with a more in-depth understanding of voters with disabilities. Poll workers can complete the online course in one hour or less. The course is based on an existing accessible online course template used for courses by the Centre for Assistive Technology and Environmental Access (Georgia, U.S.). It uses Moodle as courseware and its content integrates a variety of methods (e.g., videos, scenarios, and digital personas) to reflect the real world issues that confront both poll workers and voters with disabilities on election days.

More information is available at: <https://elections.itif.org/wp-content/uploads/AVTI-021-Harris-2014.pdf>

- 'Polling Place Application®' is a web-based interactive polling place design and management system that supports polling station design, training, operations, problem

318 Frances Harris and others, 'Development of an Online Course for Poll Workers to Improve the Voting Experiences of People with Disabilities' (2014) 21 <<https://elections.itif.org/wp-content/uploads/AVTI-021-Harris-2014.pdf>>.

319 *ibid.*

320 *ibid.*

solving, and auditing.³²¹ It was designed by Research in Accessible Voting (RAV) and funded by the U.S. Election Assistance Commission. The application is a prototype that presents a spatial/graphical UI for interacting with representations of voters, polling station space, voting materials, and equipment, to assist poll workers in better completing their functions on election day. ‘Polling Place Application’ trains poll workers to plan paths, entry and exit of all voters, as well as equipment and furniture placement at the polling station. A video overview of the system is available at https://www.dropbox.com/s/rz9ns7byvutkpui/pollingplacesimulator_x264.mp4

Discussion:

Digital training platforms are high-tech applications. These applications can be used by national electoral authorities to provide election officials with information and training to help them successfully to assist voters with disabilities at polling stations on election day.³²² These courses might offer a robust learning experience for election officials that makes them reflect on several issues, including polling place characteristics, interactions with voters with disabilities, Q&As, and problem-solving situations. Such a level of interaction, simulation, and engagement might be useful for election officials training strategies.

5.2.3. AT wearable devices

Use in the electoral cycle	Voter education, making an informed political choice, voting
Target Population	Voters with disabilities, young voters, and other ICTs users

Application:

AT wearable devices incorporate technological features which provide additional information alongside that which the wearer experiences through their senses.³²³ Optical character recognition is one type of technology integrated into wearable glasses (or ‘smart glasses’). A user can, for example, wear a pair of ‘smart glasses’ to scan printed characters in a text and convert it to digital text, which can then be read aloud by the same device. ‘Smart glasses’ can also incorporate Global Positioning System (GPS) technology.³²⁴ GPS is used to create a

321 U.S. Election Assistance Commission (n 59).

322 Harris and others (n 319).

323 Department of Health and Social Care. UK Government, ‘Research and Development Work Relating to Assistive Technology 2018-2019’ (2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885250/assistive-technologies-report-2018-to-2019.pdf>.

324 European Parliament, ‘Assistive Technologies for People with Disabilities. Part II, Current and Emerging Technologies’ (n 53).

live real time ‘radar’ showing where the wearer is and where they are in proximity to others and objects.

Virtual reality (VR) (or ‘augmented reality’) is another kind of technology increasingly used to assist persons with disabilities through immersive experiences.³²⁵ VR is the computer-generated simulation of a 3D image or environment. Devices integrating VR are in the form of, for example, smart glasses, gloves fitted with sensors, or headsets with a screen inside. Devices integrating VR can create digital-simulated environments that can be interacted with in a seemingly real or physical manner by the user. For example, by wearing the ‘Google glass®’ (or ‘Glass’), a device that displays information in a ‘smartphone-like’ and ‘hands-free format’, the user can communicate with the Internet via natural language voice commands.³²⁶ The user also has access to sign language interpretation services since Google glass uses already available smartphone applications such as Hand Talk, Mimix3D, ASL Translator, or ProDeaf Translator. The device displays on screen an avatar who translates the words heard by the wearer into sign language.

In elections, there are a few documented experiences where voters had access to VR through AT wearable devices to help them make informed voting decisions and cast their ballots.³²⁷

Examples:

- In the 2019 Israeli legislative elections, in a pilot programme available at 12 polling stations across the country, voters with visual impairments tried for the first time ‘smart glasses’ to vote at polling stations.³²⁸ Voters used the ‘OrCam My Eye®’ device. This device is manufactured by the Israeli-based company OrCam Technologies Ltd. It is a wearable device that attaches to user’s glasses. The device is activated by voice commands and when the user points at a text, the device takes a quick photo of the text and reads it back to the user through an ‘optical character recognition’ technology. The OrCam My Eye® costs more than €2,000 (excl. VAT/unit).³²⁹

325 Department of Health and Social Care. UK Government (n 205).

326 <https://www.google.com/glass/start/> accessed on 20 November 2020.

327 Blanck, *EQuality: The Struggle for Web Accessibility by Persons with Cognitive Disabilities* (n 158); Quesenbery and Sutton (n 7).

328 NCBI. Working for People with Sigh Loss (n 185).

329 <https://www.orcam.com/en/myeye2/> accessed on 15 November 2020.



Image at <https://www.orcam.com/en/media/israel-election-makes-history-with-tech-to-allow-blind-to-vote-unassisted/>

More information at <https://www.verdict.co.uk/israel-election-blind-orcam/>

- In the 2015 presidential elections in Nigeria, some electoral candidates used augmented reality tools to reach out to the country's young population. Candidates communicated with young people through an application for Android smartphones called 'Next for Nigeria'. The user could access avatar videos, manifestos characters 3D, participate in a Q&A live event, and taking selfies with candidates. Users could download the application on Google Play and focus on the party logo to trigger the technology. More information at: <https://www.experienti.eu/realta-aumentata/ar/next-for-nigeria-augmented-reality-arrives-to-elections-in-africa/>
- In 2020, the International Foundation for Electoral Systems (IFES) developed the 'New Tech Inclusive Democracy Exhibit' in Tunisia.³³⁰ The Democracy Exhibit presents visitors, mainly persons with disabilities and young people, with opportunities to learn more about democracy and elections in an accessible manner. The exhibit has three versions: a full audio-visual version, a sign language version, and an audio version with a screen reader. It includes augmented reality, VR, and interactive videos. IFES complemented the physical exhibit with an online platform and mobile application. It also partnered with the Tunisian Election Management Body and the High Independent Authority for Elections (ISIE) to publicise and expand its reach for future visitors.

More information can be found at: <https://www.ifes.org/news/leveraging-new-technologies-make-civic-and-electoral-information-accessible-all-tunisians> and here: <http://www.electionaccess.org/en/media/videos/695/>

³³⁰ International Foundation for Electoral Systems (IFES) (n 13).

Discussion:

AT wearable devices are high-tech products. Some potential benefits of making AT wearable devices available to the public (e.g. through voter education strategies) or at polling stations include: providing voters with disabilities with the opportunity to practise navigating polling stations; convey visual ballot paper information (audibly or translated to sign language) in real-time and offline; practise a variety of social interactions in a safe space which can reduce anxiety and paranoia; and reduce voter errors.³³¹ Challenges in implementing these devices include high costs, logistics and security, as well as training of election officials, ease with which these devices are to be set up, and whether voters will be familiar with them at polling stations, among others.³³² This ratio of challenges to benefits must be assessed contextually by electoral authorities.

No further experiences in converging VR and AI to support voters in casting their ballots were documented by authors in this scoping review. Nevertheless, it is worth noting that VR and AI are technologies with a great potential to influence participation of persons with disabilities in electoral processes. For example, a voter with a disability can use VR to practise marking their ballot paper, while AI can introduce a virtual poll worker (or a personal assistant) associate. This virtual poll worker could answer questions and assist a voter in casting their vote. The convergence of VR and AI would thus benefit voters with disabilities and offer great possibilities for providing a more inclusive voting environment.

5.2.4. Perceptual User Interfaces: gaze interaction and gesture recognition technology

Use in the electoral cycle	Voting
Target Population	Voters with physical impairments

Application:

Perceptual User Interfaces (PUIs) are highly interactive and multimodal interfaces which have been developed based on natural human-to-human interaction.³³³ PUIs use gestures (human

331 AFB American Foundation for the Blind, 'Oh Kapten! My Kapten! Where Am I? A Review of the Kapten PLUS Personal Navigation Device' (*AccessWorld Home*, 2011) <<https://www.afb.org/aw/12/7/15912>> accessed 27 October 2020.

332 *ibid*; Department of Health and Social Care. UK Government (n 205).

333 Information Technology and Innovation Foundation (ITIF), 'How Might We Design an Accessible Election Experience for Everyone?: Online & Mobile Voting -Accessibility for All' (*OpenIDEO*, 2012) <<https://challenges.openideo.com/challenge/voting/applause/online-mobile-voting-increase-accessibility-for-all>> accessed 27 October 2020; U.S. Election Assistance Commission (n 59).

motion) as input commands to operate computer systems. These interfaces are triggered through specialised software, for example, gaze interaction and gesture recognition technology.³³⁴ Gaze Interaction technology is an eye-tracking software integrated in computer systems. It uses a person's point of gaze to control PUIs. It can be used alone or in combination with other input modalities, such as a keyboard or paddle device. Gesture recognition technology involves a mathematical interpretation software of human motion carried out by a computing device. Hand or head movements, for example, can be interpreted as input controllers by the software.

In elections, voters with disabilities, especially those with physical impairments, could benefit from using PUIs which interact with electronic voting systems to scroll through a digital ballot, open a list of candidates, or select their options on a screen through a rapid movement of their eyes (fixation or dwell) or heads, among other gestures.

Example:

- The Information Technology and Innovation Foundation (ITIF) (funded by the U.S. Election Assistance Commission) documented eye tracking software and devices as a potential option to design an accessible election experience for everyone.³³⁵ To illustrate, authors refer to developments by Microsoft which has developed support for gaze interaction software in Windows since 2017.³³⁶ It has also manufactured and certified eye tracker devices. These devices can be attached to any monitor and capture user's gaze input. The cursor follows the user's eye movements and Windows applications respond to such input. The Eye Tracker 5 (latest eye tracking device certified by Windows) is available on Amazon for €229.00 (incl. VAT/unit).³³⁷



Image at <https://www.amazon.nl/Tobii-Eye-Tracker-5/dp/B0897GCBWW>

334 Information Technology and Innovation Foundation (ITIF) (n 215).

335 *ibid.*

336 Microsoft, 'Gaze Interaction Library' (*Developer Tools*, 2018).

337 <https://www.amazon.nl/Tobii-Eye-Tracker-5/dp/B0897GCBWW> accessed on 16 November 2020.

- ‘Wii-based Voting®’ is a prototype AT system documented by the project ‘Research in Accessible Voting (RAV)’ funded by the U.S. Election Assistance Commission.³³⁸ The system utilises Wiimote, which is a remote game controller for the Nintendo Wii game console system. It provides multiple PUIs for interacting with voters, including buttons, gestures (left, right, and down), and vibrations. A voter can navigate a remote voting system (the web) by pressing a button on Wiimote or doing a swipe gesture with it.

A video explaining ‘Wii-based Voting’ functioning is available at https://www.youtube.com/watch?v=O0D2ZzOhWFY&feature=youtube_gdata_player

Discussion:

PUIs are high-tech systems offering people with an alternative to conventional UIs for human-computer interaction. By integrating specialised software, EVMs can offer PUIs to support a wide range of interactions necessary to meet voters’ needs, and especially the needs of some voters with physical impairments.³³⁹ In elections, gaze interaction and gesture recognition technology could accommodate a wider range of scenarios, tasks, users, and preferences to make voter-computer interaction more easily. In addition to technical and security challenges of implementing PUIs, national electoral authorities also face social challenges, including conventional and acceptable gestures and other nonverbal types of communication based on local contexts.

6. Overall analysis

The previous sections described current and emerging electoral-assistive devices that can be made available by States to assist persons with disabilities when voting. This section presents the interpretation of the results of the scoping review. The results are discussed following the conceptual framework guiding the appraisal of the literature in this study (see section 3 above). Moreover, as described in the introduction to this chapter, Chapters VI and VII of this study address research participants’ experiences in using those specific electoral-assistive devices available in England and Spain.

³³⁸ U.S. Election Assistance Commission (n 59).

³³⁹ OpenIDEO, ‘Make Voting Switch Accessible!’ (*How might we design an accessible election experience for everyone?*, 2012) <<https://challenges.openideo.com/challenge/voting/inspiration/make-voting-switch-accessible>> accessed 28 October 2020.

6.1. Electoral cycle approach

States can provide voters with disabilities with the assistive devices illustrated and discussed in this chapter to assist them in performing all key electoral-related activities which required direct voters' participation. Overall, however, application of the devices shows a common trend towards assisting an individual's performance in the activity of voting (or 'casting ballots') over other activities. This is likely to be even more evident in the case of emerging technologies. AT which assists people to vote is also commonly made available by electoral authorities at polling stations (e.g., writing and visual aids), which means voters can access AT if they vote in person at polling stations, but not through other voting methods such as postal voting. In the case of voter registration and education, there are some AT devices to assist voters (e.g., voter guides formatted in Braille/easy-to-read text and mobile applications integrating AT features), which can be used remotely. Some of these technologies are compatible with personal AT devices to facilitate user experience. Notably, other activities, including training of election officials, making an informed political choice, making a complaint, and knowing election results are less supported through available and new electoral-assistive devices and technology. The scoping review of the literature confirms this analysis.

6.2. Target populations

The trend that emerges from the review of electoral-assistive devices discussed in this chapter indicates a move towards targeting multiple audience groups of voters i.e., not only voters with disabilities. Devices are, for example, also made available by States to assist language learners (e.g., easy-to-read voter guides), voters with low literacy (e.g., tactile ballot guides with raised symbols), people with attention difficulties (e.g., writing aids), and people who prefer personalised UIs when operating electronic devices. This means that, despite the traditional application of AT to enable persons with disabilities to perform activities, AT providers are changing their perspectives on product development and application. This new perspective leads to a move from providing products exclusively for people with impairments to providing products which meet people's preferences and needs more generally. Nevertheless, it is still common to find classification of devices based on people's impairments. In this case, application of AT seems to focus on two groups of voters: voters with visual impairments who know Braille and voters with physical impairments, and particularly voters with limited use of their upper extremities. Persons with different impairments who also may need to use assistive devices to vote are less likely to be targeted. This is a prevailing practice among States, including the UK and Spain, based on the review of AT devices discussed in this chapter.

6.3. Technological perspective: low-high tech

The scoping review confirms that States are making both low-and high-tech AT devices available to assist voters with disabilities in the voting environment. This is a technological perspective that varies locally and depends on multiple factors, such as direct research and development (R&D) embodied in a device. From this scoping review, it is apparent that there is an overall balance between current low- and high-tech solutions in elections in practice with probably a slight prevalence for high-tech devices, mainly resulting from electronic voting systems which integrate AT features. Nevertheless, States are also making technologies available which fall somewhere ‘in between’ (e.g., SMS technology and voting documents formatted in Braille), which can be classified as medium-high tech based on the complexity of the underlying technology. This trend is different in the case of emerging technologies, where there seems to be more interest in developing high-tech devices than other sorts of devices. The identifiable trend found in this scoping review is to provide auto personalised options for voters to simplify operations and interfaces of electronic voting systems, e.g., the mobile applications.

6.4. AT challenges

The discussion of electoral-assistive devices in this chapter shows that current AT application to promote greater access and flexibility for voters with disabilities occurs either through easily understandable and affordable products (e.g., a hand-held magnifier), or more complex and expensive systems (e.g., mobile applications and communication support technology). Both easily understandable/affordable and complex/expensive ATs require some degree of security risk assessment and standardisation to ensure usability and interoperability with other parts of the technological infrastructure (e.g., Internet and personal ATs). States have the challenge to ensure that security and accessibility requirements are addressed at the design stage of electoral-assistive devices and systems.

The articles included in this scoping review also suggest that government procurement plans or AT policy programme are necessary to advance AT availability in elections. In the case of emerging technologies, there is an evident trend towards developing more complex ATs, mainly by focusing on simplifying the human-computer interaction. These new technologies also present social, security, accessibility, and (bigger) affordability challenges. Notably, the scoping review shows that further research is needed in certain respects of the provision of electoral-assistive devices, namely cost analysis, user’s experiences, and relationship between AT, legal regulation, and socio-cultural factors. These aspects are unexplored issues in the literature reviewed here.

7. Conclusions

This chapter provided an overview of available and emerging electoral-assistive devices that can be used by States to increase, maintain, or improve persons with disabilities' participation in elections. The research carried out for this chapter confirms that the development and implementation of AT (and other technologies) in elections requires a comprehensive framework of analysis. The analysis must include, *inter alia*, the electoral cycle perspective, target populations, technological perspective, and common application challenges. Multiple actors must be involved in conducting this analysis. This includes AT designers and manufacturers, but is not limited to them. Notably, tangible benefits for voters with disabilities from using assistive devices to participate in electoral processes must be determined by persons with disabilities themselves. National electoral authorities must also guarantee that the development and implementation of electoral-assistive devices incorporate accessibility principles.

Based on the conceptual framework and the scoping review protocol applied in this chapter, four main trends and some gaps were found. Firstly, States are using AT devices in elections to support voters across the electoral cycle. However, AT application does not cover to the same degree all the electoral-related activities which require voter direct participation. Developments are centred on the activity of casting ballots in person at polling stations. This focus leaves outside other voting methods (e.g., voting by post) and support needs for persons with disabilities, in particular when persons with disabilities are being trained as election officials, making an informed political choice, making a complaint, or knowing election results. Further AT application and development by States needs to cover the whole electoral cycle and to ensure the equal and effective participation of voters with disabilities in elections.

Secondly, AT in elections can be used to assist all individuals to perform electoral tasks more easily. States are using AT as an option to make voting materials more accessible to multiple audience groups, and not only to persons with disabilities. Such an approach might be relevant when comprehensively assessing monetary and non-monetary costs and benefits associated with the provision of AT in elections. Nevertheless, it is still common to find target population classification based on types of impairment. This classification reveals a disproportionate number of devices designed to address the needs of blind voters (mostly those knowing Braille code) and voters with physical (fine motor impairments) in comparison with those products and systems put in place to assist individuals with different impairments. Consideration of human diversity and voters' demographics is a further perspective that can be adopted by AT designers and electoral authorities to fill this gap in supply. Such a perspective might play an important role in private companies and government decisions concerning the types of technology to design and implement in future elections.

Thirdly, current electoral-assistive devices available in some countries are either low- or high- tech, with a few exceptions. This means there are mechanical (i.e., manually operated) and affordable devices, as well as power source (i.e., electrically operated) and expensive devices which can be used by voters with disabilities. Conversely, emerging developments are almost exclusively high-tech devices. Despite the reality that technological advances are increasingly enriching voters' participation in elections, there is additional government and private funding for research on AT needed, as well as user-centred research to develop new low-tech devices to assist voters with disabilities. Such devices can be made available more easily by some States, primarily those with limited resources. A more balanced technological perspective in the production of new devices is thus needed to ensure the development of context-appropriate voting materials.

Lastly, this scoping review indicates that AT application in elections requires government technology procurement plans and AT policy programmes which address different factors, including socio-cultural, security, and accessibility standardisation challenges. These are areas for further knowledge development to ensure the usability of electoral-assistive devices (i.e., effectiveness, efficiency, and user's satisfaction).

The following chapter of this study involves the legal dogmatic analysis of the provision of AT in elections.



Chapter III

Legal obligations under
international human rights
instruments of States
regarding the provision of
electoral-assistive devices

1. Introduction

This chapter follows up on the idea formulated in the previous chapter about providing assistive technology (AT) as a measure for achieving greater accessibility in the voting environment. It seeks to establish the legal basis under international human rights law for providing electoral-assistive devices to be used by voters with disabilities where necessary and appropriate. To that end, the chapter answers the following research sub-question:

What is the legal duty of States Parties under the CRPD and other relevant international human rights instruments regarding the provision of electoral-assistive devices to be used by persons with disabilities?

The overall aim of this chapter is to identify and analyse the legal obligations under international human rights instruments of States regarding the provision of electoral-assistive devices to be used by persons with disabilities to vote. The focus is on interpreting Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) and Article 29(a) CRPD. Accordingly, this chapter provides a comprehensive legal basis for the assessment of compliance of England and Spain with their international legal obligations by setting out what those obligations are. This assessment is elaborated in chapters VI (England) and VII (Spain).

This chapter is divided into seven sections. Following this introduction, section 2 of this chapter briefly explains the research methodology (treaty interpretation) employed in this chapter. Section 3 provides an interpretation of Article 25(b) ICCPR. It aims to examine the normative content of the legal obligations of States Parties pertaining to the focus of this study. Section 4 of this chapter introduces the CRPD as a binding and disability-specific global treaty. The purpose of this section is two-fold. Firstly, it aims to examine the progressive conceptual understanding of disability under the CRPD (sub-section 4.1). This is an important backdrop to the right to vote of persons with disabilities. Secondly, Section 4 consists of an interpretation of some of the constituent elements of Paragraph (a) of Article 29 CRPD, and mainly the concept of ‘opportunity’ to enjoy political rights (sub-section 4.2.1.) and the obligation to ‘ensure full and effective participation’ (sub-section 4.2.2.). As such, Section 4 provides an understanding of fundamental concepts found in Article 29(a) CRPD. This understanding guides the substantive interpretation of Article 29(a) in the next section of this chapter.

Section 5 of this chapter identifies and analyses the legal obligations of States Parties under Article 29(a) and related CRPD provisions regarding the provision and use of electoral-assistive devices by persons with disabilities. Firstly, this section interprets the legal obligation to provide accessible voting materials [Article 29(a)(i) CRPD] (sub-section 5.1.). Secondly, the obligation to ensure ballot secrecy [Article 29(a)(ii) CRPD] is addressed (sub-section 5.2.). Thirdly, this section elaborates on the legal obligation to ensure the free expression of the will

of persons with disabilities as voters [Article 29(a)(iii)] (sub-section 5.3.). When discussing each of these obligations, this section outlines the link between the States Parties' specific obligations and the provision of AT devices. Fourthly, Section 6 includes a brief discussion of other (active) measures to be developed and implemented by States Parties in the context of voting, mainly those measures related to the concepts of 'universal design' and 'reasonable accommodation'.

Lastly, Section 7 provides some concluding remarks.

2. Research methodology (treaty interpretation)

This chapter uses treaty interpretation as a research method for identifying and analysing the obligations of States Parties under international human rights law. The concept of treaty interpretation was discussed in the introductory chapter of this study. This section focuses on the interpretative criteria and rules for treaty interpretation set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT).

Article 31 VCLT establishes the general rule of interpretation. It provides:

- 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.¹*

¹ United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, Article 31.

Article 31(1) above refers to four elements: good faith, ordinary meaning to be given to the terms of the treaty, the treaty's object and purpose, and context. The element of *good faith* applies to the whole process of interpreting a treaty. It is equivalent to conducting a 'reasonable' interpretation.² Moreover, *good faith* is associated with the task of finding the real intention of the States Parties to a treaty.³ The *ordinary meaning* of a term includes the 'regular, normal or customary' meaning.⁴ Interpreting the 'ordinary meaning' is related to the literal interpretation (or 'textual interpretative approach'), which asserts that the ordinary meaning is a 'starting point' to interpret a term. This 'starting point' may play a determinative role, but only if the other elements of the general rule of interpretation confirm the interpretation based on the ordinary meaning. The *object and purpose* are the treaty's *raison d'être* and *ratio legis*.⁵ These elements are identified through a teleological interpretation (or 'functional interpretation approach'), which asserts that the *object and purpose* of a treaty are based on a normative construction.⁶ As such, there is no unique or precise method to identify the *object and purpose* of a treaty.⁷ The main guidance provided by the VCLT is that these elements cannot be invoked to contradict the meaning of the text of the treaty. Lastly, the *context* of a treaty consists of the complete text of the treaty.⁸ The *context* is related to the systematic interpretation (or 'contextual interpretation approach').⁹ Article 31(3) VCLT provides that the *context* includes any agreement between the parties regarding the interpretation or the application of a treaty (e.g., the Optional Protocol to the CRPD); the practice in the application of the treaty; and any relevant applicable rules of international law. In this regard, two observations are important. Firstly, the decisions and recommendations adopted by the treaty bodies, such as the CRPD Committee, may represent 'subsequent practice' and 'subsequent agreements'. Nevertheless, concluding observations and general comments are not legally binding instruments *per*

2 Hersch (Sir) Lauterpacht, 'Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties' (1949) 26 British Yearbook of International Law 48.

3 Richard Gardiner, *Treaty Interpretation* (1st edn, Oxford University Press 2008).

4 *ibid.*

5 The Cambridge Dictionary defines the French phrase *raison d'être* as the reason for existence and the Latin phrase *ratio legis* as the reason or principle behind a law. See <https://dictionary.cambridge.org/>.

6 International Court of Justice, Advisory Opinion Concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, International Court of Justice (ICJ), 28 May 1951.

7 According to Gardiner, the teleological element of the object and purpose of a treaty present some uncertainty. He asserts that it would be unrealistic to assume that the object and purpose of a treaty are easily identifiable from reading one particular provision: '*it must be gained from the 'spirit' of the treaty.*' See Gardiner (n 3), 38.

8 Hanneke Senden, 'Interpretation of Fundamental Rights in a Multilevel Legal System: An Analysis of the European Court of Human Rights and the Court of Justice of the European Court' (Leiden University 2011).

9 Michael S Kirsch, 'The Limits of Administrative Guidance in the Interpretation of Tax Treaties' (2009) 87 Texas Law Review 1063.

se.¹⁰ Thus, in a formal sense, the views adopted by the CRPD Committee are a subsidiary source of interpretation with an undeniable authoritative but not binding weight. Secondly, in international human rights law there is a mutually re-enforcing nature of all treaties, i.e., the treaties complement each other.¹¹ Thus, when interpreting the CRPD, it is important to consider other human rights instruments.

Article 31(4) VCLT contains an exception to the interpretation rules in Article 31(1) VCLT for those cases in which the States Parties agree to substitute the ordinary meaning of a term by a 'special meaning'. Gardiner¹² explains the term '*special meaning*' from two approaches: it corresponds to the meaning that a term has in a particular area of human endeavour (e.g., a term of art) and it is the meaning that differs from the most common one. In the latter case, States Parties must provide some indication that the meaning of a term differs from the expected one.

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

'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.'*¹³

Article 32 lays the foundation for interpreting an international treaty by referring to its preparatory work. This rule corresponds to the historical interpretative approach. This approach states that the use of the preparatory work for interpretation takes place when the application of the methods established in Article 31 lead to an ambiguous or 'obscure' meaning or a manifestly 'absurd' or unreasonable result.¹⁴ Nevertheless, Article 32 VCLT does not define the extent of the material covered by the term 'preparatory work'. Overall, it is accepted that official working papers of delegates drafting a treaty (e.g., preliminary drafts of the CRPD and reports of the drafters) are a supplementary source for interpreting a treaty.¹⁵

10 Gerald L Neuman, 'Giving Meaning and Effect to Human Rights: The Contribution of Human Rights Committee Members' (*Research Working Paper Series. Harvard Law School*, 2016) 1 <http://hrp.law.harvard.edu/wp-content/uploads/2016/12/Gerald-L-Neuman_HRP-16_002.pdf> accessed 30 September 2021.

11 Office of the United Nations High Commissioner for Human Rights, 'The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies' (2012).

12 Gardiner (n 3), 291.

13 *United Nations, Vienna Convention on the Law of Treaties*, 23 May 1969 (n 1), Article 32.

14 Senden (n 8).

15 Lord McNair, *The Law of Treaties* (Oxford University Press 1986).

In this study, the legal interpretation of the provisions of international law is based on a synthesis of all the interpretative rules set forth by the VCLT, and three main principles of treaty interpretation. The *principle of autonomous interpretation* refers to the idea that there can be only one true interpretation of a treaty.¹⁶ The meaning of treaty provisions is thus not equivalent to the meaning given to them by the domestic law of States Parties.¹⁷ Accordingly, the researcher has searched for the autonomous and international meaning of treaty provisions. The *principle of effective interpretation* emphasizes the integrity of a treaty and the need to give effective content to all its terms.¹⁸ Based on this principle, the researcher has tried to understand what the parties agreed in order to provide an accurate understanding of the provisions of each treaty, and the treaty as a whole. Lastly, the *principle of evolutive interpretation* views human rights treaties as living instruments.¹⁹ By adopting an evolutionary interpretation, the interpreter understands that meanings of rights change from the meanings they had when treaties were adopted. In this study, a dynamic interpretation approach has been adopted to provide an accurate interpretation of the meanings of rights in the treaties examined.

The following section presents the application of the VCLT rules and principles of treaty interpretation described above to relevant provisions of international human rights law: Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) and Article 29(a) CRPD. The legal interpretation of these provisions will establish the legal basis for the assessment of compliance with certain obligations by England and Spain regarding the provision and use of electoral-assistive devices by persons with disabilities.

3. Legal obligations of States Parties under Article 25(b) ICCPR

The beginning of the development of the right of all people to participate in the political processes of their nations began with the Universal Declaration of Human Rights (UDHR) in 1948.²⁰ Notwithstanding the fact that the UDHR does not create legally binding obligations, States are called on to ensure the right of ‘everyone’ to participate in periodic, free, and genuine elections through a secret ballot as provided by Article 21(3) UDHR. These innovative principles were developed later through a binding treaty: the International Covenant on

16 Gardiner (n 3).

17 Stephen Carruthers, *How Just Is the Union's Area of Freedom, Security and Justice?: An Assessment of the Normative Status of International Fundamental Rights in the Union's Legal Order* (University of Ulster, Magee College 2006), 291-292.

18 Lauterpacht (n 2).

19 Eirik Bjorge, ‘Evolutionary Interpretation: The Convention Is a Living Instrument’ in Eirik Bjorge (ed), *Domestic Application of the ECHR: Courts as Faithful Trustees* (Oxford Scholarship Online 2015).

20 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

Civil and Political Rights (ICCPR). The ICCPR is the most widely ratified international instrument on political participation.²¹ The UK and Spain ratified the ICCPR in 1976 and 1977, respectively. Voting rights are codified in Article 25(b) ICCPR, which provides:

Article 25(b)

‘Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

[...]

(b) To 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; (...).’²²

Article 25(b) ICCPR guarantees the right to political participation to citizens of States Parties. According to the UN Human Rights Committee (HRC), in its General Comment No. 25 of 1996,²³ the ICCPR does not prescribe how a State determines citizenship, though it does prohibit discrimination in such determination. The HRC also recognised that the right to vote should be exercised as an act of individual free expression by ‘every citizen’ of a State Party, which includes persons with disabilities. However, the HRC accepted that people could be denied the right to vote by reason of ‘mental incapacity’.²⁴ Although no other subsequent General Comment issued by the HRC addresses the right to vote of persons with disabilities, the HRC’s interpretation of Article 25(b) ICCPR has evolved after the adoption of the CRPD, as reflected in its concluding observations to States Parties.²⁵ The HRC has explicitly recommended that States Parties ensure that national electoral law does not discriminate against persons with disabilities.²⁶ Indeed, States Parties cannot deny persons with disabilities the right to vote on grounds that are disproportionate or have no reasonable and objective relation to their ability to vote, under Article 25(b) read in conjunction with Articles 2(1) and 26 ICCPR. Article 2(1) ICCPR provides that no distinctions are permitted between citizens in the enjoyment of political rights on the grounds of ‘*race, colour, sex, language, religion, political*

21 UN General Assembly, International Covenant on Civil and Political Rights, G.A. Res.2200A (XXI), U.N. Doc A/6316, from 16 December 1966.

22 *ibid*, Article 25(b).

23 Human Rights Committee, CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), 12 July 1996, para. 22.03.

24 *ibid*, para. 4.

25 See for instance *Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Czechia, CCPR/C/CZE/CO/4, 06 December 2019, paras 46-47; Human Rights Committee, Concluding Observations on the Third Periodic Report of Tajikistan, CCPR/C/TJK/CO/3, 22 August 2019, paras 54-55; Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Paraguay, CCPR/C/PRY/CO/4, 20 August 2019, paras 38-39.*

26 International Institute for Democracy and Electoral Assistance (IDEA), ‘International Obligations for Elections. Guidelines for Legal Frameworks’ (2014) 364 <<https://www.idea.int/publications/catalogue/international-obligations-elections-guidelines-legal-frameworks>> accessed 30 September 2021.

or other opinion, national or social origin, property, birth or other status.’ Joseph and others²⁷ argue that, in light of the term ‘other status’, when participating in political life, persons with disabilities have the same human rights as others. Article 26 ICCPR provides that ‘*all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.*’ Articles 2(1), 25(b), and 26 ICCPR must be interpreted as norms prohibiting any discrimination and guaranteeing to all citizens equal protection against discrimination on the ground of disability in the context of voting.²⁸ Furthermore, Article 25(b) ICCPR sets forth certain duties for States Parties that are relevant to the focus of this study, as examined below.

3.1. The obligation to ensure the ‘opportunity’ to vote for all voters

The preamble to Article 25(b) ICCPR provides that citizens must have the ‘opportunity’ to exercise their right to vote. According to Tomuschat,²⁹ the drafters of Article 25 ICCPR agreed to introduce the wording ‘opportunity’ to ensure that all citizens have the right to effectively take part in the running of the public affairs of their country. The drafters made it clear that States must effectively ensure the right to vote of citizens.³⁰ In a similar view, Conte³¹ asserts that a ‘proactive approach’ to render participation of all voters in political life as a realisable possibility is endorsed by Article 25(b) ICCPR through the wording ‘opportunity’, and complements the formal recognition of the right to vote. Berger-Walliser³² explains that when duty bearers, including States, adopt a ‘proactive approach to law’, they seek to set effective, change-oriented goals, focus on accomplishments with real impact, and achieve results. In other words, a ‘proactive approach to law’ implies that duty bearers take action to achieve effective implementation of the law. Notably, by using the word ‘opportunity’ in the preamble of Article 25(b) ICCPR, the drafters reflected the purpose of this provision, namely to place the right to participate in political life under the effective protection of international human rights law.

27 Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford University Press 2000), 502.

28 *ibid.*

29 Christian Tomuschat, ‘Introductory Note’ (*International Covenant on Civil and Political Rights*, 2008) 1 <https://legal.un.org/avl/pdf/ha/icpr/icpr_e.pdf> accessed 20 July 2021.

30 *ibid.*, 2.

31 Alex Conte, ‘Democratic and Civil Rights’ in Alex Conte and Richard Burchill (eds), *Defining Civil and Political Rights: the jurisprudence of the United Nations Human Rights Committee* (II, Routledge 2016).

32 Gerlinde Berger-Walliser, ‘The Past and Future of Proactive Law: An Overview of the Proactive Law Movement’ in Gerlinde Berger-Walliser and Kim Østergaard (eds), *Proactive Law in a Business Environment* (DJØF Publishing 2012), 13-17.

Furthermore, relevant legal criteria to interpret the term ‘opportunity’ are also provided by Article 2(2) ICCPR. This provision declares that *‘Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps [...] to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant.’* In its General Comment No. 25, the HRC noted that under Articles 2(2) and 25(b) ICCPR, States Parties are legally obliged to take ‘effective measures’ to ensure that all persons entitled to vote are able to exercise that right.³³ The Committee also asserted that *‘Positive measures should be taken to overcome specific difficulties, such as illiteracy, [...] or impediments to freedom of movement, which prevent persons entitled to vote from exercising their rights effectively.’*³⁴ The HRC has, therefore, expressly confirmed that States Parties have positive duties to guarantee the enjoyment of the right to vote of citizens under Article 25(b) ICCPR.³⁵ This means that States Parties must ‘respect and protect’ the right to vote of citizens, as well as to adopt positive measures to implement this right in practice.

The intersection of negative and positive obligations to implement the right to vote of persons with disabilities is even clearer in the context of Article 29(a) CRPD, which endorses the principle of ‘equality of opportunity’. This provision is comprehensively interpreted in sub-section 5.1. below. For the present purposes, it is important to highlight that the HRC has declared that States Parties are required to adopt all ‘necessary steps’ and ‘effective (positive) measures’ to ensure that all citizens, including all voters with disabilities, have the opportunity to vote under Article 25(b) ICCPR. Moreover, after the adoption of the CRPD, in some of its concluding observations to States Parties, the HRC has explicitly indicated that examples of ‘effective measures’ include the provision of accessible voting materials³⁶ and electoral-assistive devices, such as ballot papers in Braille.³⁷ As explained in chapter II of this study, ballot papers in Braille are not recommended in this study because they risk leaving ‘electoral traces’ for voters with disabilities who use these devices. However, it is noteworthy that, under Article 25(b) ICCPR, the HRC has recommended that States Parties provide electoral-assistive devices to be used by voters with disabilities as an effective measure to ensure their opportunity to vote. The fact that these recommendations postdate the adoption of the CRPD is also important as it indicates how the CRPD has altered the traditional interpretation of voting rights of persons with disabilities.

33 Human Rights Committee, CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), 12 July 1996 (n 23), para. 11.

34 *ibid.*, para. 12.

35 Joseph, Schultz and Castan (n 27), 503.

36 Human Rights Committee, Concluding Observations on the Third Periodic Report of the Former Yugoslav Republic of Macedonia, CCPR/C/MKD/CO/3, 17 August 2015, para. 22.

37 Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Paraguay, CCPR/C/PRY/CO/4, 20 August 2019 (n 25), para. 11.

3.2. The obligation to ensure ballot secrecy

According to Tomuschat,³⁸ at an early stage of the drafting process of the ICCPR, drafters agreed that ‘protective mechanisms of human rights at the domestic level alone did not provide sufficiently stable safeguards.’ The drafters included in Article 25 ICCPR some of the most widely accepted elements of the right to vote to secure their international legally binding character for States Parties. In doing so, the drafters of the Covenant thoroughly reviewed the wording of Article 21(3) UDHR that provides that elections be held by secret ballot. A secret ballot shields voters from pressures or threats to which they may be subjected if third parties know how they intend to vote or voted.³⁹ Accordingly, elections must be held by secret ballot under Article 25(b) ICCPR. To that end, States Parties are required to take measures to guarantee the requirement of the secrecy of the vote in practice.⁴⁰ Such measures include informing voters with disabilities about their rights to a free and secret ballot and be assisted to vote under Article 25(b) ICCPR.⁴¹

Lastly, in its 2019 concluding observations on the initial report of Paraguay, the HRC recommended Paraguay make ballot papers available in Braille to specifically ensure the right of blind voters to vote secretly.⁴² Therefore, the link between implementing the right to vote secretly and using electoral-assistive devices by voters with disabilities under Article 25(b) ICCPR has been recognised by the Committee, and particularly after the adoption of the CRPD.

3.3. The obligation to guarantee the free expression of the will of voters

According to Lau and Redlawsk:⁴³ ‘democratic representation can be assured if informed citizens freely elect their leaders.’ This means that a proper democratic system of government requires voters to make an informed political choice. Voter decision-making is protected under Article 25(b) ICCPR. This provision sets out the right of citizens to make a free and informed

38 Tomuschat (n 29).

39 See Michael Evan Waterstone, ‘Civil Rights and the Administration of Elections -Toward Secret Ballots and Polling Place Access’ (2004) 8 *Journal of Gender, Race & Justice* 101.

40 Conte (n 31), 103.

41 Human Rights Committee, CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), 12 July 1996 (n 23), para. 20.

42 *Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Paraguay, CCPR/C/PRY/CO/4, 20 August 2019* (n 24), para. 11.

43 Richard R Lau and David P Redlawsk, *How Voters Decide: Information Processing during Election Campaigns* (Cambridge University Press 2006), 3.

choice about candidates when voting. According to the HRC,⁴⁴ the right of citizens to express their will in elections encompasses the duty of States Parties to adopt positive measures to ensure that disadvantaged citizens, as may be the case for some voters with disabilities, have access to information to help them exercise this right under Article 25(b) ICCPR. In this regard, the HRC has identified voter education campaigns as an effective measure to guarantee the right to vote of citizens without undue influence that could distort the free expression of their will.⁴⁵ It has also provided that electoral information, including materials about voting procedures, ‘should be made available in minority languages and that certain methods, e.g., photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their political choice.’⁴⁶ Understanding the terms ‘photographs’ and ‘symbols’ used by the HRC to include easy-to-read formats is possible based on the explanation of ‘easy-to-read language’ provided in chapter II of this study. It is thus important that the HRC reinforces the obligation to make electoral information available in easy-to-read formats as an effective measure to be adopted by States Parties to comply with their obligations under Article 25(b) ICCPR.

Furthermore, in the context of disability, the opportunity for persons with disabilities to freely express their political opinions and choice on an equal basis with others is inextricably linked to the recognition of their legal capacity. This topic is further discussed in this chapter when interpreting Articles 12 (equal recognition before the law) and 29(a)(iii) CRPD (section 5.3. below). At the time of writing this study, the HRC has not yet considered any individual disability-related complaint concerning Article 25(b) ICCPR pursuant to Article 1 of the ICCPR’s Optional Protocol mechanism.

Lastly, the legal elements of the right to vote, as established in Article 25(b) ICCPR, were developed later by another binding treaty: the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which was adopted in 1979.⁴⁷ Spain ratified CEDAW in 1984 and the UK followed suit two years later. The non-discrimination principle covers the whole range of human rights recognised in CEDAW, including the political rights of women. Although CEDAW does not specifically address the issue of disability, based on a contextual interpretative approach, it is accepted that its provisions apply to all disabled and

44 Human Rights Committee, CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), 12 July 1996 (n 23), para 12.

45 *ibid.*, paras 11 and 19.

46 *ibid.*, para. 12.

47 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979.

non-disabled women.⁴⁸ For the present purposes, it is enough to say that Article 7 CEDAW addresses the elimination of discrimination against women in political and public life. Moreover, States Parties are required to take positive measures to ensure that women have substantive equality of opportunity to vote under Article 7(a) CEDAW. The wording contained in Article 29 CRPD is mirrored in the rights set forth in both Article 25 ICCPR and Article 7 CEDAW. The CRPD aims to prevent and eliminate discrimination against women (disabled and non-disabled women) in the context of voting, as explained below in this chapter.

3.4. Concluding remarks

This section indicated that international human rights instruments adopted prior to the CRPD have established participation in political life as a human right [Articles 21(3) UDHR; 25(b) ICCPR; and 7(a) CEDAW]. Implementation of this right is necessary to achieve well-functioning democratic systems. This section also illustrated that, pursuant to Articles 2(2), 25(b), and 26 ICCPR, restrictions on the right to vote imposed by States Parties must be based on reasonable and objective criteria. In that regard, the HRC, based on an evolutive interpretative approach, has provided that domestic laws which deprive persons with disabilities of their voting rights by reason of their ‘mental capacity’ involve disproportionate restrictions on the rights protected by Article 25(b) ICCPR.

Furthermore, under Articles 2(2) and 25(b) ICCPR, States Parties are obliged to ensure that persons with disabilities who are legally entitled to vote have the actual opportunity to vote, can vote secretly, and can freely express their will as voters. To that end, States Parties to the ICCPR must adopt ‘effective’ and ‘positive’ measures to ensure the enjoyment of voting rights of their citizens under Article 25(b) ICCPR. This section has discussed examples given by the HRC of positive action measures that specifically involve the provision of electoral-assistive devices. For example, the HRC has explicitly recommended certain States Parties provide voters with disabilities with ballot papers in Braille and easy-to-read voter education guides. These recommendations postdate the adoption of the CRPD. This is a significant research finding as it indicates how the CRPD, as a binding and disability-specific global treaty, is an interpretative aid for the substantive rights and obligations in the ICCPR in the context of persons with disabilities.

48 Oddný Mjöll Arnardóttir, ‘A Future of Multidimensional Disadvantage Equality’ in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff: Leiden 2009), 51-52; Andrea Broderick, ‘The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities’ (Intersentia 2015), 43 and 91.

The following section of this chapter examines the CRPD as the primary international human rights treaty for promoting full and equal participation of persons with disabilities in elections.

4. The CRPD: a binding and disability-specific global treaty

This section introduces the CRPD. The overall purpose of this section is two-fold. Firstly, it aims to examine the progressive conceptual understanding of disability under the CRPD (sub-section 4.1 below). This is an important backdrop to the right to vote of persons with disabilities. Secondly, Section 4 consists of an interpretation of some of the constituent elements of Paragraph (a) of Article 29 CRPD, and mainly the concept of ‘opportunity’ to enjoy political rights (sub-section 4.2.1. below) and the obligation to ‘ensure full and effective participation’ (sub-section 4.2.2. below). As such, this section provides an understanding of fundamental concepts found in Article 29(a) CRPD. This understanding guides the substantive interpretation of Article 29(a) in the next section of this chapter.

4.1. The conceptual understanding of disability under the CRPD

The CRPD is an innovative human rights treaty and is one of the most widely ratified human rights treaties worldwide.⁴⁹ The drafting process of the CRPD began on 19 December 2001, when UN General Assembly Resolution 56/168 was adopted.⁵⁰ This resolution established an Ad Hoc Committee to consider proposals for drafting the CRPD. The Working Group of the Ad Hoc Committee drafted Article 18 (which later became Article 29). At the Committee, the panel of experts agreed to discuss a conceptual understanding of disability, rather than a specific definition of disability.⁵¹ They reached consensus on conceptualising disability with regard to a social-contextual framework, rather than relying on ‘individual models’ of disability.⁵²

49 UN Treaty Collection, ‘Status as at 28/02/2021 Convention on the Rights of Persons with Disabilities, New York, 13 December 2006’ (*Chapter IV Human Rights.*, 2021) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4> accessed 28 February 2021.

50 *Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, A/RES/56/168*, 19 December 2001.

51 ‘UN General Assembly, Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, New York, 16-27 June 2003, Second Session A/58/118 of 3 July 2003’ <https://www.un.org/esa/socdev/enable/rights/a_58_118_e.htm> accessed 6 May 2020.

52 See Theresia Degener and Gerard Quinn, ‘A Survey of International, Comparative and Regional Disability Law Reform’ in Mary Lou Breslin and Silvia Yee (eds), *Principles to Practice: Disability Rights Law and Policy International and National Perspectives* (Transnational Publishers 2002).

Oliver⁵³ and Priestley⁵⁴ explain that ‘individual models’ of disability characterise disability in terms of individual problems caused by impairments (an attribute of an individual, e.g., blindness). Broderick⁵⁵ explains that the focus under ‘individual models’ of disability is on the impairments of individuals rather than discriminatory barriers in society. Conversely, according to Traustadóttir,⁵⁶ the social model of disability is based on a socio-political perspective, which locates the experience of disability in the social environment, rather than in impairment. Oliver⁵⁷ argues that persons with impairments face discrimination arising from social structures which segregate or exclude them from participating fully in society. Consequently, ‘disability’ is a socially constructed category stemming from a systematic disadvantage (i.e., disability stems from discrimination and social oppression).⁵⁸ It is the society that excludes persons who have impairments from the mainstream of social activities. Consistent with this view, disability scholars concur in arguing that the social-contextual model of disability had an enormous influence on the drafting of the CRPD.⁵⁹ Paragraph (e) of the Preamble and Article 1 CRPD clearly reflect the delegates’ conceptual understanding of disability. Paragraph (e) of the Preamble recognises that:

‘Disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.’⁶⁰

Article 1 provides:

‘Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’⁶¹

53 Michael Oliver, *Understanding Disability: From Theory to Practice* (2nd edn, Palgrave Macmillan 2009).

54 Mark Priestley, ‘Constructions and Creations: Idealism, Materialism and Disability Theory’ (1998) 13 *Disability & Society* 75.

55 Broderick (n 48), 23.

56 Rannveig Traustadóttir, ‘Disability Studies, The Social Model and Legal Developments’ in Gerard Quinn and Oddný Mjöll Arnardóttir (eds), *The UN Convention on the Rights of Persons with Disabilities. European and Scandinavian Perspectives* (Martinus Nijhoff: Leiden 2009).

57 Oliver, *Understanding Disability: From Theory to Practice* (n 53).

58 *ibid*; Priestley (n 54).

59 Degener and Quinn (n 52); Agustina Palacios, ‘The Social Model in the International Convention on the Rights of Persons with Disabilities’ (2015) 4 *The Age of Human Rights Journal* 91.

60 *UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106*, Preamble (e).

61 *ibid*, Article 1.

Noteworthy, other contemporary disability scholars⁶² argue that the CRPD goes beyond conceptualising disability in connection to discrimination and social oppression. Stein and Stein,⁶³ for example, argue that the CRPD reflects a disability human rights paradigm. For the authors, by adopting a disability human rights paradigm, the CRPD's framework moves from the social model advocacy's emphasis on *formal equality* (or equity before the law) to a rights-based emphasis on *substantive equality* (or full and effective inclusion of a socially marginalised group).⁶⁴ The former Chairperson of the CRPD Committee, Theresia Degener,⁶⁵ has elaborated on the disability human rights paradigm. Degener⁶⁶ argues that the human rights model is an improvement on the social model of disability and is a tool to implement the CRPD.

Bruce⁶⁷ argues that the CRPD was influenced by the social model of disability, alongside other models of disability. For Bruce, the reason why the CRPD takes stances that 'resonate' with different approaches to disability, including the International Classification of Functioning, Disability and Health (ICF) which is a framework for measuring health and disability developed by the World Health Organization, is that these different approaches converge on principled positions, including the importance of access to a broad range of life opportunities and on the general principles of the CRPD, such as inclusion and participation.⁶⁸

Furthermore, the CRPD Committee elaborated on the human rights model of disability in its General Comment No. 6 on equality and non-discrimination.⁶⁹ According to the CRPD Committee, the human rights model of disability involves at least three elements.⁷⁰ First, it recognizes that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction of human rights. Second, it acknowledges that disability is one of several layers of identity. Third, it recognizes that human rights are interdependent, interrelated and indivisible. Accordingly, States must adopt all necessary measures to identify

62 Michael Ashely Stein and Penelope JS Stein, 'Beyond Disability Civil Rights' (2007) 58 Hastings Law Journal 1203; Mark C Weber, 'Disability Rights, Disability Discrimination, and Social Insurance' (2009) 25 Georgia State University Law Review 575; Daniel R Kelemen and Lisa Vanhala, 'The Shift to the Rights Model of Disability in the EU and Canada' (2010) 20 Regional & Federal Studies 1.

63 Stein and Stein (n 62), 1212-1225.

64 *ibid.*

65 Theresia Degener, 'A New Human Rights Model of Disability' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017).

66 *ibid.*, 43-56.

67 Anna Bruce, *Which Entitlements and for Whom? The Convention on the Rights of Persons with Disabilities and Its Ideological Antecedents* (Lund University 2014).

68 *ibid.*, 352.

69 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 74).

70 *ibid.*, paras. 9-10.

and overcome barriers hindering all human rights of persons with disabilities, including voting rights. Such measures must respect difference and human diversity so that persons with disabilities can participate in political and public life on an equal basis with their non-disabled counterparts. Overall, both the social-contextual model of disability and the human rights model of disability acknowledge that the ultimate responsibility for tackling the disadvantages emerging from the interaction of impairment with barriers in, among others, the context of voting, falls on the States, under the equality and non-discrimination norms in the CRPD.

As such, this study subscribes to the idea that the CRPD confirms a progressive and empowering rights-based approach to disability, which recognises that persons with disabilities are human rights subjects.⁷¹ Under Article 29(a) CRPD, voters with disabilities are viewed as equal citizens, capable of making choices and playing an active part in political life to the same extent as non-disabled voters. This progressive conceptual understanding of voting rights of persons with disabilities is grounded in the core notion of human dignity (Article 1 CRPD). Certainly, the CRPD applied the right to vote bestowed by other human rights treaties in a manner that addresses the particular needs of persons with disabilities, as examined below.

4.2. Introduction to Article 29(a) CRPD Participation in political and public life

The final text of Article 29(a) CRPD is formulated as follows:

'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;*

⁷¹ Degener and Quinn (n 52).

- (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; [...].*⁷²

This interpretation of Article 29(a) CRPD starts by elaborating on the wording used in the *chapeau* and Paragraph (a) of Article 29 CRPD. This involves the concept of ‘*opportunity*’ to enjoy political rights and the obligation ‘*to ensure effective and full participation*’, as examined below.

4.2.1. The ‘*opportunity*’ to enjoy political rights

At the 6th session of the Ad Hoc Committee, the term ‘*opportunity*’ was added to the final text of the *chapeau*.⁷³ The Committee agreed to strengthen the draft Article 18 by bringing it into line with the wording used in Article 25(b) ICCPR. According to the delegates,⁷⁴ the use of the word ‘*opportunity*’ in the *chapeau* reflected a strong commitment to not only recognise political rights formally, but also to guarantee the exercise of such rights in practice. In this way, the *chapeau* renders the right to vote an actual realisable possibility. It lays down the overarching obligation of States Parties to guarantee persons with disabilities both political rights, i.e., the *chapeau* recognises ‘*the right*’ to vote of persons with disabilities, and the ‘*opportunity*’ to enjoy them on an equal basis with others. Article 29 CRPD admits no exception based on disability. This provision also embodies the principle of ‘*equality of opportunity*’ by stating that States Parties are required to ensure persons with disabilities have, ‘on an equal basis with others’, the opportunity to enjoy the rights contained in this provision.

The principle of ‘*equality of opportunity*’ is a general principle of the CRPD under Article 3(e). It is also enshrined in other international treaties.⁷⁵ According to the CRPD Committee, such a principle marks ‘*a significant development from a formal model of equality to a substantive*

⁷² UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106 (n 58), Article 29(a).

⁷³ ‘UN General Assembly, Ad Hoc Committee, Daily Summaries of Discussion at the Sixth Session on 04 August 2005, Volume 7 #4’ <<https://www.un.org/esa/socdev/enable/rights/ahc6sum4aug.htm>> accessed 6 August 2020.

⁷⁴ ‘UN General Assembly, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Sixth Session, A/60/266 of 17 August 2005’ (*Report of the Ad Hoc Committee*) <<https://www.un.org/esa/socdev/enable/rights/ahc6reporte.htm>>.

⁷⁵ Article 7(c) of the International Covenant on Economic, Social and Cultural Rights (employment); Article 4(1) CEDAW (temporary special measures to accelerate de facto equality between men and women); and Articles 28 (education) and 31 (cultural participation) of the Convention on Rights of the Child (CRC).

model of equality.⁷⁶ Fredman and others⁷⁷ have also suggested that the CRPD goes beyond substantive equality by extending and elaborating on the meaning of equality to embrace a transformative equality approach, which is a more fundamental form of substantive equality. Firstly, according to Fredman,⁷⁸ formal equality is generally linked to eliminating *direct discrimination*, which occurs ‘when a person, on account of one or more of prohibited grounds, is treated less favourably than someone else in comparable circumstances.’ In the context of voting, direct discrimination persists because some national electoral laws prohibit persons with disabilities from voting based on impairments.⁷⁹ Therefore, achieving formal equality is an important first step in ensuring that voters with disabilities can effectively participate in elections. Indeed, under a formal equality approach, the *chapeau* of Article 29(a) recognises the *de jure* right to vote of persons with disabilities.

Secondly, Fredman⁸⁰ argues that a substantive approach to equality addresses not only the issue of discrimination by focusing on ‘equal treatment’, but also the unequal division of power within society. This substantive approach to equality is reflected in the concept of ‘indirect discrimination’, which occurs when a practice, rule, or requirement that is seemingly ‘neutral’, meaning it is not based on a prohibited ground of discrimination, has a disproportionately negative impact on members of groups which are defined by reference to a prohibited ground.⁸¹ In the context of voting, indirect discrimination, or unequal effects of a seemingly neutral rule or practice, is common. Apparently neutral practices which create barriers to the participation of persons with disabilities in elections include voting materials that are more difficult for persons with disabilities to use, e.g., ballot papers which are only available in printed form.

By interpreting Article 29(a) in conjunction with other CRPD provisions, it is possible to argue that Article 29(a) goes beyond a formal recognition of equality to prevent and eliminate barriers to participation encountered by voters with disabilities in the voting environment (substantive approach to equality). The Preamble (e) and (k) to the CRPD highlight the concept of ‘barriers’ faced by persons with disabilities and the importance of accessibility of the environment for enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms.

76 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018, para. 10.

77 Sandra Fredman and others, ‘Achieving Transformative Equality for Persons with Disabilities: Submission to the CRPD Committee for General Comment No. 6 on Article 5 of the UN Convention on the Rights of Persons with Disabilities’ (*Oxford Human Rights Hub. A global perspective on human rights*, 2017) <<http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2017/12/CPRD-Submission.pdf>> accessed 11 May 2020.

78 Sandra Fredman, ‘Equality: A New Generation?’ (2001) 30 *Industrial Law Journal* 145, 163-164.

79 European Union Agency for Fundamental Rights (n 40).

80 Sandra Fredman, ‘Substantive Equality Revisited’ (2016) 14 *International Journal of Constitutional Law* 712.

81 Daniel Moeckli, ‘Equality and Non-Discrimination’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, Oxford University Press 2014).

Article 1 CRPD establishes that the purpose of the Convention is to ‘promote, protect and ensure the full and equal enjoyment of all human rights’ by persons with disabilities. Article 2 CRPD incorporates ‘equal enjoyment’ in the definition of ‘*discrimination on the basis of disability*’ to provide that discrimination against persons with disabilities occurs when ‘*any distinction, exclusion or restriction on the basis of disability*’ has the purpose or effect of impairing or nullifying the exercise of their human rights and fundamental freedoms ‘*on an equal basis with others.*’ Article 3(d) CRPD provides, among others, the principle of ‘*respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.*’ Article 5 CRPD sets out the legal duty of States Parties to promote equality and eliminate discrimination. To that end, States Parties ‘*shall take all appropriate steps to ensure that reasonable accommodation is provided*’ and goes further by stating ‘*specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination*’ under Article 5 CRPD. Notably, the CRPD as a whole, goes beyond a formal recognition of equality to prevent and eliminate barriers to participation encountered by persons with disabilities in, among others, the voting environment. Accordingly, the *chapeau* of Article 29(a) CRPD aims to guarantee not only the *de jure* right to vote, but also to create concrete positive obligations for States Parties to challenge discriminatory practices and laws, as well as to promote respect for differences among voters. The *chapeau* thus establishes the duty of States Parties to ensure an environment where persons with disabilities substantially have the same opportunities to vote as people without disabilities.

Thirdly, the model of transformative equality pioneered by Fredman⁸² is a more fundamental form of substantive equality addressing the structural and systemic nature of discrimination that, for example, persons with disabilities experience within society. Transformative equality goes beyond affording opportunities to persons with disabilities, to also promoting changes to the underlying social framework that denies persons with disabilities genuine choice and generates inequitable outcomes.⁸³ Fredman⁸⁴ explains that ‘transformative equality’ is required to fully break cycles of disadvantage and eradicate poverty and involves ensuring an ‘equality of capabilities’. ‘Transformative equality’ means enabling individuals to develop the skills they need to effectively participate in society. To that end, positive (active) measures adopted by States to achieve equality must cover four dimensions: the redistributive dimension (redressing

82 Sandra Fredman, *Discrimination Law* (Second, Clarendon Law Series 2011); Sandra Fredman, Jaakko Kuosmanen and Meghan Campbell, ‘Transformative Equality: Making the Sustainable Developmental Goals Work for Women’ (2016) 30 *Ethics & International Affairs* 177.

83 Fredman, ‘Equality: A New Generation?’ (n 76).

84 Sandra Fredman, ‘Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights’ in Ineke Boerefijn and others (eds), *Temporary Special Measures: Accelerating de facto Equality of Women under Article 4(1) UN Convention on the Elimination of All Forms of Discrimination Against Women* (1st edn, Intersentia Maastricht Series in Human Rights 2003).

disadvantage); the recognition dimension (addressing stigma, stereotyping, prejudice, and violence); the participative dimension (facilitating voice and participation); and the transformative dimension (accommodating difference, including through structural change).⁸⁵

By interpreting the *chapeau* of Article 29(a), read in conjunction with the Preamble, Articles 1, 2, 3, and 5 CRPD, it is possible to confirm that Fredman's four dimensions of equality are endorsed in Article 29(a) CRPD. Article 29(a) CRPD, and the CRPD as a whole, aim to redress the social and economic disadvantage associated with impairment that hinder the full and effective exercise of the right to vote of persons with disabilities; address stigma, stereotyping, prejudice, and violence against persons with disabilities in electoral processes; enhance participation on election day and during the whole electoral process; and accommodate difference among voters through laws, policies, programme, and practices that promote structural changes within national electoral systems. Disability scholars⁸⁶ also argue that the CRPD addresses issues of both substantive and transformative equality.

Furthermore, the CRPD Committee, in its General Comment No. 6 on equality and non-discrimination,⁸⁷ explicitly stated that the Convention extends and elaborates on the content of equality to achieve a more fundamental form of the substantive model of equality: inclusive equality.⁸⁸ In explaining that the CRPD is based on inclusive equality, the CRPD Committee endorses the four dimensions of equality as elaborated by Fredman: (a) a fair redistribute dimension to address socioeconomic disadvantages of persons with disabilities; (b) a recognition dimension to combat, among others, stigma, and to recognise the dignity of persons with disabilities and their intersectionality; (c) a participative dimension to reaffirm the social nature of persons with disabilities as active members of society; and (d) an accommodating dimension to respect difference and human diversity.⁸⁹ As such, by endorsing the concept of 'inclusive equality', the Committee shares Fredman's view that providing equal opportunities alone is not enough to fully break cycles of disadvantage experienced by persons with disabilities.⁹⁰ The Committee also reinforced the idea that States Parties must adopt and implement 'specific measures' and other (active) measures where necessary to uphold

85 *ibid*; Fredman, Kuosmanen and Campbell (n 80).

86 Marcia H Rioux and Christopher Riddle, 'Values in Disability Policy and Law: Equality' in Marcia H Rioux, Lee Ann Bassar and Melinda Jones (eds), *Critical Perspectives on Human Rights and Disability Law* (Martinus Nijhoff Publishers 2011); Broderick (n 48); Jenny E Goldschmidt, 'New Perspectives on Equality: Towards Transformative Justice through the Disability Convention?' (2017) 35 *Nordic Journal of Human Rights* 1; Tina Minkowitz, 'CRPD and Transformative Equality' (2017) 13 *International Journal of Law in Context* 77.

87 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 74).

88 *ibid*, para 11.

89 *ibid*, para 11.

90 Bob Hepple, *The Legal Framework* (2nd edn, Hart Publishing 2014), 28-29.

the principles of equality and non-discrimination.⁹¹ These notions of ‘specific measures’ (as endorsed in the CRPD) and ‘other active measures’ that connect with the principle of ‘*equality of opportunity*’ in the context of voting are discussed below.

4.2.1.1. The concepts of ‘specific measures’ and ‘other (active) measures’

According to O’Brien,⁹² the term ‘affirmative action’ is a synonym for ‘positive action’ or ‘special measures’ (as usually included in international human rights law).⁹³ The author argues that the wide set of programmes and activities aimed at redressing historic and lingering deprivations of the basic civil right to equality is known as ‘affirmative action’.⁹⁴ ‘Affirmative action’ encompasses a wide range of proactive measures designed to enhance opportunities for disadvantaged groups.⁹⁵ Broderick⁹⁶ explains that ‘affirmative action’ seeks to correct or compensate for past or ongoing discrimination, or to prevent discrimination from recurring in the future. Barmes⁹⁷ defines ‘positive action’ as any activity ‘*designed to improve the position, in terms of the distribution of benefits or dis-benefits, of a given social group or sub-group (or of several such groups), on the basis that its members suffer systematic disadvantage in that regard.*’ In summary, ‘affirmative action’ or ‘positive action’ involves a wide range of proactive measures designed to overcome a history of exclusion and discrimination against certain groups of people. Such measures have thus obvious benefits for persons with disabilities in the context of voting.

The CRPD, as explained by Waddington,⁹⁸ does not refer explicitly to ‘positive action’, but instead speaks of ‘*specific measures*’ necessary to accelerate or achieve *de facto* equality [Article 5(4) CRPD]. The CRPD Committee elaborated on the term ‘*specific measures*’ in its General Comment No. 6 on equality and non-discrimination. The Committee highlights two key elements to explain what constitutes ‘*specific measures*’: (i) they are usually temporary in nature (although, as established by the Committee, in some instances permanent specific measures are required), and (ii) they depend on context and circumstances ‘*including by virtue*

91 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 74), paras 17, 28, 29, and 55-56.

92 Julie O’Brien, ‘Affirmative Action, Special Measures and the Sex Discrimination Act’ (2004) 27 University of New South Wales Law Journal 840.

93 See for instance Article 4 of CEDAW.

94 O’Brien (n 89).

95 *ibid.*, 840.

96 Broderick (n 48), 116.

97 Lizzie Barmes, ‘Equality Law and Experimentation: The Positive Action Challenge’ (2009) 68 Cambridge Law Journal 623, 623.

98 Lisa Waddington, ‘Equal to the Task: Re-Examining EU Equality in Light of the United Nations Convention on the Rights of Persons with Disabilities’ (2013) 4 European Yearbook of Disability Law 169, 188.

of a particular impairment or the structural barriers of society'.⁹⁹ The CRPD Committee also stated that the 'specific measures' adopted by States Parties must be consistent with the principles and provisions of the CRPD.¹⁰⁰ Significantly, for the present purposes, the CRPD Committee explicitly considers 'technological aids' as examples of 'specific measures'.¹⁰¹ Providing technological aids in the context of voting is, therefore, a 'specific measure' that States Parties can adopt to enhance opportunities for persons with disabilities to enjoy their right to vote under Article 5(4) CRPD. The Committee has also stated that the 'specific measures' adopted by States Parties must be consistent with the principles and provisions of the CRPD.¹⁰² This means that States Parties are required to ensure that any technological aid in place to facilitate the exercise of the right to vote of persons with disabilities fully complies with the requirements of the CRPD.

Under the *chapeau* of Article 29 and related CRPD provisions, 'specific measures' and 'other active measures' are a necessary component for realising transformative equality for persons with disabilities in the context of voting. Indeed, the wide set of active measures that States Parties are to adopt includes, but is not limited to, positive action.¹⁰³ In this respect, Waddington and Bell¹⁰⁴ elaborate on the difference between 'positive action measures' and 'other measures' of a more general nature. Overall, both types of action seek to promote social inclusion of persons with disabilities. Waddington and Bell identify three key features (non-cumulative) of States' measures to be considered as positive action: targeted at a well-defined social group; designed to redress disadvantages in a specific setting, such as access to education or employment; and assumed to have a preordained time limit (i.e., they are not automatically assumed to be indefinite).¹⁰⁵ Broderick¹⁰⁶ argues that, in the context of disability, 'other (active) measures' also aim at preventing and eliminating discrimination and remedying disadvantage (which is a common objective of positive action). These other measures are much wider than positive action measures. Broderick¹⁰⁷ states that such 'other measures' are general measures taken by States to '*alter environmental and other structures in order to tackle the root causes of discrimination and structural inequalities.*' Broderick notes that examples of 'other measures' that do not fall within 'positive action' are the awareness-raising duties of States Parties

99 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 74), para 28.

100 *ibid*, para 29.

101 *ibid*, para 28.

102 *ibid*, para 29.

103 Broderick (n 48), 117-120; Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases and Materials* (Cambridge University Press 2019), 114-118.

104 Lisa Waddington and Mark Bell, 'Exploring the Boundaries of Positive Action under EU Law: A Search for Conceptual Clarity' (2011) 48 Common Market Law Review 1503.

105 *ibid*, 1523-1524.

106 Broderick (n 48).

107 *ibid*, 118.

addressed in Article 8 CRPD (awareness-raising) and the accessibility obligation in Article 9 CRPD.¹⁰⁸ In the context of political participation, both positive action and other (active) measures have the common purpose to increase participation and inclusion of persons with disabilities. The *chapeau* of Article 29(a) CRPD thus covers both: positive action measures and other (active) measures of a more general nature under the principle of ‘equality of opportunity’. Notably, providing technological aids, such as electoral-assistive devices, is linked to both: positive action measures (‘specific measures’) and ‘other (active) measures’ of a more general nature, namely the accessibility obligation set out in Articles 9 and 29(a) CRPD.

The following sub-section interprets the wording ‘to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others’, as endorsed in paragraph (a) of Article 29 CRPD.

4.2.2. The obligation to ‘ensure full and effective participation’

At the 6th session of the Ad Hoc Committee, based on broad support in favour of strengthening the opening phrase of Article 18(a), the Committee replaced the original opening phrase (‘*actively promote an environment in which*’) in the *chapeau* of paragraph (a) with the phrase ‘*ensure that*’.¹⁰⁹ The new wording aimed to strengthen the legal duty of States Parties to guarantee the rights set forth in the provision.

Based on the work of the Human Rights Committee (HRC) and the Committee on Economic, Social, and Cultural Rights (CESCR), Nowak¹¹⁰ interprets the obligation to ‘ensure’ as a positive obligation, which combines the obligation to ‘protect’ and to ‘fulfil’. In the context of international human rights law, the tripartite terminology to *respect, protect, and fulfil* shows how compliance with all human rights requires various measures, ranging from passive or non-interference, to active or ensuring satisfaction of individual needs, depending on the given circumstances.¹¹¹ Firstly, the obligation to *respect* entails refraining from interfering with rights prescribed in human rights treaties. States have an obligation to avoid taking any measures

108 *ibid*, 118.

109 ‘UN General Assembly, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Sixth Session, A/60/266 of 17 August 2005’ (n 72).

110 Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary (2nd edn, NP Engel 2005), 39.

111 Henry Shue, *Basic Rights, Subsistence, Affluence, and U.S. Foreign Policy*, (2nd edn, Princeton University Press 1996), 160; Asbjorn Eide, ‘Realisation of Social and Economic Rights and the Minimum Threshold Approach’ (1989) 10(1-2) Human Rights Law Journal 36, 37; Ida Elisabeth Koch, ‘Economic, Social and Cultural Rights as Components in Civil and Political Rights: A Hermeneutic Perspective’ (2006) 10 International Journal of Human Rights 405, 406-407.

that result in a violation of a given human right.¹¹² Secondly, States must *protect* individuals from human rights violations. This obligation implies preventing third party human rights violations.¹¹³ States may be held responsible for human rights violations attributable to their failure to protect individuals from the actions of third parties. Accordingly, shortcomings of States may include the adoption of laws, policies, programmes, and practices that allow the perpetration of human rights violations or actions which are otherwise insufficient to prevent violations. Thirdly, the obligation to *fulfil* human rights implies that States should take positive steps to secure the enjoyment of human rights. It represents a duty to adopt appropriate measures for implementing human rights treaties.¹¹⁴ The UN Committee on Economic, Social and Cultural Rights (CESCR) has stated that the obligation to *fulfil* requires States which have ratified or acceded to international human rights instruments to implement them domestically through legislative and policy reforms, as well as other concrete measures on the ground.¹¹⁵ In practice, the obligations to *respect*, *protect*, and *fulfil* human rights are mutually reinforcing. As such, in treaty interpretation, it may be difficult to clarify distinctions between them. Notably, the CRPD, as a whole, requires States Parties to refrain from interfering with the rights prescribed in the treaty, prevent violations by third parties, and adopt appropriate measures for implementing the CRPD.

Furthermore, Article 29(a) CRPD puts an emphasis on the measures to secure for persons with disabilities ‘full and effective participation’ in the context of political participation. During the early days of the negotiation process, drafters of the CRPD agreed that the inclusion of persons with disabilities required their ‘effective and full participation’ in political and public life.¹¹⁶ The European Union played an active role in the negotiations leading to Article 29(a). At the 6th session, the EU noted that without ‘full and effective participation’ in political and public life, ‘disabled people risk being invisible to wider society and undergoing further discrimination’.¹¹⁷ As such, 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 foundation of the legal duty of States Parties to ensure the enjoyment of all civil and political rights, and social, economic, and cultural rights recognised in the CRPD. This principle is also affirmed in paragraph (5) of the Preamble and Article 1. Moreover, the CRPD recognises, as a general principle, the ‘full and effective participation and inclusion in society’ in Article 3. This means that achieving ‘full

112 Frédéric Mégret, ‘Nature of Obligations’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, Oxford University Press 2014).

113 *ibid.*

114 *ibid.*

115 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Article 13), adopted at the 21st Session on 8 December 1999.

116 UN General Assembly, ‘Report of the Second Session of the Ad Hoc Committee, 16 to 27 June 2003’.

117 ‘UN General Assembly, Ad Hoc Committee, Daily Summaries of Discussion at the Sixth Session on 04 August 2005, Volume 7 #4’ (n 71).

and effective participation’ is part of the purpose of CRPD, and it acts as a benchmark against which to measure the domestic laws, policies, and practices of States Parties. Accordingly, from a reading of Article 29(a) in conjunction with the Preamble and Articles 1 and 3, ‘*full and effective participation*’ refers to the idea that persons with disabilities are entitled to take part in political and public life and should have the opportunity to be actively involved in decision-making processes concerning the governance of their countries. Moreover, the term ‘*full and effective participation*’ implies the recognition of the legal duty of States Parties to ensure the right of persons with disabilities to take part in elections through positive measures. As argued by Cera,¹¹⁸ the right to vote is ‘meaningless’ for persons with disabilities unless it is provided through active measures. The non-exhaustive list of measures included in the sub-paragraphs of Article 29(a) are an integral part of the right of persons with disabilities to participate in elections. These measures are elaborated in detail below.

5. Legal obligations of States Parties under Article 29(a) CRPD

This section provides a comprehensive interpretation of Article 29(a) CRPD. It sets out the legal obligations of States Parties related to the provision of electoral-assistive devices to be used by persons with disabilities to vote. Not all the duties of States Parties under Article 29 CRPD fall within the scope of this research.¹¹⁹ One aim of the interpretation of Article 29(a) CRPD is to reflect on how drafters of this provision did not develop any new human right, but tailored the existing right to vote, as endorsed in Article 25(b) ICCPR, to the needs of persons with disabilities. That interpretation determines the normative nature of the legal obligations of States Parties under Article 29(a) CRPD. Such legal obligations can be summarised as providing accessible voting materials under Article 29(a)(i) CRPD (sub-section 5.1. below); ensuring ballot secrecy under Article 29(a)(ii) CRPD (sub-section 5.2. below); and ensuring the free expression of the will of persons with disabilities as voters under Article 29(a)(iii) CRPD (sub-section 5.3. below).

118 Rachele Cera, ‘Article 29 Participation in Political and Public Life’ in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities A Commentary* (Springer 2017), 528.

119 The parts of Article 29 CRPD excluded from the scope of this research are: paragraph (a)(iii) as regards 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 organisations and forming DPOs.

5.1. The legal obligation to provide accessible voting materials

5.1.1. Introduction

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

Article 29(a)(i)

'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'*

Article 29(a)(i) is the outcome of the recognition by the drafters of the CRPD that lack of accessibility in the voting environment diminishes the participation of persons with disabilities in electoral processes.¹²⁰ Consistent with the views of the delegates of India, Mexico, Canada, People with Disabilities Australia, the European Disability Forum (EDF), and the World Network of Users and Survivors of Psychiatry on behalf of the International Disability Caucus (IDC), at the 6th session, the Ad Hoc Committee reviewed the draft of Article 18(a) and made a few changes such as introducing the term '*materials*' to subparagraph (i) of paragraph (a).¹²¹ The use of the term '*materials*' in the final Article 29(a) reinforces the idea that all instruments of the electoral process should be made accessible to persons with disabilities. As such, the drafters of the CRPD agreed that accessibility of voting materials is a precondition for persons with disabilities to fully and effectively participate in elections. Moreover, the drafters of Article 29(a) recognised that accessibility in the voting environment contributes significantly to the removal of barriers that persons with disabilities face when attempting to vote.

120 'Ad Hoc Committee, Article 29 Participation in Political and Public Life, Seventh Session, Comments, Proposals and Amendments Submitted Electronically'.

121 'Ad Hoc Committee, Article 29—Participation in Political and Public Life, Sixth Session, Report by the Chairman, 12 August 2005'.

5.1.2. The obligation to provide accessibility in the voting environment

The concept of ‘accessibility’ generally covers issues related to removing physical, mental, and communication barriers, among others.¹²² Seatzu¹²³ asserts that the expression ‘accessibility rights’ refers ‘to the right to use, and obtain an equal benefit from, the provision of goods, services, facilities, and accommodations generally available to the public without discrimination because of physical disability.’ The CRPD is one of the first human rights treaties to address ‘accessibility’ as a right, but it does not define it *per se*.¹²⁴ During the negotiation of the CRPD, the delegates came to the realisation that a definition of accessibility risked being unclear.¹²⁵ The delegates decided to not define the term ‘accessibility’ to avoid creating any confusion on the concept. Nevertheless, several CRPD articles are relevant to interpret the obligation to provide accessibility under Article 29(a)(i) CRPD.

The Preamble (v) of the CRPD provides that States Parties recognise ‘*the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms.*’ Moreover, accessibility is a general principle pursuant to Article 3(6) CRPD. As a general principle, according to Charitakis,¹²⁶ accessibility supports the purpose of the CRPD, namely, to ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities. This means that accessibility is a cross-cutting principle of the CRPD and must be taken into consideration in the implementation of the human rights codified in the CRPD. This fact is particularly important in the case of the right to vote since Article 29(a)(i) explicitly entails obligations related to accessibility. In addition, Article 4(1) CRPD sets out the general obligation of States Parties to ensure accessibility to promote the full realisation of all human rights of persons with disabilities. This provision sets forth legal obligations of States Parties to remove barriers that, read in conjunction with Article 29(a)(i), can be interpreted as including, *inter alia*, making

122 Agustina Palacios and Francisco Bariffi, *La Discapacidad Como Una Cuestión de Derechos Humanos: Una Aproximación a La Convención Internacional Sobre Los Derechos de Las Personas Con Discapacidad* (Edicions Cinca 2007), 73-99.

123 For a comprehensive explanation of the notion of ‘accessibility rights’ see Francesco Seatzu, ‘Article 9 Accessibility’ in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017).

124 Anna Lawson, ‘Art. 9 Accessibility’ in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018), 259.

125 *Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities’ Annex 1 to the Report of the Working Group to the Ad Hoc Committee UN Doc A/AC265/2004/WG/1.*

126 Stelios Charitakis, *Access Denied. The Role of the European Union in Ensuring Accessibility under the United Nations Convention on the Rights of Persons with Disabilities* (Intersentia Maastricht Series in Human Rights 2018), 31.

ATs available to enable persons with disabilities to vote and abolishing practices that constitute discrimination in the context of voting. Examples of practices that constitute discrimination in the context of voting include the use of inaccessible voting materials, e.g., ballot papers which are available only in printed form. Furthermore, in accordance with Article 4(1)(g) CRPD, States Parties have a wide margin of discretion in deciding on the measures to adopt to undertake or promote research and development, and to promote the availability and use, of new technologies. Pursuant to Article 4(1)(h) CRPD, States Parties are required to ensure that concrete policies are formulated enshrining the obligation to ensure provision of accessible information on, for example, voter education. This obligation implies that States Parties have the duty to promote voter education centred on the rights of persons with disabilities, and to provide training on accessibility requirements to political parties and mass media providers. In addition, under Article 4(1)(i) read in conjunction with Article 29(a)(i) CRPD, States Parties are required to promote the training of election officials on accessibility needs of persons with disabilities to ensure that such officials can provide voters with disabilities with appropriate assistance, where necessary. Ultimately, the obligations under Article 4(1) CRPD are of cross-cutting application. This provision contains overarching obligations of States Parties that permeate the text of Article 29(a)(i), and the entire CRPD. Article 4(1) CRPD is, therefore, a key provision for fully understanding the obligation to provide accessibility in the voting environment by States Parties.

Accessibility is also addressed in a standalone article of the Convention: Article 9 CRPD which states:

Article 9 – Accessibility

‘1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a) Buildings, roads, transportation, and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;*
- b) Information, communications, and other services, including electronic services and emergency services.*

2. States Parties shall also take appropriate measures:

- a) To develop, promulgate and monitor the implementation of minimum standards*

and guidelines for the accessibility of facilities and services open or provided to the public;

b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

c) To provide training for stakeholders on accessibility issues facing persons with disabilities;

d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

e) To provide forms of live assistance and intermediaries, including guides, readers, and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.¹²⁷

Article 9 CRPD enacts a ‘substantive and transformative equality-based model’ that requires public funding and policy planning for its implementation.¹²⁸ For Charitakis,¹²⁹ the relevance or transformative potential of Article 9 is the possibility it offers to private (e.g., technology manufacturers) and public actors (e.g., national electoral authorities) to address accessibility barriers in a comprehensive manner and early in planning processes. States Parties must ensure that accessibility of voting materials is not overlooked when planning electoral processes. In that regard, Article 9(1), read in conjunction with Article 29(a)(i) CRPD, requires States Parties to take appropriate measures at an early stage of the electoral process to ensure that persons with disabilities have access on an equal basis with others to the voting environment, information on the electoral processes, and communication technologies, including the Internet, and other services available to the public. Following Article 9(1) CRPD, States Parties are also required to formulate relevant legislation and other concrete policies to identify and eliminate barriers to accessibility in the voting environment. Article 9(2) CRPD indicates that States Parties are required to adopt ‘appropriate measures’ to resolve barriers to accessibility faced

¹²⁷ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106 (n 60), Article 9.

¹²⁸ Seatzu (n 120), 238.

¹²⁹ Stelios Charitakis, ‘The Challenges and Consequences of Implementation of the UN CRPD for the EU with the Focus on Accessibility [Ius Commune Training Programme: Introduction]’ (Maastricht University 2011).

by persons with disabilities in using, for example, voting materials. The list of such measures as codified in Article 9(2) is non-exhaustive. Article 29(a)(i) read in conjunction with Article 9(2) provide some concrete measures, such as training for voters and election officials on accessibility barriers facing persons with disabilities when using materials to vote; making multiple forms of assistance and support available, such as ATs, to voters with disabilities to ensure their access to electoral information; ensuring accessibility of, *inter alia*, national electoral authorities' websites and the public media; and the adoption of accessibility standards regarding voting materials to address the particular needs of voters with disabilities.

Regarding the legal obligation of States Parties to establish accessibility standards, in its 2021 concluding observations on the initial report of Estonia, the CRPD Committee positively regarded the adoption of domestic regulations in the State to establish accessibility requirements for polling stations.¹³⁰ In the Committee's view this is a substantive positive measure taken by Estonia to implement Article 29(a) CRPD. The CRPD Committee has declared that underlying the need to adopt accessibility standards is the *ratio legis* of the duty to provide accessibility: this duty is related to groups of people and corresponds to an *ex ante* duty.¹³¹ This means that measures to provide accessibility adopted by States Parties have a generalised group-based dimension. Moreover, the duty to provide accessibility in the voting environment is a proactive duty. As explained by Broderick,¹³² States Parties must provide accessibility before receiving an individual request to enter, for example, a public building used as a polling station on election day. This does not, however, restrict the right of persons with disabilities to request reasonable accommodations (where necessary), which is addressed further below in this chapter (section 6).

The duty to provide accessibility is also an unconditional obligation of the State. This means that duty bearers may not excuse the omission to do so by referring to the burden of providing accessibility for persons with disabilities.¹³³ Remarkably, accessibility in general is one of the main concerns that is discussed with States Parties during the consideration of States' initial reports.¹³⁴ Moreover, the lack of accessibility in the voting environment has been commonly

130 CRPD Committee, *Concluding observations on the initial report of Estonia*, CRPD/C/EST/CO/1, 5 May 2021, paras 6 and 20.

131 CRPD Committee, *General Comment No 2 (2014) Article 9: Accessibility*, CRPD/C/GC/2, 22 May 2014, para 25.

132 Broderick (n 48), 247.

133 CRPD Committee, *General Comment No. 2 (2014) Article 9: Accessibility*, CRPD/C/GC/2, 22 May 2014 (n 128), para. 25; *Committee on the Rights of Persons with Disabilities, Fiona Given v Australia, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No 19/2014*, CRPD/C/19/D/19/2014, 29 March 2018, para. 8.8.

134 CRPD Committee, *General Comment No. 2 (2014) Article 9: Accessibility*, CRPD/C/GC/2, 22 May 2014 (n 128), para. 10.

identified as problematic by the CRPD Committee in its concluding observations.¹³⁵ For example, the Committee explicitly recommended Slovenia ensure the right to all persons with disabilities to use accessible voting materials to vote ‘regardless of their impairment’.¹³⁶ The Committee has also declared that such a right applies throughout the electoral process (i.e., not only on election day).¹³⁷

Furthermore, the CRPD Committee has declared that States Parties should guarantee that accessibility is achieved through gradual implementation.¹³⁸ In this respect, during the negotiations on the CRPD, and particularly on Article 19 (the draft version of Article 9 CRPD), the delegates agreed on the progressive realisation of the obligation to provide accessibility.¹³⁹ In this regard, the Chair of the Working Group stated that:

‘Accessibility is an economic, social, and cultural right, and so progressive realization would be appropriate; however, there are also elements of civil and political right, freedom of expression; therefore Article 19 [the draft version of Article 9 CRPD] is something of a hybrid.’ (Emphasis added)¹⁴⁰

135 See for instance CRPD Committee, *Concluding observations on the initial report of Turkey*, CRPD/C/TUR/CO/1, 1 October 2019, para. 57; CRPD Committee, *Concluding observations on the initial report of Kuwait*, CRPD/C/KWT/CO/1, 18 October 2019, para. 57; Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Uganda*, CRPD/C/UGA/CO/1, 12 May 2016, para. 57; CRPD Committee, *Concluding Observations on initial report of Thailand* UN Doc CRPD/C/THA/CO/1, 12 May 2016 (n 46), para. 68; Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Sweden*, CRPD/C/SWE/CO/1, 12 May 2014, paras. 51 and 52; Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of the Cook Islands*, CRPD/C/COK/CO/1, 15 May 2015, para. 52; CRPD Committee, *Concluding observations on the initial report of Bosnia and Herzegovina*, CRPD/C/BIH/CO/1*, 2 May 2017, para. 53; CRPD Committee, *Concluding observations on the initial report of Honduras*, CRPD/C/HND/CO/1, 4 May 2017, paras. 61 and 62; CRPD Committee, *Concluding observations on the initial report of Armenia*, CRPD/C/ARM/CO/1, 8 May 2017, paras. 51 and 52; CRPD Committee, *Concluding observations on the initial report of the Islamic Republic of Iran*, CRPD/C/IRN/CO/1, 10 May 2017, para. 55; CRPD Committee, *Concluding observations on the initial report of Jordan*, CRPD/C/JOR/CO/1, 15 May 2017, para. 55; CRPD Committee, *Concluding observations on the initial report of Slovenia*, CRPD/C/SVN/CO/1, para. 50(a); CRPD Committee, *Concluding observations on the combined second and third periodic reports of Spain*, CRPD/C/ESP/CO/2-3, 13 May 2019, para. 54(a).

136 CRPD Committee, *Concluding observations on the initial report of Slovenia*, CRPD/C/SVN/CO/1 (n 132), para 50(a).

137 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 74), para. 70(b).

138 CRPD Committee, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014 (n 131), paras 11, 14, 24 and 27.

139 ‘UN General Assembly, Ad Hoc Committee, Daily Summaries of Discussion at the Sixth Session on 05 August 2005, Morning Session’ <<https://www.un.org/esa/socdev/enable/rights/ahc6.htm>> accessed 15 January 2021.

140 *ibid.*

According to the records of the following sessions of the Ad Hoc Committee, there was no further elaboration by the delegates on the ‘*hybrid*’ nature of Article 9 CRPD as alluded to by the Chair of the Working Group. The outcome of the negotiations on the CRPD reflects this fact.

Moreover, during the 7th session,¹⁴¹ the Ad Hoc Committee reached consensus on the final text of Article 4(2), which provides:

Article 4(2)

‘With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights (...).’

The provision above resembles the wording of Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states:

Article 2(1)

‘1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. (...).’¹⁴²

Article 2(1) ICESCR above provides for progressive realisation of economic, social, and cultural rights by States Parties to the ICESCR, and acknowledges the constraints to such realisation, due to limitations on available resources.

In the following paragraphs, this section addresses the ‘progressive realisation’ doctrine further to explain its implications for the right of persons with disabilities to use accessible voting materials.

141 ‘UN General Assembly, Ad Hoc Committee, Daily Summaries of Discussion at the Seventh Session on 17 January 2006, Volume 8 #2’ <<https://www.un.org/esa/socdev/enable/rights/ahc7sum17jan.htm>> accessed 15 January 2021.

142 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, G.A. Res.2200A (XXI), U.N. Doc A/6316, from 16 December 1966, Article 2(1).

5.1.3. The right to vote and the progressive realisation doctrine

The concept of ‘progressive realisation’ was initially interpreted in the context of economic, social, and cultural rights. In its General Comment No. 3,¹⁴³ the Committee on Economic, Social and Cultural Rights (CESCR) declared that the concept of ‘progressive realisation’ implies a recognition that full realisation of all economic, social, and cultural rights is not feasible in a short period of time.¹⁴⁴ The CESCR has, however, indicated that neither the variable of available resources nor the time flexibility deprive the legal obligations under the ICESCR of meaningful content.¹⁴⁵ Indeed, the ‘progressively realisable’ nature of the legal obligations under the ICESCR requires States to take initial steps to progressively fulfil the rights set out in the ICESCR.¹⁴⁶ The Committee has asserted that such steps should be ‘deliberate, concrete, and targeted as clearly as possible’ towards meeting the obligations under the ICESCR.¹⁴⁷ States Parties to the ICESCR have discretion in determining which steps to adopt to implement the Covenant, including legislative, judicial, administrative, financial, educational, and social steps.¹⁴⁸ Overall, steps by States Parties must be effective in terms of achieving outcomes consistent with the obligations of the ICESCR and taken within a reasonably short time after the ICESCR enters into force.

The Optional Protocol to the ICESCR,¹⁴⁹ which establishes a complaint mechanism for the ICESCR, recalls the duty of ‘progressive realisation’ [Preamble], and sets out a standard of reasonableness in review [Article 8(4)]. According to Article 8(4) of the Optional Protocol, when examining individual communications, the CESCR shall consider the ‘reasonableness’ of the steps taken by the State Party. To determine whether a step is reasonable, the CESCR has taken the level of development of the State Party into consideration.¹⁵⁰ In practice, the more developed a State Party is, the higher the expectations of the CESCR are regarding the level of implementation of a right enshrined in the ICESCR through the steps adopted by such a State.¹⁵¹ Inherent in this idea of ‘reasonableness’ is the international standard of ‘maximum

143 ICESCR Committee, General Comment No. 3: The Nature of States Parties’ Obligations (Article 2(1) ICESCR) 1990.

144 *ibid*, para 9.

145 *ibid*, para 9.

146 Magdalena M Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Intersentia 2003), 313.

147 ICESCR Committee General Comment No. 3: The Nature of States Parties’ Obligations (Article 2(1) ICESCR) (n 140), para 2.

148 *ibid*, para 7.

149 UN General Assembly, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights [entered into force in 2013].

150 Sepúlveda (n 143), 337.

151 *ibid*, 337.

available resources’,¹⁵² which indicates that States with greater economic resources have a correspondingly greater duty to ensure equitable and widespread enjoyment of economic and social rights.

No similar ‘flexibility’ as defined for the progressive realisation of the ICESCR was outlined for the obligations set out by the ICCPR, such as Article 25(b) ICCPR (addressing voting rights).¹⁵³ In that regard, Article 2(1) ICCPR is relevant. It provides:

Article 2(1)

‘1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, (...) or other status.’¹⁵⁴

As interpreted by the Human Rights Committee,¹⁵⁵ Article 2(1) ICCPR above requires that ‘unqualified’ and ‘immediate’ effect be given to all the obligations arising under the ICCPR. Accordingly, the right to vote under Article 25(b) ICCPR must be immediately and fully complied with by all States. Article 2(1) ICCPR, therefore, embodies an immediate obligation to respect and ensure all rights enshrined in the ICCPR, which differs significantly from the doctrine of ‘progressive realisation’ contained in Article 2(1) ICESCR. Scholars¹⁵⁶ explain that such a difference is rooted in the traditional perceptions attached to civil and political rights (as ‘negative rights’), and economic, social, and cultural rights (as ‘positive rights’). Under this characterisation, States must abstain from activities that violate civil and political rights.¹⁵⁷ In contrast, economic, social, and cultural rights require active State intervention. Koch¹⁵⁸ refers to another distinction between cost-free rights and resource-intensive rights, in which civil and

152 Rodrigo Uprimny, Sergio Chaparro and Andrés Castro, ‘Bridging the Gap: The Evolving Doctrine on ESCR and “Maximum Available Resources”’ in Katharine G Young (ed), *The Future of Economic and Social Rights* (Cambridge University Press 2019), 624.

153 *Optional Protocol to the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976 , in accordance wit [1976] Assembly 9.*

154 UN General Assembly, International Covenant on Civil and Political Rights, G.A. Res.2200A (XXI), U.N. Doc A/6316, from 16 December 1966 (n 21), Article 2(1).

155 UN Human Rights Committee (HRC), General Comment no. 31 [80], The Nature of the General Legal Obligation imposed on States Parties to the Covenant. Adopted on 29 March 2004 (2187th meeting), para. 14.

156 Gustavo Arosemena, ‘A Rational Reconstruction of United Nations Human Rights Law’ (2017) 30 *Ratio Juris*. *International Journal of Jurisprudence and Philosophy of Law* 372; Brian Galligan and Emma Larking, ‘Rights Protection—Comparative Perspectives’ (2009) 44 *Australian Journal of Political Science* 1; Koch (n 108).

157 Arosemena (n 153), 372.

158 Koch (n 108), 405-407.

political rights are realisable without significant costs, while realising economic, social, and cultural rights requires a major commitment of resources. Moreover, Galligan and Larking¹⁵⁹ assert that there is a common reluctance to accept vaguely worded and resource-demanding economic, social, and cultural rights as justiciable. Conversely, civil and political rights are deemed as precisely defined in order to be readily justiciable and enforceable.¹⁶⁰ In that regard, Coomans¹⁶¹ argues that, in practice, it is difficult to denounce a violation of an economic or social right before a court of law. He asserts *'In other words, their justiciability is a matter of debate and dispute.'*¹⁶²

The Chair of the CESCR, Philip Alston, with co-author Gerard Quinn,¹⁶³ criticised the 'artificiality of the idealized way in which the immediate/progressive distinction is often portrayed.' The authors argue that there are certain substantive rights under the ICESCR that are expressly immediately realisable, such as the right to fair wages and equal remuneration for work of equal value [Article 7(a)(i) ICESCR].¹⁶⁴ In the context of the ICCPR, Tasioulas¹⁶⁵ has stated that compliance with civil and political rights has significant resource implications. Tasioulas¹⁶⁶ also asserts that constraints on available resources may impose obstacles to the immediate compliance with civil and political rights, just as in the case of economic, social, and cultural rights. This means voting rights are not entirely 'cost-free rights'. Undoubtedly, States must engage in costly endeavours to ensure the right of citizens to vote, e.g., setting up national electoral bodies, elaborating and implementing appropriate policies and regulatory frameworks, allotting polling stations, and providing voters with voting materials. This means that the obligation to 'respect and protect' the right to vote of persons with disabilities, under Article 25(b) ICCPR, despite lying outside of notions of 'progressive realisation', and understood as subject to 'immediate realisation', also requires available resources and acceptable timeframes for compliance. This different perspective on human rights challenges the traditional immediate/progressive distinction. Such a perspective is founded on the notion of 'human dignity', which is often identified as the key normative foundation that justifies the indivisibility and interdependence of all human rights.¹⁶⁷ As such, taken together, both civil

159 Galligan and Larking (n 153).

160 *ibid.*

161 Fons Coomans, *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Intersentia 2006) 1-19.

162 *ibid.*, 1.

163 Philip Alston and Gerard Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 *Human Rights Quarterly* 156, 173.

164 *ibid.*, 159.

165 John Tasioulas, *Minimum Core Obligations: Human Rights in the Here and Now* (Nordic Trust Fund & The World Bank 2017), 29-30.

166 *ibid.*, 29.

167 Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013), 121-132.

and political rights, and economic, social, and cultural rights, are *indivisible* because both are indispensable to one another and also equally necessary for human dignity.

The interdependence and interrelatedness of civil and political rights, and economic, social, and cultural rights, have been consolidated at an operational and normative level under international human rights law during the last seven decades.¹⁶⁸ Noteworthy, Broderick¹⁶⁹ affirms, '*Nowhere is this interdependence more obvious than in the context of the CRPD*'. The author goes on to assert that '*maintaining strict distinctions between civil and political rights and socio-economic rights is not helpful in the context of the CRPD*' owing to the fact that many of the substantive articles in the CRPD contain elements of both types of rights and can be termed 'hybrid' rights.¹⁷⁰ Indeed, the CRPD Committee has asserted that providing accessibility of the voting environment '*is often a precondition for the effective enjoyment of various civil and political rights by persons with disabilities*.'¹⁷¹ An accessible voting environment which, includes accessible voting materials, is, therefore, a necessary and fundamental component of the obligation to ensure the right to vote of persons with disabilities. Compliance with all these duties is crucial for an effective participation of persons with disabilities in political life.

Providing accessibility in the voting environment cannot be achieved in a short period of time and is not a 'cost-free' obligation. Nevertheless, States Parties are obliged to immediately take initial steps to progressively realise the rights codified in Articles 9 and 29(a)(i) CRPD. To that end, States Parties are required to establish definite timeframes and allocate adequate resources for the removal of existing barriers '*gradually yet steadily*' as declared by the CRPD Committee.¹⁷² The non-exhaustive 'roadmap' outlined by the Committee to eliminate existing barriers includes: (i) a comprehensive review of the laws on accessibility in close consultation with DPOs to identify, monitor, and address gaps in legislation and implementation; (ii) suitable legislation to provide accessibility (if no relevant legislation is in place); and (iii) adoption of national accessibility standards including domestic law providing for the mandatory application of these standards and for sanctions for non-compliance.

Lastly, States Parties are accorded a certain margin of discretion to decide which concrete measures are appropriate to provide accessibility in the voting environment. States Parties can also provide accessibility to the enjoyment of political rights through international

168 Priscila Neves-Silva, Giselle Isabelle Martins and Léo Heller, 'Human Rights' Interdependence and Indivisibility: A Glance over the Human Rights to Water and Sanitation' (2019) 19 BMC International Health and Human Rights 1.

169 Broderick (n 48), 221.

170 *ibid.*, 221.

171 CRPD Committee, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014 (n 131), para. 27.

172 *ibid.*, paras 27-28.

cooperation.¹⁷³ In doing so, technical and economic international assistance could include facilitating access to and sharing of context-appropriate technologies for voting, as provided by Article 32(1)(d) CRPD.

5.1.4. Concluding remarks

States Parties are required to provide voters with disabilities with accessible voting materials under Article 29(a)(i) CRPD. Making accessible materials to vote available is a precondition for persons with disabilities to participate in elections fully and effectively. The legal interpretation of Article 29(a)(i) and related CRPD provisions presented in this section has concluded that the obligation to provide voters with disabilities with accessible voting materials is necessary for removing discriminatory barriers. This positive duty also aims to create opportunities for achieving *de facto* equality and structural changes within national electoral systems. The ‘proactive approach’ of substantive and transformative equality is, therefore, reflected in Article 29(a)(i), and the entire Convention. Certainly, this approach serves as an analytical framework to assess and assist States Parties in implementing ‘specific measures’ and ‘other (active) measures’ to achieve greater accessibility in the context of voting.

This section indicated that the obligations to provide accessibility in the voting environment and to respect, protect, and fulfil the right to vote are intrinsically linked in the context of Article 29(a)(i) CRPD. In order to effectively and fully ensure the right to vote by persons with disabilities, States Parties are required to act promptly to implement Article 29(a)(i) CRPD. Furthermore, States Parties are required to make accessible voting materials available in a gradual and unconditional manner, as well as through international cooperation, under Article 29(a)(i), read in conjunction with the Preamble (v), and Articles 3(6), 4(1)(f)(g), 9, and 32(1)(d) CRPD.

In light of the goals of this study, it was concluded that one of the positive measures that States Parties can adopt to implement their obligation to provide accessibility in the voting environment is to make ‘technological aids’ available to be used by persons with disabilities to vote, under Articles 29(a)(i), 4(1)(g)(h), and 9(2) CRPD. These technological aids include electoral-assistive devices as noted by the CRPD Committee. In that regard, the CRPD leaves States Parties discretion. Certainly, several other active measures can also be adopted by States Parties to realise transformative equality in the context of voting.

The obligation to ensure ballot secrecy by persons with disabilities is discussed below.

¹⁷³ *ibid*, para. 27.

5.2. The legal obligation to ensure ballot secrecy

5.2.1. Introduction

As set out in Article 25(b) ICCPR (right to vote), vote secrecy is a fundamental legal element of the right to vote. In the context of disability rights, the principle of secrecy of the ballot is codified in Article 29(a)(ii) CRPD. This provision states:

Article 29(a)(ii)

'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.'

As demonstrated in the CRPD *travaux préparatoires*, the principle of secrecy in voting was included in Article 29(a)(ii) CRPD to protect voters from undue influence. The lived reality of persons with disabilities who could not vote in secret, primarily because of inaccessible voting materials, motivated Mexico, Venezuela, and DPI Africa, among others, to include in the CRPD's draft text the phrase '*by secret ballot*' and other related terms.¹⁷⁴ In the Committee's 6th session, the Chair explained his understanding of the relevance of the secret ballot. The Chair noted that draft Article 18 (now Article 29) was not intended to create any additional rights. He highlighted that Article 25(b) ICCPR guarantees the rights to periodic elections, universal and equal suffrage, a secret ballot, and the free expression of the will of the voters. Nevertheless, in the Chair's view, based on the strong support among delegations for introducing the phrase '*by secret ballot*' in the draft Article 18, the secrecy issue needed to be explicitly addressed in the text to better reflect the commitments found in the ICCPR.¹⁷⁵ Furthermore, at the 6th session of the Ad Hoc Committee,¹⁷⁶ Senegal proposed to add to Article 18(a)(ii) the phrase '*and providing adequate means*' after '*vote by secret ballot*', to address the need for

¹⁷⁴ Ad Hoc Committee, 'Working Group of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity, 5 to 16 January 2004 United Nations, New York. Documents 15 January 2004 of Persons with Disabilities'.

¹⁷⁵ 'UN General Assembly, Ad Hoc Committee, Daily Summaries of Discussion at the Sixth Session on 04 August 2005, Volume 7 #4' (n 71).

¹⁷⁶ *ibid.*

resources enabling citizens with disabilities to vote by secret ballot. Similarly, EDF proposed to include measures to ensure that all persons with disabilities could exercise their right to a secret vote, such as through the provision of ballots in alternative formats. In addition, the DPO Central and East European Coalition emphasised that effective political participation by persons with disabilities requires providing them with the necessary tools and technologies to vote independently and secretly.

The references to ‘assistive and new technologies’ were only introduced in the final draft text at the 7th session of the Ad Hoc Committee, following a last contribution of the EU. The EU proposed adding the word ‘*effectively*’ before ‘*hold office*’ and ‘*facilitating the use of assistive and new technologies where appropriate*’ at the end of the sentence in paragraph (a)(ii).¹⁷⁷ The Ad Hoc Committee supported the EU delegation’s proposal and included ‘*assistive and new technologies*’ in the draft text of Article 29(a)(ii).¹⁷⁸ By means of adding the wording ‘by secret ballot’ after ‘protecting the right of persons with disabilities to vote’ and ‘facilitating the use of assistive and new technologies where appropriate’, the drafters of Article 29(a)(ii) made it clear that States Parties are required to ensure that persons with disabilities are not forced to reveal their political choice to other people. Consequently, Article 29(a)(ii) CRPD goes beyond the formal recognition of the right to a secret ballot. It explicitly provides that States Parties must protect the right of persons with disabilities to a secret ballot by facilitating the use of assistive and new technologies where appropriate.

5.2.2. The duty to ensure a secret ballot and the provision of assistive devices

The relevance of the legal duty to ensure secret and independent voting has been one of the issues frequently elaborated upon by the CRPD Committee in its concluding observations

¹⁷⁷ ‘Ad Hoc Committee, Article 29–Participation in Political and Public Life, Seventh Session, Report by the Chairman, 25 January 2006’.

¹⁷⁸ *ibid.*

concerning Article 29 CRPD.¹⁷⁹ The Committee has been consistent in expressing its concerns about States Parties' systematic failure to protect the right of persons with disabilities to vote in private at polling stations. It has addressed this duty by recommending that States Parties pay particular attention to ensuring a secret ballot and to the accessibility of voting environments in rural and remote areas.¹⁸⁰

Furthermore, the CRPD Committee elaborated on the right of persons with disabilities to vote by secret ballot when it reviewed the individual communication submitted by Fiona Given, represented by the Australian Centre for Disability Law, in 2013.¹⁸¹ At the time of federal elections in Australia, the author of the submission went to vote with her personal assistant at the designated polling station. However, due to her limited dexterity, the author could not mark her ballot or fold and deposit it in a ballot box without live assistance, which compromised the secrecy of her vote. The author argued that she required access to an electronic voting system, such as a computer-generated interface as illustrated in chapter II of this study, to cast an independent and secret ballot.¹⁸² Nevertheless, at the time of the elections, according to the Electoral Act, electronically assisted voting was only available to voters registered as having visual impairments.¹⁸³ The law also provided that a presiding election official should provide assistance if the voter 'failed' to nominate another person to assist them, and not merely upon

179 See for instance *CRPD Committee, Concluding observations on the initial report of Montenegro, CRPD/C/MNE/CO/1*, 22 September 2017 (n 106), para. 53(b); *CRPD Committee, Concluding observations on the initial report of Panama, CRPD/C/PAN/CO/1*, 29 September 2017, para. 57; *CRPD Committee, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, CRPD/C/GBR/CO/1*, 3 October 2017, para. 61; *CRPD Committee, Concluding observations on the initial report of Oman, CRPD/C/OMN/CO/1*, 17 April 2018, para. 51; *CRPD Committee, Concluding observations on the initial report of Malta, CRPD/C/MLT/CO/1*, 17 October 2018, paras 42(b) and (c); *CRPD Committee, Concluding observations on the initial report of Poland, CRPD/C/POL/CO/1*, 29 October 2018, para. 51(c); *CRPD Committee, Concluding observations on the initial report of the Niger, CRPD/C/NER/CO/1*, 1 May 2019, para. 48; *CRPD Committee, Concluding observations on the initial report of Albania, CRPD/C/ALB/CO/1*, 14 October 2019, para. 48(c); *CRPD Committee, Concluding observations on the combined second and third periodic reports of Australia, CRPD/C/AUS/CO/2-3*, 15 October 2019, para. 53; *CRPD Committee, Concluding observations on the initial report of Myanmar, CRPD/C/MMR/CO/1*, 22 October 2019, paras. 55(b) and (c); *Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the Cook Islands, CRPD/C/COK/CO/1*, 15 May 2015, para. 51; *Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Arab Emirates, CRPD/C/ARE/CO/1*, 3 October 2016, para. 54; *Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of New Zealand, CRPD/C/NZL/CO/1*, 31 October 2014, para. 62.

180 *CRPD Committee, Concluding observations on the initial report of Turkey, CRPD/C/TUR/CO/1*, 1 October 2019 (n 132), para 57(b).

181 *Committee on the Rights of Persons with Disabilities, Fiona Given v Australia, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 19/2014, CRPD/C/19/D/19/2014*, 29 March 2018 (n 130).

182 *ibid*, para 2.3.

183 *ibid*, para 2.3.

the request from the voter.¹⁸⁴ In the absence of an electronic voting system, the author preferred the assistance of an election official who was a stranger to her, such as the presiding election official at the polling station. However, the officer refused the author's request and directed her to obtain assistance from her personal assistant.

The author of the submission claimed that the State Party violated her rights, as it denied her the right to vote secretly and independently through the use of AT, and to obtain voting assistance from a person of her choice.¹⁸⁵ The CRPD Committee noted that none of the options available to the author in the federal elections could have enabled her to exercise the right to vote in the way she wanted, namely without having to reveal her political choice to the person accompanying her.¹⁸⁶ It further indicated that access to an electronic voting system, which was already available in the State Party, would have enabled the author to vote secretly on an equal basis with others. The Committee ultimately upheld the complaint based on Article 29(a)(i) and (ii). It found that the failure to provide the author with access to an electronic voting system integrating AT, without providing her with an alternative that would have enabled her to vote secretly, resulted in a denial of her rights under Article 29, both read alone and in conjunction with Articles 4, 5, and 9 CRPD.

This study subscribes to the idea that because AT is a tool to ensure accessibility, and increase autonomy and participation, persons with disabilities have the right to access AT to enjoy their voting rights, where appropriate.¹⁸⁷ This is explicitly recognised in Article 29(a)(ii) CRPD. In doing so, the CRPD connects the right of persons with disabilities to vote secretly (as set forth in Article 25(b) ICCPR) to the legal duty of States Parties to facilitate the use of assistive and new technologies, where appropriate. Notably, AT can enable persons with disabilities to vote secretly and independently, as well as to participate in other forms of political life, education, the labour market, and civic life. Various accessible voting materials in the form of electoral-assistive devices already exist to assist persons with disabilities when voting, as illustrated in chapter II of this study. For the present purposes, it is important to note that the *ratio legis* of the terms 'assistive and new technologies' under Article 29(a)(ii) CRPD is to connect the duty to ensure ballot secrecy with the duty to provide accessibility in the voting environment. As previously explained in this section, the dismantling of barriers hindering the exercise of political rights of persons with disabilities falls within the broader scope of Article 9, in conjunction with Articles 4(1)(g)(h) and 29(a)(ii) CRPD. Furthermore, under Articles 4(1)(g)(h) and 29(a)(ii) CRPD, States Parties also have the legal duty to facilitate

184 *ibid.*, para. 2.5.

185 *ibid.*, para. 3.1.

186 *ibid.*, para. 8.7.

187 See Jennifer Kline and Delia Ferri, 'Enabling People with Disabilities through Effective Accessible Technology Policies' in Bjørn Hvinden and others (eds), *The Changing Disability Policy System. Active Citizenship and Disability in Europe. Volume 1* (Routledge 2017).

access to ‘technology’, which itself must be accessible, and to promote developments (‘*new technologies*’) with the aim of encouraging and supporting the capacity of persons with disabilities to, *inter alia*, vote secretly and independently. The systematic interpretation of other CRPD provisions is useful for understanding the meaning of the concept ‘*technology*’ as contained in Article 29(a)(ii). This is explained below.

5.2.3. Access to ‘technology’ under the CRPD

The term ‘technology’ is included in several CRPD provisions. In Article 2 CRPD, the term ‘*technology*’ refers to ‘*means and formats of communication, including accessible information and communication technology.*’ Article 4(1)(g) obliges States Parties to undertake or promote research and development of new technologies, and to promote their availability and use by persons with disabilities. Such technologies include ICTs, mobility aids, devices, and ATs. Article 4(g) also stresses the suitability of new technologies for persons with disabilities and the responsibility of States Parties to prioritise providing technologies at an affordable cost. Article 4(1)(h) requires States to provide accessible information to persons with disabilities about AT devices and systems, including new technologies. Article 19 provides that AT is essential to enable persons with disabilities to live independently and to participate fully in all aspects of life.¹⁸⁸ Article 20(b), on personal mobility, imposes obligations on States Parties to facilitate access to quality mobility aids, and forms of live assistance and intermediaries, including by making them available at an affordable cost. Article 21, which focuses on the freedom of expression and opinion, and access to information, explicitly indicates that States Parties must provide information in accessible formats and technologies appropriate to persons with different impairments, in a timely manner, and without additional costs. Article 26 obliges States Parties to organise and strengthen comprehensive rehabilitation services, including relevant technology. Lastly, Article 32, on international cooperation, as referred to previously in this section, requires States Parties to facilitate access to and sharing of accessible information and ATs.

The interpretation of the above 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) as a means to ensure equality and the enjoyment of voting rights by persons with disabilities. Furthermore, the CRPD Committee asserted that ‘new technologies can be used to promote the full and equal participation of persons with disabilities in society, but only if they are designed and produced in a way that ensures their accessibility and affordability.’¹⁸⁹ In summary, States

188 Janet Lord, Katherine N Guernsey and Joelle M Balfe, *Human Rights. YES! Action and Advocacy on the Rights of Persons with Disabilities* (Nancy Flowers ed, Second, University of Minnesota Human Rights Center 2012), 128.

189 CRPD Committee, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014 (n 131), para 22.

Parties have an obligation to provide and support investment, research, and the production of assistive and new (voting) technologies to ensure that persons with disabilities can exercise the right to vote secretly on an equal basis with others under Article 29(a)(ii) CRPD.¹⁹⁰

Lastly, it is important to note that the UN Human Rights Council (UNHRC) adopted the 2012 Resolution 19/11 on the right of persons with disabilities to participate in political and public life.¹⁹¹ Despite being a soft law instrument, Resolution 19/11 calls upon States to ‘adopt and implement measures’ ensuring that persons with disabilities can effectively cast a secret and independent ballot under Articles 21(3) UDHR, 25(b) ICCPR, and 29 CRPD. The Resolution encourages States Parties to pay ‘*due attention*’ to universal design when designing products, environments, programmes, and services relating to participation in political life.¹⁹² It also recommends that States Parties allow assistance when voting for persons with disabilities where necessary and at their request.¹⁹³ The right to voting assistance is interpreted in detail below in section 5.3.3.

5.2.4. Concluding remarks

Vote secrecy is a fundamental legal element of the right to vote on an equal basis with others. This section noted that Article 29(a)(ii) CRPD goes beyond the formal recognition of the right to a secret ballot as initially set forth in Article 25(b) ICCPR. Pursuant to Article 29(a)(ii) CRPD, States Parties are required to protect and ensure the right of all persons with disabilities to vote by secret ballot. It was also indicated that Article 29(a)(ii) intersects with other relevant CRPD provisions, including Articles 2, 4, 19, 20, 21, and 32 CRPD. The systematic interpretation of these CRPD norms led to the conclusion that the CRPD aims to guarantee an environment in which persons with disabilities can vote by secret ballot through the adoption of positive measures.

Article 29(a)(ii) explicitly sets forth the obligation of States Parties to adopt a particular positive measure: to provide voters with disabilities with assistive and new (voting) technologies to enable them to vote secretly and independently, where appropriate. Furthermore, under Article 29(a)(ii), and the CRPD as a whole, ‘technology’ is a tool to ensure accessibility

190 See CRPD Committee, *Concluding observations on the initial report of Panama*, CRPD/C/PAN/CO/1, 29 September 2017, para. 57; CRPD Committee, *Concluding observations on the initial report of Montenegro*, CRPD/C/MNE/CO/1, 22 September 2017, para. 53(b); CRPD Committee, *Concluding observations on the initial report of Malta*, CRPD/C/MLT/CO/1, 17 October 2018, paras 42(b) and (c); CRPD Committee, *Concluding observations on the initial report of Albania*, CRPD/C/ALB/CO/1, 14 October 2019, para. 48(c).

191 Human Rights Council, *19/11 Rights of persons with disabilities: participation in political and public life*, A/HRC/RES/19/11, 23 April 2012.

192 *ibid.*, para. 10.

193 *ibid.*, para. 5(a).

and increase independence and participation in political and public life by persons with disabilities. Accordingly, in light of Article 29(a)(ii) and related CRPD provisions, States Parties are required to adopt deliberate, concrete, and targeted measures, such as laws, policies, programmes, and practices aiming at designing and producing electoral-assistive devices and other voting technological systems to protect ballot secrecy and in ways that ensure accessibility.

5.3. The legal obligation to ensure the free expression of voters

5.3.1. Introduction

The principle of free elections is provided in Article 25(b) ICCPR (right to vote). Such a principle 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) CRPD provides:

Article 29(a)(iii)

‘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:

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.’

Under Article 29(a)(iii), States Parties have the legal obligation to not interfere with the free expression of the political opinions of persons with disabilities. By inserting the term ‘free expression’ into Article 29(a)(iii), the drafters of the CRPD aimed to protect voters with disabilities from being forced to vote for or against a specific candidate or a specific list of candidates.¹⁹⁴ Third parties, including family members, personal assistants, or poll workers, may not exert influence on voters with disabilities to force them to take part in, or abstain from, elections under Article 29(a)(iii) CRPD. Furthermore, the drafters of Article 29(a)(iii) CRPD aimed to ensure the free expression of the will of persons with disabilities as voters on an equal basis with others. Accordingly, Article 29(a)(iii) CRPD entitles persons with disabilities to choose to participate in elections or not, in accordance with domestic law. It also entitles

¹⁹⁴ ‘UN General Assembly, Ad Hoc Committee, Daily Summaries of Discussion at the Sixth Session on 04 August 2005, Volume 7 #4’ (n 71).

persons with disabilities to make an informed political choice. Such choices by persons with disabilities must be made without any undue influence, violence, threats to apply violence or illegal coercion, as well as without fear of penalty or influence, regardless of the results of the elections, as required by Articles 19 (freedom of expression) and 25(b) ICCPR. The CRPD goes even further by introducing the concept of assistance when voting under Article 29(a) (iii), which must be allowed, where necessary, to ensure the exercise of the right to vote. The link between these obligations and the duty to provide technological aids in the context of voting is elaborated below.

5.3.2. The right to freely express political choices and the provision of assistive devices

According to the HRC,¹⁹⁵ the *rationales* of freedom of expression and opinion imply the recognition of these freedoms as indispensable conditions for the full development of the person and as a ‘*foundation stone for every free and democratic society*’. Such an interpretation reflects the idea that a precondition for the effective enjoyment of voting rights by persons with disabilities is the realisation of the legal duty of States to protect the development and exchange by persons with disabilities of their political opinions.¹⁹⁶ This obligation requires States Parties to adopt both an active and passive perspective to guarantee the freedom of expression and opinion, as well as access to (accessible) electoral information by persons with disabilities.¹⁹⁷ The active perspective implies the obligation to ensure the right of persons with disabilities to impart or share information and articulate ideas and political opinions. The passive perspective includes the obligation to ensure the right of persons with disabilities to seek and receive (accessible) electoral information, so that their ideas and political opinions can be developed. The scope of these obligations can be further defined in light of other CRPD provisions that intersect with Article 29(a)(iii) on the issue of information and communication.

Article 2 CRPD defines communication as comprising a wide range of augmentative and alternative modes, means, and formats, such as accessible ICT. Article 4(1)(g) sets out the legal obligation of States Parties to promote research and development of, and to endorse the availability and use of, ICTs and other technologies, where appropriate. Pursuant to Article 9(2)(e) and (f) CRPD, States Parties are required to provide forms of live assistance and intermediaries, such as guides and professional sign language interpreters, to ensure accessibility of public services (e.g., televised election debates) and buildings open to the

195 Human Rights Committee, *General comment No 34 Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, para. 1.

196 See Rachele Cera, ‘Article 21 Freedom of Expression and Opinion, and Access to Information’ in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017), 388.

197 *ibid.*

public (e.g., premises used as polling stations). Moreover, Article 9(2)(f) implies that other appropriate forms of support for persons with disabilities must also be available to ensure people's right to access information through accessible materials, such as voter education guides and political party manifestos in easy-to-read format. Lastly, Article 21 sets out several relevant duties of States Parties to ensure accessibility of information and communication in, *inter alia*, the electoral process:¹⁹⁸ to provide (electoral) information, e.g., election results, to persons with disabilities in accessible formats in a timely manner and without additional cost; to provide persons with disabilities with alternative and augmentative modes of communication as, without such modes, the right to freedom of expression is meaningless; to encourage and monitor that certain private entities, e.g., political parties and the mass media, provide information in accessible and usable formats for persons with disabilities; and to recognise and promote the use of sign languages. These are all part of the States' measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion.

As such, Articles 2, 4, 9, and 21 read in conjunction with Article 29(a)(iii) CRPD reflect the importance of accessible electoral information and communication, and accessible means and tools to help voters with disabilities participate in the electoral process, including making and communicating their political choice. Under the CRPD, to fulfil the right of persons with disabilities to freely express their will as voters, States Parties are required to adopt an active role, or specific positive measures, and not only a 'non-interventionist' role. Notably, the right of non-interference with personal political opinion and expression as endorsed in Article 25(b) ICCPR is tailored to the needs of voters with disabilities by Article 29(a)(iii) CRPD. This provision and related CRPD provisions also 'transformed' the obligation of non-interference into a State Party's obligation to provide both electoral information in accessible formats and means of support, e.g., electoral-assistive devices, to enable persons with disabilities to make and express their opinions. This was explicitly recommended by the CRPD Committee to Estonia in its 2021 concluding observations on the initial report of this State.¹⁹⁹ The Committee noted that, despite relevant legal and policy developments in the context of voting rights of persons with disabilities, such as having achieved accessibility to all government websites (including the online voting system), the State was not providing some voters with accessible electoral information, e.g., electoral programmes.²⁰⁰ The CRPD Committee explicitly recommended that Estonia provide voters with disabilities with electoral-assistive devices in the form of online or printed election materials in plain language and easy-to-read format to enable them to effectively exercise their right to make an informed political choice.²⁰¹

¹⁹⁸ *ibid*, 390.

¹⁹⁹ *CRPD Committee, Concluding observations on the initial report of Estonia, CRPD/C/EST/CO/1, 5 May 2021, paras 6 and 20* (n 127).

²⁰⁰ *ibid*, 56-57.

²⁰¹ *ibid*, para. 57(b).

Lastly, States Parties' failure to adopt and implement accessibility standards related to ICTs, e.g., websites of national electoral authorities, are common issues raised by the CRPD Committee in its concluding observations to States Parties.²⁰² Article 29(a)(iii) CRPD provides for the right of persons with disabilities to be assisted, where appropriate, to express their political opinion and choice. Notably, although 'technological aids' are not specifically mentioned in Article 29(a)(iii), forms of voting assistance go beyond personal support and include assistive devices and new technologies. The scope of the right to voting assistance is discussed below.

5.3.3. Voting assistance for persons with disabilities

During the negotiations on Article 29(a)(iii) CRPD, the New Zealand delegation proposed to add the phrase "*the provision to persons with disabilities of assistance which guarantees them the free expression of their will as electors*" to draft Article 18.²⁰³ In their view, such a phrase qualified the duties under Article 25(b) ICCPR. **At the 6th session, the EU, Serbia Montenegro, and Australia** supported New Zealand's proposal.²⁰⁴ Moreover, Costa Rica emphasised that assistance for the purpose of accessibility should be at the request of the individual with a disability.²⁰⁵ The resulting text of Article 29(a)(iii) sets out the right of persons with disabilities to be assisted when voting. It covers the entirety of the electoral process.²⁰⁶ Furthermore, the wording '(...) *where necessary, at their request*', included in Article 29(a)(iii) means the CRPD foresees that not all persons with disabilities require assistance to vote. As Article 29(a)(iii) does not make assistance in voting mandatory, States Parties should not compel voters with disabilities to be assisted when voting. Moreover, any measure taken to assist voters with disabilities cannot hinder their right to vote secretly.²⁰⁷

Firstly, under the CRPD, the right to voting assistance is at the discretion of the voter who desires support when voting. Secondly, Article 29(a)(iii) provides that voting assistance must be provided by a person of the voter's choice. This means that the assistance should be

202 CRPD Committee, *Concluding observations on the initial report of Turkey*, CRPD/C/TUR/CO/1, 1 October 2019 (n 129), paras. 44-45; CRPD Committee, *Concluding Observations on the initial report of Greece*, CRPD/C/SR487 and 488, 18 September 2019, paras. 32-33; CRPD Committee, *Concluding observations on the initial report of Myanmar*, CRPD/C/MMR/CO/1, 22 October 2019 (n 169), para. 41-42.

203 'UN General Assembly, Ad Hoc Committee, Daily Summaries of Discussion at the Sixth Session on 04 August 2005, Volume 7 #4' (n 71).

204 'UN General Assembly, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Sixth Session, A/60/266 of 17 August 2005' (n 72).

205 'UN General Assembly, Ad Hoc Committee, Daily Summaries of Discussion at the Sixth Session on 04 August 2005, Volume 7 #4' (n 71).

206 Cera (n 115).

207 CRPD Committee, *Concluding observations on the initial report of Myanmar*, CRPD/C/MMR/CO/1, 22 October 2019 (n 176), para. 55.

tailored to the voter's preference, needs, and expectations. The word '*choice*' indicates that the principle of respect for the individual autonomy and capacity of persons with disabilities (their agency) underlies the right to be assisted in voting. In that regard, the CRPD Committee has confirmed that the equal recognition of persons with disabilities before the law (Article 12 CRPD) underpins the construction of the provisions of Article 29(a) CRPD.²⁰⁸ Therefore, although it is not the main research topic of this study, the issue of '*assistance in voting*' must be interpreted at the intersection of Article 29(a)(iii) and Article 12 (on equal recognition before the law). Article 12(3) requires States Parties to adopt appropriate measures to support individuals in exercising their legal capacity. In this regard, in the individual communication *Zsolt Bujdosó and five others v Hungary*,²⁰⁹ the CRPD Committee confirmed that States Parties have a positive duty to take the necessary measures to guarantee to persons with disabilities the actual exercise of their legal capacity under Article 29, in connection with Article 12(3) CRPD. The Committee also noted that the imposition of restrictions or exceptions for any group of persons with disabilities in the enjoyment of their rights constitutes discrimination based on disability according to Article 2.²¹⁰ The Committee explicitly addressed this issue in its General Comment No. 6 on equality and non-discrimination.²¹¹ It indicated that exclusion from elections is a form of disability-based discrimination, which is often related to denial or restriction of legal capacity of persons with disabilities.²¹² The Committee also noted that under Article 12(4) CRPD, States Parties are called on to provide appropriate and effective safeguards to prevent abuse in supported decision-making. The voting assistant or support is, therefore, only an enabling measure for persons with disabilities to exercise their right to vote. Article 29(a)(iii) in line with Article 12 expressly provides that the voting assistant must be chosen by voters with disabilities to safeguard them against intimidation, coercion, or undue influence.

Thirdly, Article 29(a)(iii), read in conjunction with Article 12(3), raises an issue concerning the means of providing '*assistance in voting*'. As discussed by the drafters of the Convention,²¹³ the term '*inter alia*' at the end of paragraph (a) refers to the intention of the drafters of Article 29 to indicate that the voting initiatives as set out under subparagraphs (i), (ii) and (iii) are

208 CRPD Committee, General Comment No 1 (2014) Article 12: *Equal recognition before the law*, CRPD/C/GC/1, 19 May 2014, para. 31.

209 In the case six individuals were automatically barred from voting due to their placement under guardianship. The Committee did not foresee any reasonable restrictions or exception for any group of persons with disabilities in the enjoyment of their political rights in the individual complaint. *Committee on the Rights of Persons with Disabilities, Zsolt Bujdosó and five others v Hungary, Communication No 4/2011, Views adopted by the Committee at its tenth session (2-13 September 2013), CRPD/C/10/D/4/2011, 16 October 2013, paras 9.7-10.*

210 *ibid.*, para. 9.4.

211 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 74).

212 *ibid.*, para. 70.

213 'Ad Hoc Committee, Article 29 Participation in Political and Public Life, Seventh Session, Comments, Proposals and Amendments Submitted Electronically' (n 118).

illustrative, but not exhaustive. This means that the scope of potential positive obligations for States Parties under Article 29(a)(iii) is broad, and covers, as argued in this study, the provision of accessible environments to protect the free expression of the will of persons with disabilities when voting. Viewed in that light, forms of voting assistance go beyond personal support and may include assistive devices and new technologies, where necessary.

Lastly, Article 29(a)(iii), in line with the principle of free suffrage and Article 12(3), requires States Parties to provide voter education aimed at enabling voters with disabilities to develop the skills necessary to use the different forms of voting assistance, including any technological aid. States Parties must also provide training in disability rights to election officials to enable them to comply with their duty to assist persons with disabilities when voting, where appropriate, under Article 29(a) CRPD.

5.3.4. Concluding remarks

This section argued that the principle of free elections provided in Article 25(b) ICCPR is endorsed in Article 29(a)(iii) CRPD. Pursuant to Article 29(a)(iii) CRPD, States Parties have the legal obligation not to interfere with the free expression of the political opinions and choices of persons with disabilities. States Parties must also ensure the opportunity for persons with disabilities to freely make an informed political choice and express it on an equal basis with others. As noted, the right of persons with disabilities to freely express their opinion as voters consists of three elements.

Firstly, it is inextricably linked to the recognition of the legal capacity of persons with disabilities under Article 12, read in conjunction with Article 29(a)(iii) CRPD. Implementation of this duty is a precondition for the effective enjoyment of their voting rights. Secondly, under Article 29(a)(iii) and Articles 2, 4(1)(g), 9(2)(e) and (f), 12, and 21 CRPD, States Parties must identify and address information and communication barriers in the voting environment. States must adopt effective (active) measures targeted at two main purposes: (i) to ensure that the electoral information upon which a political choice and opinion is made by a person with a disability is accessible, and (ii) to address discrimination by political parties and mass media providers throughout the electoral process. Thirdly, States Parties must provide voting assistance for persons with disabilities where necessary, and at the individual's request, as required by Article 29(a)(iii) CRPD. In this regard, it was noted that, as the inclusion of the term '*inter alia*' at the end of paragraph (a) indicates, the voting initiatives set out under sub-paragraph (iii) are not exhaustive, but illustrative. Accordingly, the means and tools for voting assistance could include live and technological assistance. Indeed, information in accessible formats and other electoral-assistive devices are effective means to assist voters with disabilities in exercising their right to freedom of expression in elections according to the CRPD Committee. These aids can be used to support persons with disabilities throughout

the electoral process, including when making an informed political choice and communicating their will as voters, where appropriate.

Lastly, it was noted in this section that under Article 29(a)(iii) CRPD, when making voting assistance technology available, States Parties are required to provide voter education centred on persons with disabilities aimed at enabling them to develop the skills necessary to use the different forms of technology. Likewise, election officials must be trained in disability rights and the needs of persons with disabilities to effectively comply with their duty to provide voting assistance under Article 29(a)(iii) CRPD.

The following section briefly addresses ‘other (active) measures’ that States Parties can adopt to implement the obligations to provide accessibility in the voting environment, protect secrecy in voting, and assist voters when voting. The focus lies on two active measures relating to the concepts of ‘reasonable accommodation’ and ‘universal design’.

6. Other active measures

6.1. Introduction

This chapter has consistently argued that, by including the term ‘*inter alia*’ at the end of the last sentence of Paragraph (a) of Article 29 CRPD, the voting-related measures as set out in Paragraph (a) subparagraphs (i), (ii), and (iii) are illustrative and not exhaustive. Article 29(a), therefore, accords considerable discretion to States Parties to develop and implement different active measures to prevent and eliminate disability discrimination in electoral processes. In this regard, pursuant to Article 35(1) CRPD, the CRPD Committee has a monitoring role to examine States Parties’ implementation of Article 29(a) CRPD, and the Convention as a whole. The Committee is also responsible for making recommendations to States Parties concerning their compliance with the CRPD.

Providing voting technological aids is part of the ‘specific measures’ and ‘other (active) measures’ [Article 5(4) CRPD] that States Parties can adopt for achieving greater accessibility in the voting environment. States Parties are also required to adopt other active measures, which involve the concepts of ‘reasonable accommodation’ [Articles 2 and 5(3) CRPD] and ‘universal design’ [Articles 2 and 4(1)(f) CRPD]. Article 29(a) does not explicitly refer to either of these concepts. Nevertheless, the duty to provide reasonable accommodation and to apply universal design intersect with the accessibility requirement as part of the active measures that States Parties must undertake to render participation in political life realisable for voter with

disabilities. Moreover, these duties are also related to designing and implementing electoral-assistive devices, as briefly explained below in this section.

6.2. The duty to provide reasonable accommodation

Article 2 CRPD defines the notion of ‘reasonable accommodation’ as follows:

Article 2

‘Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (...).’²¹⁴

Reasonable accommodation is an individual modification or adjustment required to ensure that a person with a disability can exercise their rights. Article 5(3) CRPD sets out the duty to provide reasonable accommodation in the realisation of all rights on an equal basis with others. In its General Comments No. 2 on accessibility and No. 6 on equality and non-discrimination, the CRPD Committee has articulated relevant criteria as regards the obligation to provide reasonable accommodation. The Committee has described the duty to provide reasonable accommodation as an *ex nunc duty*.²¹⁵ This means that it is enforceable from the moment an individual with an impairment needs it in a given situation,²¹⁶ e.g., at an election in order to enjoy their right to vote on an equal basis with others. States Parties, however, must also actively identify the needs for accommodations of persons with disabilities and take action accordingly.²¹⁷ The Committee has also observed that reasonable accommodation must be ‘negotiated’ with persons with disabilities and not determined exclusively by duty bearers.²¹⁸

Furthermore, the duty to accommodate, unlike the obligation to provide accessibility, exists only if an accommodation does not constitute an undue burden on the duty bearer.²¹⁹ As

214 UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106 (n 60), Article 2.

215 CRPD Committee, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014 (n 131), paras 25-26.

216 *ibid*, paras 25-26.

217 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 74), para. 24(b).

218 *ibid*, para. 24(b).

219 CRPD Committee, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014 (n 131), para 25.

explained by Waddington,²²⁰ the duty to accommodate involves ‘*an individual assessment and a tailored individual solution*’. This is a two-fold duty: to assess the reasonableness of the actual accommodation requested and whether the individual accommodation is a disproportionate or undue burden on an entity.²²¹ Broderick²²² argues that in the context of the duty to accommodate in the CRPD, the concept of ‘reasonableness’ involves the principle of the inherent dignity of persons with disabilities and the obligation of States to satisfy the needs and interests of persons with disabilities, accordingly. The author states ‘any requested accommodation must be necessary and effective in allowing the disabled person in question to participate in the required activity and in contributing to the realisation of the substantive rights in the CRPD.’²²³ Compliance with the duty to accommodate requires States to take the steps which are necessary to ensure that the voter with a disability in question can enjoy their right to vote on an equal basis with others and which are appropriate in resulting in the realisation of the right to vote as provided by Article 29(a) CRPD. Moreover, the CRPD Committee has clarified that ‘disproportionate or undue burden’ is a single concept that sets the limit of the duty to provide reasonable accommodation.²²⁴ In its review of individual communications²²⁵ and concluding observations²²⁶, the Committee has consistently expressed that the decision to provide an accommodation in each case rests on an underlying proportionality test. As explained by Broderick,²²⁷ the proportionality test seeks to balance the rights of, and burdens and benefits to, persons with disabilities and duty bearers. The factors which determine

220 Lisa Waddington, *Implementing and Interpreting the Reasonable Accommodation Provision of the Framework Employment Directive: Learning from Experience and Achieving Best Practice* (European Commission EU Network of Experts on Disability Discrimination 2004), 8.

221 *ibid.*, 8.

222 Broderick (n 48), 158-176.

223 *ibid.*, 175.

224 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 74), para 25(b).

225 See for instance *Committee on the Rights of Persons with Disabilities, Lockrey v Australia, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 13/2013, CRPD/C/15/D/13/2013, 30 May 2016*, para. 103; *Committee on the Rights of Persons with Disabilities, Beasley v Australia, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 11/2013, CRPD/C/15/D/11/2013, 25 May 2016*, para. 8.4-5; *Committee on the Rights of Persons with Disabilities, HM v Sweden, Communication No 3/2011 Views adopted by the Committee at its 7th session, CRPD/C/7/D/3/2011, 21 May 2012*, para. 8.5.

226 CRPD Committee, *Concluding observations on the initial report of Jordan*, CRPD/C/JOR/CO/1, 15 May 2017, para. 12; CRPD Committee, *Concluding observations on the initial report of Montenegro*, CRPD/C/MNE/CO/1, 22 September 2017, para. 11; CRPD Committee, *Concluding observations on the initial report of Morocco*, CRPD/C/MAR/CO/1, 25 September 2017, para. 13(a); CRPD Committee, *Concluding observations on the initial report of Panama*, CRPD/C/PAN/CO/1, 29 September 2017, para. 15; CRPD Committee, *Concluding observations on the initial report of the Sudan*, CRPD/C/SDN/CO/1, 10 April 2018, para. 8; CRPD Committee, *Concluding observations on the initial report of Haiti*, CRPD/C/HTI/CO/1, 13 April 2018, para. 9(a); CRPD Committee, *Concluding observations on the initial report of the Niger*, CRPD/C/NER/CO/1, 1 May 2019, para. 7(a).

227 Broderick (n 48), 176.

whether a reasonable accommodation is a ‘disproportionate or undue burden’ on an entity depend on the facts of a particular case.²²⁸ The CRPD Committee has not elaborated yet on what might be a ‘disproportionate or undue burden’ in the context of the right to vote of persons with disabilities. Nevertheless, the duty to provide reasonable accommodation, as a non-discrimination duty, applies in the context of political participation under Article 29(a) (i) read in conjunction with Articles 2, 3(2), 4(1)(b), and 5 CRPD. Accordingly, the CRPD Committee has highlighted that implementing reasonable accommodation is part of the positive obligations of States Parties to effectively eliminate discriminatory barriers faced by persons with disabilities when voting.²²⁹ Furthermore, the Committee has noted that accommodations are distinct from other forms of assistance that persons with disabilities may require.²³⁰ This includes live or technological voting assistance to help voters with disabilities to vote under Article 29(a)(iii) CRPD.

Many persons with disabilities rely on assistive devices to enable them to carry out daily activities and participate in community life. In certain cases, based on individual needs, a voter with a disability may require an accommodation, such as using a personal assistive device (i.e., a device that they already have) to maintain or improve their functional performance. For example, a person with a long-term impairment may use a pen reader²³¹ (assistive device) to read text independently. When voting at a polling station, that person may use their pen reader to read and mark their ballot paper. Nevertheless, a pen reader is not an ‘electoral-assistive device’ (or a material used to vote) *per se*, as it supports reading of any kind of texts, including ballot papers. In general, national electoral authorities do not provide voters with pen-readers at polling stations, or at least it is not mandatory to do so. However, when casting their ballot, a person might not be allowed to use their own pen reader. In such cases, the person might not be able to read independently the ballot paper which hinders the full enjoyment of their right to vote. Furthermore, electoral-assistive devices, such as a tactile ballot guide in Braille, (developed by electoral authorities), which are available at polling stations, may still not be sufficient to ensure independent voting. Some people may not know how to use the means or materials (for example because they cannot read Braille), or their individual impairments were not considered when accessible voting materials were developed. In these cases, being permitted to use their own device at the polling station is a form of reasonable accommodation and is a means of ensuring accessibility for persons with disabilities in specific circumstances. Consistent with this view, the Committee recommended to the UK in its latest concluding

228 *ibid*, 176.

229 See CRPD Committee, *Concluding observations on the initial report of the Republic of Moldova*, CRPD/C/MDA/CO/1, 18 May 2017, para 7(b).

230 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 74), para 25(c).

231 A pen reader scanner is an assistive device that reads text out loud.

observation on the State's initial report that it should ensure the provision of reasonable accommodation to guarantee the possibility of, and right to, universal and secret suffrage.²³²

In summary, the duty to implement reasonable accommodations may apply in the context of political participation, depending on specific needs and requests of individuals with long-term impairments. Conversely, the application of 'universal design' is based on the recognition of the inherent diversity of individuals. Such a measure seeks to ensure that everyone can equally use products, environments, or services as explained below.

6.3. The duty to develop universally designed goods

Article 2 CRPD defines the term 'universal design' as follows:

Article 2

“‘Universal design’ means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.”²³³

Overall, as a term of art from architecture, 'universal design' is about creating products and environments that are usable by everyone.²³⁴ The CRPD articulates in Article 4(1)(f) (general obligations) the States Parties' obligation to undertake or promote research on and development of universally designed goods, services, equipment, and facilities. Certainly, by relying on universal design, both relevant public and private actors can design a variety of buildings open to the public (e.g., facilities used as polling stations on election day) and voting materials in a way that they are usable by the widest range of people, without the need for adaptation, whether or not an impairment or disability exists.

Notably, the CRPD Committee has explicitly drawn attention to the importance of the application of universal design to all new voting facilities and materials in order to make them accessible for all voters, and not only persons with disabilities.²³⁵ By applying universal design to voting facilitates and materials, States Parties can ensure (at least to some extent)

232 CRPD Committee, *Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland*, CRPD/C/GBR/CO/1, 03 October 2017 (n 59), para 61.

233 UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Article 2.

234 Betty Rose Connell and others, 'Principles of Universal Design' (*The Center for Universal Design*, 1997).

235 CRPD Committee, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014 (n 131), paras 15-16.

full, equal, and unrestricted access for all potential voters.²³⁶ The Committee has also stated that the application of universal design does not eliminate the need for technological aids to provide accessibility, such as electoral-assistive devices, but does contribute to a more barrier-free voting environment.²³⁷ In summary, under Articles 2, 4(1)(f), 9 and 29(a)(i) CRPD, States Parties are required to provide accessibility in the voting environment through, *inter alia*, application of universal design. In accordance with the principle of universal design, all new voting premises and materials must be designed in a manner that makes them accessible for all eligible voters, including persons with disabilities.

7. Conclusion

This chapter has addressed the substantive framework of the legal obligations set out in Article 29(a) CRPD, under which voting rights of persons with disabilities are protected. It was noted that legal obligations provided by Article 25(b) ICCPR were applied (or ‘tailored’) to the requirements of persons with disabilities by Article 29(a) CRPD. The inclusion of the legal obligations on States Parties in the CRPD to provide accessible voting materials to be used by persons with disabilities [Article 29(a)(i)]; ensure their ballot secrecy [Article 29(a)(ii)]; and guarantee the free expression of their will as voters [Article 29(a)(iii)] is significant for many reasons. For example, the CRPD obliges States Parties to ensure equal opportunities to vote for persons with disabilities. Notably, Article 29(a) and related CRPD provisions reflect the strong commitment of the drafters of the CRPD to not only recognise voting rights of persons with disabilities formally, but also to guarantee the exercise of such rights in practice and on an equal basis with others. Article 29(a), and the CRPD as a whole, afford opportunities to voters with disabilities, and promote changes to covert social practices that deny voters with disabilities the effective and full exercise of their right to vote, by addressing the structural and systemic nature of discrimination that persons with disabilities experience within the context of voting.

The CRPD requires States Parties to adopt, *inter alia*, legislative, policy, administrative, financial, educational and social measures for the elimination of existing barriers. Article 29(a) CRPD recognises that the full realisation of the right to vote of persons with disabilities cannot occur in circumstances where barriers exist, such as when people cannot use voting materials, vote secretly, and express their free will as voters. Dismantling these barriers can be accomplished through positive measures, such as those codified in Article 29(a) CRPD; other

236 Stein and Stein (n 402); Kayess and French (n 66).

237 CRPD Committee, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014 (n 131), para. 15.

measures to provide accessibility, such as applying the principle of universal design, which is not directed at specific voters with disabilities; and individualised reasonable accommodations.

This chapter has demonstrated that providing electoral-assistive devices is linked to both positive action measures ('specific measures') and 'other (active) measures' of a more general nature. This is a significant research finding that shows the substantive and transformative value of making available electoral-assistive devices to be used by voters with disabilities. States Parties can provide voters with disabilities with electoral-assistive devices as an active measure for achieving accessibility in the voting environment [Article 29(a)(i) CRPD]; protecting the right of persons with disabilities to vote secretly and independently [Article 29(a)(ii) CRPD]; and guaranteeing the free expression of the will of persons with disabilities as voters [Article 29(a)(iii) CRPD].

One particular aspect of the cross-cutting application of assistive and new technologies in elections under Article 29(a) CRPD is the 'discretionary decision-making' issue. In that regard two specific conclusions were reached in this chapter. Firstly, States Parties hold a certain margin of discretion when deciding on the type of positive measures to develop and implement. This involves allocation of public funds for the research, design, and implementation of voting assistive and new technologies. The discretionary power of States Parties is based on the progressive implementation of Article 29(a) CRPD, both regarding the allocation of resources and the design of programmes and policies. National electoral authorities have the discretion to decide which electoral-assistive devices are appropriate to be used by the electorate. Overall, such decisions must be in conformity with the principles, rights, and obligations provided by the CRPD. The discretionary decisions by national authorities regarding electoral-assistive devices and other measures are subject to supervision by the CRPD Committee. Secondly, States Parties must be effective in terms of progressively achieving outcomes consistent with the obligations of the CRPD and action must be taken within a reasonably short period of time. Lastly, the CRPD itself and the already existing frameworks for assessing compliance with international human rights law, mainly under the Optional Protocol to the ICESCR, provide a useful basis for the CRPD Committee to establish the adequacy or 'timely manner' of measures developed and implemented by States Parties to comply with Article 29(a) CRPD.

The following chapter of this study briefly examines the relevant European legal framework regulating the right to vote in the context of persons with disabilities. Both Chapter III and (the following) Chapter IV form the legal basis for the assessment of compliance of England and Spain with their legal obligations under human rights instruments pertaining to the provision and use of electoral-assistive devices by persons with disabilities.



Chapter IV

The European legal
framework on the right to
vote

1. Introduction

Persons with disabilities continue to face numerous statutory and procedural barriers to participating in elections globally.¹ Research shows that Europe is no exception in this regard.² Contracting States to the European Convention on Human Rights (ECHR) must remove these barriers to ensure full and effective participation of persons with disabilities in elections. Moreover, the European Union (EU) concluded the CRPD in 2010. As such, the CRPD is an instrument of EU law. This European legal framework regulating the right to vote in the context of persons with disabilities is briefly explored in this chapter. The resulting analysis is part of the legal basis for the assessment of compliance of England and Spain with their legal obligations under human rights instruments.

This chapter is divided into four sections. Following this introduction, Section 2 provides an interpretation of Article 3 of Protocol No. 1 to the ECHR (addressing voting rights). This section does not endeavour to undertake a detailed analysis of Article 3 of Protocol No. 1 to the ECHR. Rather, it aims to highlight the relevance of Article 29(a) CRPD, and the entire CRPD, for the interpretation of Article 3 of Protocol No. 1 and related ECHR provisions in the context of disability. In this regard, Section 2 provides a comprehensive examination of the recent judgment delivered by the European Court of Human Rights (ECtHR) of *Toplak and Mrak v. Slovenia*.³ In this case, the ECtHR ruled on issues relating to the accessibility of the voting environment.

Section 3 succinctly examines the rules applicable to European elections and the CRPD as an instrument of EU law. Section 3 also describes the recent European Parliament (EP) Legislative Resolution 2020/2220 (INL) that introduces proposals for a Council Regulation on the election of the members of the EP. The focus is on highlighting the impact on voters with disabilities of two specific proposals for: ensuring the right to vote of all EU citizens, regardless of their legal capacity, and providing accessibility of the voting environment in European elections. Section 3 also briefly explores certain measures adopted by the European Commission to

1 Janet Lord, Michael Ashley Stein and János Fiala-Butora, 'Facilitating and Equal Right to Vote for Persons with Disabilities' (2014) 6 Journal of Human Rights Practice 115; Virginia Atkinson, Rebecca Aaberg and Staffan Darnolf, 'Disability Rights and Election Observation: Increasing Access to the Political Process' (2017) 35 Nordic Journal of Human Rights 375.

2 Jurij Toplak, 'Voting Is Every EU Citizen's Right, Regardless of Disability' (*Euractiv*, 2020) <<https://www.euractiv.com/section/eu-elections-2019/opinion/voting-is-every-eu-citizens-right-regardless-of-disability/>> accessed 14 February 2022; Aalt Willem Heringa and Hoai-Thu Nguyen, 'Obstacles to Participation in Elections and the Exercise of Voting Rights, inside the E.U. European Parliament' (2020) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658593/IPOL_STU\(2020\)658593_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658593/IPOL_STU(2020)658593_EN.pdf)> accessed 2 June 2020.

3 ECHR, *Toplak and Mrak v. Slovenia*, applications no. 34591/19 and 42545/19, Judgment 26 October 2021.

support Member States to improve the conditions for political participation of persons with disabilities. Lastly, Section 4 of this chapter provides some conclusions.

2. Voting rights at the Council of Europe level

Within the Council of Europe, voting rights are primarily addressed in the European Convention on Human Rights (ECHR).⁴ The ECHR does not contain any specific rights for the protection of persons with disabilities. Nevertheless, it is generally accepted that the human rights contained in the ECHR apply equally to all human beings, including persons with disabilities.⁵ Political participation is framed in the Preamble to the ECHR in relationship to the concepts of democracy and democratic society, as provided in Article 25(b) ICCPR. Article 3 of the Additional Protocol No.1 to the ECHR addresses voting rights. It provides:

Article 3 of Protocol No. 1.

‘The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.’⁶

According to the *travaux préparatoires* of Additional Protocol No.1 to the ECHR,⁷ it was difficult to reach a consensus on the text of Article 3. Considering the difficulties in reaching an agreement on the draft provision, the wording of Article 3 differs from the other provisions in the ECHR and Additional Protocol No.1 in that it is framed as an inter-State obligation to ‘hold free elections’ rather than as a right of ‘everyone’ to participate in free elections. Furthermore, Article 3 of Protocol No.1 does not mention that suffrage should be universal. This is one of the main differences between Article 3 of Protocol No.1 and Articles 25(b) ICCPR and 29(a) CRPD.

4 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.

5 See Andrea Broderick, ‘The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities’ (Intersentia 2015), 62.

6 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950 (n 4), Article 3 of Protocol No. 1.

7 Council of Europe, ‘European Court of Human Rights “Travaux Préparatoires on Article 3 of Protocol No. 1 to the European Convention on Human Rights”’ (1986) <[https://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-P1-3-Cour\(86\)36-BIL1221606.pdf](https://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-P1-3-Cour(86)36-BIL1221606.pdf)> accessed 9 February 2020, 77-78.

Goodwin-Gill⁸ states that an evolutive interpretation of Article 3 of Protocol No. 1 by the European Commission of Human Rights⁹ led to changes in the understanding of obligations established by Article 3: from the institutional obligation to hold free elections,¹⁰ to the concept of ‘universal suffrage’,¹¹ and then, as a consequence, to subjective rights of individuals to participate, such as through the right to vote.¹² Pursuant to Article 3 of Protocol No. 1, Contracting States are therefore required to hold free elections, which intersects with numerous other rights and principles guaranteed by the ECHR, such as the freedom of expression and the prohibition of discrimination, addressed in Articles 10 and 14 ECHR respectively. Moreover, through the endorsement of the principle of the secret ballot, Article 3 of Protocol No. 1 shields disabled and non-disabled voters from pressures or threats to which they may be subject if third parties know how they voted or intend to vote.¹³

At the policy level, the ‘*Disability Strategy 2017-2023: Human Rights—A Reality for All*’ is part of the guiding framework for the Council of Europe and its Contracting States on, *inter alia*, voting rights of persons with disabilities.¹⁴ The Strategy 2017-2023 aims to ‘achieve equality, dignity and equal opportunities for persons with disabilities in specific areas where the Council of Europe can make an input.’¹⁵ Accessibility is a priority area in the Strategy 2017-2023. For the present purposes, it is important to note that accessibility to ICTs and goods is recognised as an enabler of the right of persons with disabilities to participate in political life on an equal basis with others. Moreover, in its Strategy 2017-2023, the Council of Europe committed to work with Contracting States to make the services of governments accessible to persons with disabilities.¹⁶

The Ad Hoc Committee of experts on the rights of persons with disabilities (CAHDPH) reports on the progress in the implementation of the Strategy 2017-2023 to the Committee of

8 Guy S Goodwin-Gill, ‘Free and Fair Elections’ (*New expanded edition. Inter-Parliamentary Union. Geneva, 2006*) 216 <<https://www.ipu.org/resources/publications/reference/2016-07/free-and-fair-elections-new-expanded-edition>> accessed 30 September 2021, 103-104.

9 The European Commission of Human Rights had the role to consider if a petition was admissible to the ECtHR. It became obsolete in 1998 with the restructuring of the ECtHR.

10 *X v Belgium (Application No 1028/61) Commission Decision 18 September 1961, Yearbook of the Convention, vol 4.*

11 *X v The Federal Republic of Germany (Application No 2728/66) Commission Decision 06 October 1967, Yearbook of the Convention, vol 10.*

12 *W, X, Y and Z v Belgium (Application No 6745-6746/76) Commission Decision 30 May 1975, Yearbook of the Convention, vol 18.*

13 Joanna Shulman, ‘Defending Secret Voting for People with Vision Impairments’ (2008) 2 *Fittler v New South Wales Electoral Commission and Anor* 42.

14 Council of Europe, ‘Council of Europe Disability Strategy 2017-2023. Human Rights: A Reality for All’ (2016) <<https://www.coe.int/en/web/disability/strategy-2017-2023>> accessed 10 July 2022.

15 *ibid*, para. 55.

16 *ibid*, paras 55-60.

Ministers.¹⁷ The Ad Hoc Committee positively regarded the extra-budgetary contributions by some Contracting States, including the UK and Spain, to the publication of the ‘Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities’ by the Organisation for Security and Co-operation in Europe (OSCE).¹⁸ This publication provides a framework to assist the OSCE’s Office for Democratic Institutions in assessing the participation of persons with disabilities in elections. The handbook outlines criteria for assessing the participation of persons with disabilities in participating States, as part of the overall observation of an electoral process. These criteria include legislation and policy instruments in line with Article 3 of the Additional Protocol No. 1 to the ECHR, and measures regarding accessibility of, among others, voting materials.¹⁹

The implications of Article 3 of the Additional Protocol No. 1 and related ECHR provisions for the *de facto* realisation of the right to vote by persons with disabilities, including the obligation to provide accessibility in the voting environment, are examined below. This is based on relevant judgments and decisions of the ECtHR.

2.1. The ECtHR case law

The ECtHR has addressed relevant issues for the implementation of Article 3 of Protocol No. 1 to the ECHR in its case law. Some of these issues include ‘universal suffrage’ as part of the right to free elections;²⁰ the scope of the term ‘legislature’, which is not confined to the national parliament and must be interpreted in the light of the constitutional structure of the State in question;²¹ the margin of appreciation enjoyed by the Contracting States when establishing legal restrictions on the right to vote;²² and the systematic interpretation of Article 3 of Protocol

17 The Committee of Ministers is the Council of Europe’s decision-making body. See Ad Hoc Committee on the Rights of Persons with Disabilities -Council of Europe, *Rights of Persons with Disabilities: Implementation of the Council of Europe Disability Strategy 2017-2023: Human Rights a Reality for All. 6th Meeting, 27-29 September 2017* (2017).

18 OSCE -Organization for Security and Co-operation in Europe, *Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities* (OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) 2017).

19 OSCE’s Office for Democratic Institutions and Human Rights (ODIHR), *Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities* (2017), 33-36 & 47-49.

20 See for instance ECHR, *Mathieu-Mohin and Clearfayt v Belgium*, 02 March 1987, Merits, application no 9267/81; ECHR, *Hirst v The United Kingdom*, application no 74052/01, Judgment 06 October 2005.

21 ECHR, *Malarde v. France*, application no. 46813/99, Judgment 05 September 2000; ECHR, *Respetto Visentini v. Italy*, application no. 42081/10, Judgment 09 March 2021.

22 ECHR, *Mathieu-Mohin and Clearfayt v Belgium*, 02 March 1987, Merits, application no. 9267/81 (n 20); ECHR, *Ždanoka v Latvia*, application no. 58278/00, Judgment 16 March 2006.

No. 1 in conjunction with Article 14 ECHR on the prohibition of discrimination.²³ The Court has also admitted cases involving election-related complaints which do not fall under Article 3 of Protocol No. 1, to be raised under other ECHR provisions, and particularly pursuant to Article 8 ECHR on the right to respect for private and family life.²⁴

In its declaration finding the case *Mólka v. Poland* case inadmissible,²⁵ the ECtHR interpreted the scope of Article 8(1) ECHR as covering the right to free elections of the applicant. Briefly stated, the applicant had a physical impairment and used a wheelchair. He could not vote in municipal and in district council elections because the polling station he attended was not accessible to individuals in wheelchairs. The applicant complained under Article 3 of Protocol No. 1 and Article 14 ECHR. He alleged that he had been deprived of his right to vote on account of his disability. Moreover, of its own accord, the Court raised a complaint under Article 8(1) ECHR related to inaction by the State.²⁶ In *Mólka*, the applicant had refused the possibility of entering the polling station with the assistance of third persons on a stretcher or in a wheelchair as was proposed to him by the election officials.²⁷ The applicant did not consider any of these possibilities as he had felt that it would have been embarrassing and degrading for him.²⁸ The Court recalled the State's margin of appreciation and considered that the alternatives provided to the applicant were adequate. As a result, the Court declared the applicant's complaint ill-founded.

Moreover, the Court did not find it necessary to determine the applicability of Article 8 ECHR in the case since the application was in any event inadmissible. Nevertheless, the Court did not rule out the possibility that, in circumstances such as those in *Mólka*, a sufficient link could exist to attract the protection of Article 8. It held that Article 8 compels the State to respect private or family life by abstaining from arbitrary interferences.²⁹ Moreover, in the Court's view, these negative obligations may be reinforced by positive obligations designed to ensure the effective enjoyment by persons with disabilities of the many rights set out in the ECHR. In both cases of negative and positive obligations under Article 8 ECHR, there must be 'a fair balance' between the competing interests of the individual and the community as a whole.³⁰ The State in question is recognised as enjoying a margin of appreciation in this regard.³¹ Overall,

23 See for instance ECHR, *Sejdić and Finci v Bosnia and Herzegovina*, application nos. 27996/06 and 34836/06 Judgment 22 December 2009.

24 'ECHR, Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights (ECHR, 30 April 2019) Right to Free Elections'.

25 ECHR, *Mólka v Poland (dec)*, Application No 56550/00, 11 April 2006.

26 *ibid*, Complaints.

27 *ibid*, section A.

28 *ibid*, section A.

29 *ibid*, section C/2.

30 *ibid*, section IV.

31 *ibid*, section IV.

according to the Court, the effective enjoyment of many of the ECHR rights by persons with disabilities may require the adoption of various positive measures by the competent State authorities.³² Therefore, despite being a pre-CRPD case, the *Mólka* decision is important for understanding how negative and positive obligations overlap in practice, e.g., in the context of the right of persons with disabilities to vote.

After the adoption of the CRPD, the ECtHR has recognised the importance of the CRPD as a global human rights instrument on disability rights, and its relevance for interpreting substantive rights under the ECHR in the context of disability.³³ The ECtHR applied the CRPD in the context of voting for the first time in its judgment in *Alajos Kiss v. Hungary*.³⁴ In that case, the ECtHR condemned the automatic disenfranchisement of persons with disabilities due to their guardianship status. This was confirmed by the ECtHR in two other judgments: *Gajcsi v. Hungary*³⁵ and *Sándor Harmati v. Hungary*.³⁶ However, in the recent judgments of *Strøbye and Rosenlind v. Denmark*³⁷ and *Caamaño Valle v. Spain*,³⁸ the ECtHR allowed disenfranchisements of persons divested of their legal capacity. It found no breach of relevant provisions of the ECHR because there had been individualised judicial assessments to determine the ability of the applicants to make a rational decision regarding voting. Although the issue of guardianship-based voting restrictions is not the main topic of this study, it is important to note that the ECtHR has not been consistent in applying the CRPD in its relevant case law.³⁹ Fiala-Butora and others⁴⁰ argue that in *Strøbye* the Court gave greater weight to soft law instruments rather than to the CRPD as a disability-specific global and binding treaty on

32 *ibid*, section C/2.

33 The Court referred to the CRPD for the first time in ECHR, *Glor v. Switzerland*, application no. 13444/04, Judgment 30 April 2009; Other cases include ECHR, *Enver Şahin v. Turkey*, application no. 23065/12, Judgment 02 February 2018; ECHR, *Çam v. Turkey*, application no. 51500/08, 23 May 2016; ECHR, *Guberina v. Croatia*, application no. 23682/13, Judgment 12 September 2016.

34 ECHR, *Alajos Kiss v. Hungary*, application no. 38832/06, Judgment 20 May 2010.

35 ECHR, *Gajcsi v. Hungary*, application 34503/03, Committee Judgment 23 September 2014.

36 ECHR, *Harmati v. Hungary*, application 63012/10, Committee Judgment 21 October 2014.

37 ECHR, *Strøbye and Rosenlind v. Denmark*, applications nos. 25802/18 and 27338/18, Judgment 02 February 2021.

38 ECHR, *Caamaño Valle v. Spain*, application no. 43564/17, Judgment 11 May 2021.

39 János Fiala-Butora, Matthew Smith and Michael Ashley Stein, 'Strøbye and Rosenlind v. Denmark: A Surprising Departure from the European Court of Human Rights' Disability Voting Rights' [2021] European Human Rights Law Review 201; Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases and Materials* (Cambridge University Press 2019); Colm O'Cinneide, 'Extracting Protection for the Rights of Persons with Disabilities from Human Rights Frameworks: Established Limits and New Possibilities' in Arnordóttir Oddný Mjöll & Quinn Gerard (ed), *The UN Convention on the Rights of Persons with Disabilities : European and Scandinavian Perspectives* (Martinus Nijhoff Publishers 2009).

40 Fiala-Butora, Smith and Ashley Stein (n 39).

Denmark. Similarly, in his dissent attached to *Caamaño Valle* judgment,⁴¹ Judge Paul Lemmens (President) stated that the Court's interpretation of the right to vote of the applicant conflicted with Articles 12 and 29 CRPD. In his view, the Court should have aligned its approach to that of the CRPD Committee in *Caamaño Valle* (i.e., any disenfranchisement of persons with disabilities is contrary to their rights under the CRPD). The Court has also been well advised by other disability scholars and disability rights advocates through amicus briefs to use the CRPD as an interpretative aid when interpreting and applying the ECHR in the context of voting and persons with disabilities.⁴²

The following section analyses the recent Chamber judgment of *Toplak and Mrak v. Slovenia*,⁴³ which is particularly relevant to the topic of this study.

2.2. *Toplak and Mrak v. Slovenia*, ECtHR 26 October 2021

This sub-section primarily discusses the analysis of the ECtHR of compliance by Slovenia with their positive obligation to take appropriate measures to overcome barriers to participation in elections experienced by the two applicants with disabilities in *Toplak*. The focus is on analysing the extent to which the Court applied the CRPD as an interpretative aid of the substantive rights and obligations in the ECHR in the context of persons with disabilities. To that end, it is important to mention that Slovenia signed and ratified the CRPD and its Optional Protocol on 30 March 2007 and 24 April 2008, respectively.

2.2.1. Facts

Both applicants in *Toplak* had physical impairments and used electric wheelchairs for mobility.⁴⁴ The applicants alleged a lack of adequate measures to allow them to vote in the

41 ECHR, *Caamaño Valle v Spain*, application no. 43564/17, Judgment 11 May 2021 (n 38), Dissenting Opinion of Judge Lemmens, paras 1-7.

42 Harvard Law School Project on Disability and Centre for Disability Law and Policy, *Third Party Submission in the Matter of Applications Nos. 34591/19 and 42545/19, Franc Toplak v. Slovenia and Iztok Mrak v. Slovenia* (2021); Fiala-Butora, Smith and Ashley Stein (n 39); Odvetniki Slavko Vesenjaj, 'A Request for Referral to the Grand Chamber. Toplak v. Slovenia, Mrak v. Slovenia Applications No. 34591/19, 42545/19' (2021); Slovenian Disability Rights Association, 'A Third Party Intervention in Support of the Request for Referral to the Grand Chamber. Toplak v. Slovenia, 34591/19 Mrak v. Slovenia, 42545/19 Kamenik v. Slovenia 47803/2' (2022).

43 ECHR, *Toplak and Mrak v. Slovenia*, applications no. 34591/19 and 42545/19, Judgment 26 October 2021.

44 See Adriana Caballero-Pérez, 'Positive Obligations so That Persons with Disabilities Can Effectively Vote. Case Note on Toplak and Mrak v. Slovenia (ECtHR, 34591/19 and 42545/19)' (2022) 21 Tree Legal Publisher. European Human Rights Cases Updates <ecli:CE:ECHR:2021:1026JUD3459119> accessed 22 February 2022.

2015 national referendum and the 2019 elections to the European Parliament (EP), as well as a lack of effective remedies in this regard. The applicants' complaints relating to accessibility included inaccessible polling stations for wheelchair users and inaccessible voting materials to enable them to vote secretly. These barriers hindered the right of the applicants to vote on an equal basis with others.⁴⁵ The applicants' complaints were examined by the Court under Article 1 of Protocol No. 12 (general prohibition of discrimination) to the ECHR (as regards the 2015 referendum) and Article 14 ECHR (prohibition of discrimination), in conjunction with Article 3 of Protocol No. 1 (right to free elections) (as regards the 2019 EP elections). The Court found no violation of any of these provisions with respect to both applicants.

2.2.2 The Court's judgment

In its judgment, the Court found that national legislation ensured the free expression of opinion of the applicants in elections, as required by Article 3 of Protocol No. 1 to the ECHR read alone and in conjunction with Article 14 ECHR. It therefore considered that the question was not one of direct discrimination by way of unjustified differentiation, but rather of the compliance of the State in question with its positive obligation to take steps to enable the applicants to vote on an equal basis with others.⁴⁶ The Court recalled that States enjoy a margin of appreciation in assessing the needs of voters with disabilities and the means to provide them with '*adequate access to polling stations within the context of the allocation of limited State resources*'.⁴⁷ Furthermore, the Court noted that providing accessibility of polling stations '*may take time*'.⁴⁸ In the meantime, according to the Court, national authorities must act with due diligence to ensure that persons with disabilities can vote. This interpretation of the Court is important to understand how the State must take initial concrete and targeted steps to progressively achieve greater accessibility in the voting environment.

In the Court's view, national authorities responded promptly and constructively to the applicants' request that their respective polling stations be rendered accessible.⁴⁹ The Court observed that both applicants were able to vote in elections because national authorities equipped the applicants' polling stations with ramps on election day, as was requested by them i.e., the national authorities provided 'reasonable accommodations' (as stated by the Court).⁵⁰ Such accommodations included using the backdoor trash and refuse entrance which

45 *ibid.*, para. 4.

46 Caballero-Pérez (n 44)

47 ECHR, *Toplak and Mrak v. Slovenia*, applications no. 34591/19 and 42545/19, Judgment 26 October 2021 (n 43), para. 119.

48 *ibid.*, para. 121.

49 Caballero-Pérez (n 44), para. 6.

50 ECHR, *Toplak and Mrak v. Slovenia*, applications no. 34591/19 and 42545/19, Judgment 26 October 2021 (n 43), paras 114-119.

was equipped with a ramp by the second applicant.⁵¹ The ramp, however, did not comply with the technical requirements specified by the applicant in his request. It was steep and narrower than the second applicant's wheelchair. As a result, the second applicant had to be assisted by a passer-by to access the polling station.⁵² These facts were argued by the applicants in their submission, and was therefore difficult to ignore. Nevertheless, the Court did not address any of these facts and potentially related issues regarding the right of the applicants to vote on an equal basis with others. The Court argued that, although adaptations to the voting materials were not made in advance, the applicants could be assisted in casting their vote by a companion. The Court held that existing inaccessible voting materials did not produce a particular prejudicial impact on the applicants. Therefore, the threshold of discrimination was not reached in the case.⁵³

The ECtHR referred separately to the circumstances of the first applicant who requested to use a voting machine to vote in the 2019 EP elections because he could not hold a pen to mark his ballot paper. The Court found that the use of voting machines in Slovenia was terminated following a legal reform of the Elections Act in 2017.⁵⁴ Consequently, the applicant could not be provided with a voting machine during the 2019 EP elections. The Court considered, however, that the applicant could have voted either in person at his polling station or by post, as established in the national law.⁵⁵ If the applicant had attempted to vote in person, the provision of personal support to help him vote would have been a reasonable accommodation in the Court's view. In such a case, the voting assistant was obliged to respect the secrecy of the vote under the electoral law. The Court therefore explicitly held that providing personal support to help the first applicant to vote was in compliance with the ECHR and international standards, and particularly Article 29 CRPD.⁵⁶ In the Court's view, the respondent State did not fail to strike a fair balance between the protection of the interests of the community and respect for the rights of the applicant under the ECHR in this context.⁵⁷

Furthermore, the Court recognised that voting assistive technology (AT) is one means of ensuring the right of persons with disabilities to vote.⁵⁸ In the Court's view, for some persons with disabilities voting machines afford a higher level of autonomy when voting.⁵⁹ In reaching its conclusions, the Court argued that since the ECHR is a system for the protection of human

51 *ibid.*, paras 10 and 26.

52 *ibid.*, paras 21 and 26.

53 *ibid.*, para. 118.

54 Caballero-Pérez (n 44), para. 7.

55 Caballero-Pérez (n 44)

56 ECHR, *Toplak and Mrak v. Slovenia*, applications no. 34591/19 and 42545/19, Judgment 26 October 2021 (n 43), para 125.

57 *ibid.*, para. 131.

58 *ibid.*, para. 126.

59 *ibid.*, para. 126.

rights, it had to pay attention to the consensus among Contracting States regarding the standards to be achieved.⁶⁰ The Court found that there was no indication of a consensus regarding the use of electronic voting machines for the effective exercise of the right to vote by persons with disabilities. The ECtHR also noted that the use of assistive technologies in elections ‘*no doubt requires significant financial investment*’, as well as that the operation of voting machines ‘*poses potential problems for the secrecy of the voting procedure*.’⁶¹ These statements were, however, not substantiated by the Court.⁶² In reaching its conclusions, the Court restricted its assessment to a seeming lack of consensus among Contracting States regarding the provision of AT devices to be used by voters with disabilities to help them vote.⁶³ Consequently, the Court did not make the connection between the obligation to provide voters with disabilities with voting AT and the specific question of the right of the first applicant to be enabled to vote in the way he wanted (i.e., voting secretly and independently) under the relevant provisions of the ECHR, in light of Article 29(a)(iii) CRPD.

2.2.3. The Court’s use of Article 29 and related CRPD provisions

In *Toplak*, the Court recalled that the CRPD is a relevant interpretative guide for the rights of persons with disabilities.⁶⁴ Nevertheless, in practice, the Court did not apply the CRPD as an interpretative aid for the European legal framework regulating the right to vote in the context of persons with disabilities. This is an important finding underlined by the fact that the Court did not interpret the difference between the obligation to provide accessibility (which is not expressly recognised in the ECHR) and the duty to make reasonable accommodations under the relevant provisions of the ECHR in accordance with Article 29(a) CRPD and related provisions, namely Articles 9 (accessibility) and Article 5 CRPD (addressing the right to reasonable accommodation).⁶⁵ Such a difference was a relevant issue in *Toplak*. As explained in the previous chapter of this study, the CRPD Committee has declared that accessibility and reasonable accommodations are two distinct concepts in laws and policies on equality.⁶⁶ Article 29(a) CRPD sets out the obligation of States Parties to provide accessibility in the voting environment. States Parties are also required to adopt other substantive positive measures to ensure the *de facto* realisation of the right to vote by persons with disabilities, including the obligation to provide reasonable accommodations to individual voters (Article 5) and to

60 Caballero-Pérez (n 44)

61 *ibid.*, para. 128.

62 Caballero-Pérez (n 44), para. 11.

63 Caballero-Pérez (n 44)

64 ECHR, *Toplak and Mrak v. Slovenia*, applications no. 34591/19 and 42545/19, Judgment 26 October 2021 (n 43), paras 112 and 114.

65 Caballero-Pérez (n 44), para. 9.

66 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018, para 41.

apply universal design in the voting environment (Article 4). All these positive measures aim to render participation in elections realisable for voters with disabilities.⁶⁷

Under Articles 9 and 29(a) CRPD, Slovenia had the duty to provide accessibility in the voting environment before receiving the applicants' request to enter their polling station. This is an *ex ante* duty.⁶⁸ It is also an unconditional obligation of the State.⁶⁹ Moreover, the CRPD Committee has noted that denial of access to the physical environment and services open to the public constitutes an act of disability-based discrimination that is prohibited by Article 5 CRPD.⁷⁰ Indeed, the right to accessibility is a precondition for persons with disabilities to participate in elections.⁷¹ In this respect, the CRPD Committee, in its 2018 concluding observation on the initial report of Slovenia, expressed its concerns over the State's failure to provide accessibility in the voting environment to ensure the right of all persons with disabilities to vote.⁷² Nevertheless, the Court did not interpret the accessibility standard set by the CRPD as a necessary element of the right of the applicants to vote under Article 3 of Protocol No. 1 and the right to be free from discrimination under Articles 14 and 1 of Protocol No. 12 to the ECHR. This means that the Court did not adopt a systematic interpretative approach, as provided in Article 31(3) VCLT, to consider the CRPD as part of the *context* of the ECHR. Consequently, the applicants did not have the opportunity to call Slovenia to account for their actions concerning the relevant provisions of the ECHR in light of Articles 9 and 29(a) CRPD, including the obligation to provide them with accessible voting materials.

The Court centred its analysis in the respondent State's compliance with Articles 14 and 1 of Protocol No. 12 to the ECHR and Article 3 of Protocol No. 1 to the ECHR read in conjunction with Article 5 CRPD (reasonable accommodations).⁷³ This analysis, however, did not substantially follow the criteria articulated by the CRPD Committee in this regard.⁷⁴ These criteria were elaborated in detail in the previous chapter of this study. Here, it is important to note that the CRPD Committee has observed that reasonable accommodations must be 'negotiated' with persons with disabilities and not determined exclusively by States Parties.⁷⁵

67 Caballero-Pérez (n 44)

68 CRPD Committee, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, para. 25.

69 *ibid.*, para. 25.

70 *ibid.*, para. 34.

71 Caballero-Pérez (n 44), para. 9.

72 *CRPD Committee, Concluding observations on the initial report of Slovenia, CRPD/C/SVN/CO/1*, paras 49-50.

73 Caballero-Pérez (n 44), para. 10.

74 CRPD Committee, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014 (n 468); CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 414).

75 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018 (n 62), para. 24(b).

Furthermore, the Committee has cautioned that accommodations are distinct from other forms of assistance that persons with disabilities may require.⁷⁶ This includes live or technological voting assistance to help voters with disabilities to vote under Article 29(a)(iii) CRPD. The Court did not examine these elaborations by the CRPD Committee. Moreover, it did not consider relevant recommendations in that regard submitted by third-party interveners.⁷⁷ The Court found the measures adopted by the respondent State, namely installing ramps (with technical faults) at the entrance of the applicants' polling stations on election day, and providing them with personal support to vote were reasonable accommodations in compliance with the ECHR.⁷⁸

In conclusion, in *Toplak*, the Court did not hold that the failure to ensure accessibility in the voting environment was disability-based discrimination in violation of Article 1 of Protocol No. 12 to the ECHR and Article 14 ECHR, in conjunction with Article 3 of Protocol No. 1 to the ECHR.⁷⁹ This stands in contrast with its earlier decisions on Article 14 ECHR, read in conjunction with the right to reasonable accommodation as established in Articles 2 and 5 CRPD.⁸⁰ In practice, the lack of substantive engagement with the CRPD by the Court meant that the applicants had fewer opportunities to call Slovenia to account for their actions concerning Article 3 of Protocol No. 1 to the ECHR, in light of Article 29(a) CRPD that sets forth the obligation to ensure that voting procedures, facilities and materials are accessible.⁸¹

2.3. Concluding remarks

Pursuant to Article 3 of Protocol No. 1 to the ECHR, Contracting States are required to hold free elections at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinion of citizens in the choice of the legislature. All voters, whether disabled or not, have the right to participate in elections under Article 3 of Protocol No. 1 and related ECHR provisions. Moreover, as noted in this section, the ECtHR has explicitly declared that Contracting States must adopt various positive measures to ensure the effective enjoyment of, *inter alia*, voting rights by persons with disabilities under the ECHR.

⁷⁶ *ibid.*, para. 25(c).

⁷⁷ Harvard Law School Project on Disability and Centre for Disability Law and Policy (n 42); EQUI-NET. European Network of Equality Bodies, 'Written Observations in Applications Nos. 34591/19 and 42545/19 Franc TOPLAK v. Slovenia and Iztok MRAK v. Slovenia' (2020) <https://equineteurope.org/final_tpi-28-07-2020/> accessed 24 February 2022.

⁷⁸ Caballero-Pérez (n 44)

⁷⁹ Caballero-Pérez (n 44), para. 12.

⁸⁰ ECHR, *Enver Şahin v. Turkey*, application no. 23065/12, Judgment 02 February 2018 (n 33); ECHR, *Çam v. Turkey*, application no. 51500/08, 23 May 2016 (n 33); ECHR, *Guberina v. Croatia*, application no. 23682/13, Judgment 12 September 2016 (n 33).

⁸¹ Caballero-Pérez (n 44).

The duty to provide accessibility in the voting environment is not expressly recognised by the ECHR.⁸² However, the analysis of the recent Chamber judgment of *Toplak and Mrak v. Slovenia* presented in this section noted that the Court recognised the obligation of Slovenia to provide accessibility of polling stations under Article 1 of Protocol No. 12 (general prohibition of discrimination) to the ECHR and Article 14 ECHR (prohibition of discrimination), in conjunction with Article 3 of Protocol No. 1 (right to free elections). Moreover, implementation of this duty ‘may take time’ as stated by the Court, i.e., the duty is progressively realisable. In the meantime, the Court declared that Slovenia was obliged to act with due diligence to ensure that persons with disabilities could vote. This means that Slovenia had to take initial concrete positive measures towards meeting the obligations under relevant ECHR provisions.⁸³

In reaching its conclusions of no violation of any relevant ECHR norm in *Toplak*, the Court recognised that the CRPD is a relevant interpretative guide of the rights of persons with disabilities.⁸⁴ However, it did not engage substantively with the CRPD. This fact impacted the protection of the applicants’ voting rights under the ECHR in at least four important ways. Firstly, the Court did not interpret the difference between the obligation of Slovenia to provide accessibility before receiving the applicants’ request to enter the polling station and the duty of the State to make reasonable accommodations based on each individual applicant’s requests. Secondly, the Court did not make the connection between the obligation to provide voters with disabilities with AT and the specific question of the right of the first applicant to be enabled to vote in the way he wanted (i.e., voting secretly and independently) under the relevant provisions of the ECHR in light of Article 29(a)(iii) CRPD. Thirdly, the Court did not find that the reasonable accommodations made by national authorities did not produce substantial outcomes compatible with the requirements of Articles 14 and 1 of Protocol No. 12 to the ECHR and Article 3 of Protocol No. 1 to the ECHR read in conjunction with Article 5 CRPD and Article 29(a) CRPD. Fourthly, the Court did not hold that the failure to ensure accessibility in the voting environment was disability-based discrimination in the case of the applicants under the relevant provision of the ECHR in light of Articles 5, 9, and 29(a) CRPD. As a result, it has been concluded in this section that the standard of protection available before the CRPD was lowered in *Toplak*.

82 Caballero-Pérez (n 44).

83 Caballero-Pérez (n 44).

84 Caballero-Pérez (n 44).

3. Voting rights at the European Union (EU) level

EU law, including EU primary law (EU Treaties and the Charter of Fundamental Rights⁸⁵ of the EU), and EU secondary legislation (EU Directives), is fairly specific on the right to vote. It focuses on giving EU citizens the right to vote in certain elections (i.e., European Parliament (EP) and municipal elections) under the same terms as nationals in their host state. Under Article 20(2)(b) of the Treaty on the Functioning of the European Union (TFEU), the right to vote of citizens of the Union in elections to the EP and in municipal elections is guaranteed to EU citizens residing in a Member State other than the one of which they hold citizenship. One of the important implications of Article 20(2)(b) TFEU is that the conditions under which the right to vote can be exercised, including the use of accessible voting materials, are determined by national laws, and can vary between different EU Member States.⁸⁶

The right of EU citizens to participate in EP and municipal elections while residing in another EU Member State is also enshrined in the EU Charter of Fundamental Rights of the European Union ('The Charter') [Articles 39 (elections to the EP) and 40 (municipal elections)]. Although the Charter was not incorporated directly into the TFEU, it acquired a legally binding character through Article 6 of the Treaty on European Union (TEU),⁸⁷ which gives the Charter the same legal weight as the EU treaties. Accordingly, EU Member States are obliged to comply with the Charter when implementing EU law. Noteworthy, in the case of the UK, the Charter could only be raised in British courts until the departure of the UK from the EU in 2020.⁸⁸ This is unlike the ECHR, which was incorporated into UK domestic law by the Human Rights Act (1998).⁸⁹

At the EU level, there are also directives elaborating on voting rights of EU citizens. Directive 93/109/EC lays down the detailed arrangements for the exercise of the right to vote in EP elections for citizens of the EU residing in a Member State (the host State) of which they are

85 Charter of Fundamental Rights of the European Union (2000) OJ C 364/01.

86 See Aalt Willem Heringa and Hoai-Thu Nguyen, 'Obstacles to Participation in Elections and the Exercise of Voting Rights, inside the E.U.' (2020) <<https://cris.maastrichtuniversity.nl/en/publications/obstacles-to-participation-in-elections-and-the-exercise-of-votin>>, 16.

87 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1.

88 Tommy Sheppard, Kate Osamor and Joanna Cherry, 'Brexit and the Incorporation of the EU Charter into UK Law' (*FRA-European Union Agency for Fundamental Rights*, 2019) <<https://fra.europa.eu/en/content/brexit-and-incorporation-eu-charter-uk-law>> accessed 11 February 2021.

89 Parliament of the United Kingdom, 'Human Rights Act 1998' (*UK Public General Acts*, 1998) <<http://www.legislation.gov.uk/ukpga/1998/42/contents>> accessed 12 July 2020.

not nationals. Directive 93/109/EC⁹⁰ establishes that the EU Member State of residence may require an EU citizen to declare that they have not been deprived of the right to vote in their Member State of nationality [Article 9(3)(a)] and seek clarification from the Member State of nationality in that regard [Article 7(1)]. Accordingly, a person with a disability who has been disenfranchised in the Member State of their nationality may also be denied the right to participate in elections to the EP in the Member State of residence. Directive 94/80/EC⁹¹ concerning municipal elections does not adopt a similar approach as in Directive 93/109/EC regarding disenfranchisement from the right to vote based on a prior disqualification in the Member State of nationality. Prohibition of the right to vote in municipal elections is only subject to the electoral rules within the EU Member State of residence. Furthermore, EU Member States are free to design and apply their own procedural electoral laws. In this regard, the Court of Justice of the European Union (CJEU) has asserted that the definition of persons entitled to vote in elections to the EP falls within the competence of each Member State in compliance with EU law.⁹² The CJEU has also ruled that relevant EU secondary law must be interpreted in a manner consistent with international agreements concluded by the EU, including the CRPD, if possible.⁹³ The CRPD is the first human rights treaty to which the EU is a party, as explained below.

3.1. The European Union as a party to the CRPD

The EU concluded (ratified) the CRPD in December 2010 as a regional integration organisation in accordance with Article 44 of the CRPD. In January 2011, the CRPD entered into force for the EU. The EU and its Member States are separate contracting parties. This makes the CRPD a ‘mixed’ international agreement.⁹⁴ According to the CJEU,⁹⁵ the obligations of Member

90 Council of the European Union, Council Directive 93/109/EC, No L329/34, OJ L329, 06 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament.

91 Council of the European Union, Council Directive 94/80/EC, OJ L 0080, 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union.

92 *Case C-300/04 Eman and Sevinger v College van burgemeester en wethouders van Den Haag*, EU:C:2006:545, para. 45.

93 CJEU, *Wolfgang Glatzel v Freistaat Bayern*, Case C-356/12, Judgment 22 May 2014, para. 70; CJEU, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab v HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation*, Joined Cases C-335/11 and C-337/11, para 29.

94 European Commission, *Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union* (European Commission SWD(2014) 182 final 2014) <https://www.easpd.eu/sites/default/files/sites/default/files/pictures/thessaloniki/swd_182_2014_eu_report_implementation_crpdpdf>.

95 Court of Justice. Judgment of 26 October 1982. – *Hauptzollamt Mainz v C.A. Kupferberg & Cie KG a.A.* – Case 104/81 [1982] ECR 3641, para. 13.

States under a ‘mixed’ treaty form an integral part of the EU legal system. As parties to a ‘mixed’ international agreement, the EU and its Member States are subject to a duty of sincere cooperation.⁹⁶

According to Waddington,⁹⁷ in the context of implementing individual provisions of the CRPD, the respective competences of the EU and its Member States can be described in one of three, or possibly four, scenarios: (i) the EU has exclusive competence to act;⁹⁸ (ii) the EU and the Member States share the competence to act;⁹⁹ (iii) the EU can support and supplement the action of the Member States;¹⁰⁰ and (iv) the Member States have competence to act.¹⁰¹ Whilst a detailed examination of the impact of the CRPD for EU rules regarding elections is beyond the scope of this study, it is noteworthy that most competences with respect to Article 29(a) CRPD on participation in political life rest with the Member States. As stated above, the organisation of elections in the EU is largely regulated at Member State level, and there are a variety of national laws affecting, *inter alia*, the provision and use of electoral-assistive devices by persons with disabilities. In other words, the EU does not have a general legal obligation to intervene in electoral matters in its Member States under the CRPD. Nevertheless, the European Commission has committed to work with Member States to support full electoral participation and accessibility regarding European elections. Since the 2014 European elections, the European Commission has facilitated the exchange of good practices among Member States regarding the promotion of participation in elections of persons with disabilities.¹⁰² The European Commission has organised workshops to discuss good practices

96 *ibid*, para 15.

97 Lisa Waddington, ‘The European Union and the United Nations Convention on the Rights of Persons with Disabilities: A Story of Exclusive and Shared Competences’ (2011) 18 *Maastricht Journal of European and Comparative Law* 431, 438.

98 As explained by Waddington, areas in which the EU has exclusive competence are the compatibility of State aid with the common market; the Common Customs Tariff; and obligations with respect to the EU’s own public administration. See *ibid*, 442.

99 As explained by Waddington, areas in which the EU shares competences with the Member States include combatting discrimination on the grounds of disability; free movement of goods, persons, services, and capital; agriculture; transport; taxation; internal market; equal pay for men and women; trans-European network policy; and statistics. See *ibid*, 442.

100 As explained by Waddington, areas of coordinating, supporting, and/or supplementing competences include the development of a coordinated strategy for employment; the development of quality education; a community vocational training policy; actions strengthening economic and social cohesion; and cooperation with third countries. See *ibid*, 443.

101 *ibid*, 438.

102 European Commission, ‘Report on the 2019 Elections to the European Parliament [SWD (2020) 113 Final]’ (2020) <https://ec.europa.eu/info/sites/default/files/com_2020_252_en_0.pdf> accessed 4 July 2022.

to provide accessibility in the voting environment, including through technological aids.¹⁰³ Moreover, in its report on the 2019 European elections,¹⁰⁴ the European Commission stated that EU citizens with disabilities face multiple barriers when participating in European elections, including inaccessible voting materials. The European Parliament (EP) in its report on stocktaking of the results of the 2019 European elections,¹⁰⁵ stated that an estimated 800,000 EU citizens with disabilities were unable to vote in the elections due to lack of making relevant provisions in national rules.

According to Diaz,¹⁰⁶ the EP has always sought to harmonise the rules applicable to European elections in compliance with Article 223 TFEU. Article 223 TFEU sets out the duty of the EP to draft proposals to establish a uniform electoral procedure applicable in all Member States for the election of members of the EP. Pursuant to Article 223 TFEU, in May 2022, the plenary session of the EP adopted a legislative resolution on the proposal for a Council Regulation on the election of the members of the EP [2020/2220 (INL)].¹⁰⁷ The text approved by the EP includes proposals regarding the election of the members of the EP by direct universal suffrage in accordance with a uniform electoral procedure. For the present purposes, two of these proposals are particularly relevant. First, the EP legislative resolution provides that all EU citizens from 16 years of age, including persons with disabilities regardless of their legal capacity, have the right to vote in elections to the EP (Article 4). If adopted, the new Council Regulation would amend Articles 9(3)(a) and 7(1) of the Directive 93/109/EC.¹⁰⁸ Under these rules, a person with a disability who has been disenfranchised in the Member State of their nationality may also be denied the right to participate in elections to the EP in the Member State of residence, as described above in Section 3.

103 Dr Cristian-Alexandru Leahu (Policy Officer. European Commission, Directorate-General for Justice and Consumers, Union citizenship rights and Free movement.) presentation in the DARE public event in Brussels on 12 May 2022.

104 European Commission, 'Report on the 2019 Elections to the European Parliament [SWD (2020) 113 Final]' (n 101), 7.

105 European Parliament, '2020/2088(INI) Stocktaking of European Elections' (*Rapporteur: Pascal Durand, Renew, France*, 2020), 4. <[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2088\(INI\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2088(INI))> accessed 4 July 2022.

106 Maria Diaz Crego, *Towards New Rules for European Elections?* (EU Legislation in Progress ed, Briefing, Committee on Constitutional Affairs (AFCO) 2022).

107 Legislative Observatory European Parliament, 2020/2220 (INL) Proposal for Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/EEC, EEC, Euratom) and the Act concerning the election of the members of the Europe 2022.

108 Council of the European Union, Council Directive 93/109/EC, No L329/34, OJ L329, 06 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament (n 653).

Second, the EP calls for the establishment of the obligation of Member States to improve the accessibility regarding European elections. Article 7 provides that *‘Based on their national voting systems, Member States shall put in place appropriate arrangements with the aim of facilitating the exercise of the right to vote by persons with disabilities independently and in secret.’* This provision is in line with Article 29(a) CRPD. If adopted, the new Council Regulation would oblige Member States to provide ‘appropriate arrangements’ aiming to facilitate the exercise of the right to vote by persons with disabilities. The term ‘appropriate arrangements’ is not defined in Article 7, which may require explanatory guidance. Notably, if the legal framework providing for ‘appropriate arrangements’ allows for all technological solutions, including electoral-assistive devices, it will have a positive effect in more inclusive European elections, and national elections.

Third, at the EU level, certain soft law instruments and initiatives have been adopted to promote the participation of persons with disabilities in society, including in political life. In that regard, the *‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030’* (henceforth: *The Strategy*)¹⁰⁹ proposes a comprehensive set of policies and complements the existing EU legal framework, as explained below.

3.2. The ‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030’

The Strategy builds on the results of the previous European Disability Strategy 2010-2020 (EDS),¹¹⁰ which was a driver for new legislation and policy initiatives on disability rights. The overall aim of the Strategy 2021-2030 is to make progress towards ensuring that all persons with disabilities in EU enjoy their human rights and have equal opportunities to participate in political and public life. The Strategy envisages a wide set of actions and flagship initiatives in various domains. For the present purposes, it is important to note that accessibility to the built and virtual environments, to ICTs, goods, and services, is recognised as an enabler of rights and a prerequisite for the full participation of persons with disabilities on an equal basis with others in, *inter alia*, elections.¹¹¹ The Strategy states that to make ‘Europe barrier-free’, Member States should mainstream accessibility into all relevant policies and actions.¹¹² EU-

109 European Commission, ‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030’ (*Employment, Social Affairs & Inclusion*, 2021) <<https://ec.europa.eu/social/main.jsp?catId=1484>> accessed 26 May 2021.

110 European Commission, *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*, COM (2010) 636 final.

111 European Commission, ‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030’ (n 108), 6 and 9-10.

112 *ibid.*, 7.

level action will also include further work on standardisation and technical specifications. The Strategy explicitly provides that the European Commission will examine the functioning of the internal market for assistive technologies to identify the need for further action by 2023.¹¹³

Furthermore, the Strategy highlights the responsibility of the European Commission to pay close attention to the correct implementation and evaluation of all EU norms regulating accessibility and identify gaps in EU law, as well as the need for further legislative actions.¹¹⁴

One of the flagship initiatives contained in the Strategy is the launching of a European resource centre ‘*AccessibleEU*’ to increase coherence in accessibility policies and facilitate access to relevant knowledge.¹¹⁵ The Strategy also establishes that the European Commission will work with Member States in the ‘European Cooperation Network on Elections’ to support full electoral participation and accessibility regarding European elections.¹¹⁶ This Network was launched in 2019 by the European Commission to contribute to supporting the integrity of the 2019 elections to the EP.¹¹⁷ It brings together representatives of national bodies which have competence in electoral matters to promote concrete and practical exchanges on a range of topics relevant to ensuring free and fair elections. This cooperative work, which is led by the European Commission, will support the Member States to comply with EU law, including Article 29(a) CRPD.¹¹⁸ Under the Strategy, new EU legal rules and policies to ensure consistency of EU and national actions for providing accessibility in the voting environment for persons with disabilities are to be adopted.¹¹⁹

Lastly, it is noteworthy that the EU has undertaken a series of actions, both at a policy and legislative level, to foster ‘digital inclusion’ in the EU. Achieving greater ‘digital inclusion’ is necessary to ensure access and use of ICTs by all individuals, including persons with disabilities.¹²⁰ It has been argued in this study that a digitally inclusive voting environment is important to encourage political participation of disabled and non-disabled voters. In the area of accessibility, a number of EU legal rules and policies have been adopted during the last decade to make different ICTs more accessible for persons with disabilities including

113 *ibid.*, 7.

114 *ibid.*, 7.

115 *ibid.*, 8 and 58.

116 *ibid.*, 10.

117 European Commission, ‘European Cooperation Network on Elections’ (*Electoral Rights*, 2019) <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections_en> accessed 7 June 2021.

118 EQUINET. European Network of Equality Bodies (n 646).

119 European Commission, ‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030’ (n 108), 9-10.

120 Siteimprove, ‘Democracy, Digital Accessibility, and EU Member Parliament Websites’ (*Foreword by European Disability Forum (EDF)*, 2019) <<https://siteimprove.com/media/5009/accessible-report-eu-democracy.pdf>> accessed 19 August 2020.

the European Accessibility Act,¹²¹ the Public Sector Web Accessibility Directive,¹²² the Electronic Communications Code,¹²³ the Audio-visual Media Services Directive,¹²⁴ copyright legislation,¹²⁵ and the Digital Agenda for Europe.¹²⁶ Most of these actions are fundamental for encouraging political participation of persons with disabilities.

3.3. Concluding remarks

This section has explained that EU law is a specific legal framework: it confers certain voting rights (i.e., voting at European Parliament and municipal elections) on EU citizens under the same terms as nationals in their host state. The organisation of elections in the EU is largely regulated at Member State level, including the provision and use of electoral-assistive devices by persons with disabilities when voting. As noted, EU Member States are required to respect general principles of the right to suffrage set out in EU law, including the CRPD. The CRPD is a ‘mixed’ international agreement, to which the EU and its Member States are separate contracting parties. Most competences with respect to implementing Article 29(a) CRPD rest with the Member States.

The recent proposal for a Council Regulation on the election of the members of the EP provides for the *de jure* and *de facto* realisation of the right of persons with disabilities to vote in EP elections. If adopted, the new Council Regulation would contribute to ensuring the right to vote of all EU citizens, regardless of their legal capacity, and to provide accessibility in the voting environment regarding EP elections. The new regulation would be in line with the CRPD. It was also described in this section that the ‘*Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030*’ sets out relevant plans and actions to make the EU more accessible for persons with disabilities. The European Commission has explicitly committed to support Member States to achieve greater accessibility regarding the European elections

121 Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services. OJ L 151, 7.6.2019.

122 The European Parliament & The Council of the European Union, Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October on the accessibility of the websites and mobile applications of public sector bodies 2016.

123 Directive of the European Parliament and of the Council of Europe establishing the European Electronic Communications Code. COM/2016/0590 final–2016/0288 (COD).

124 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

125 European Parliament, ‘Copyright Law in the EU: Salient Features of Copyright Law across the EU Member States’ (*EPRS European Parliamentary Research Service*, 2018) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/625126/EPRS_STU\(2018\)625126_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/625126/EPRS_STU(2018)625126_EN.pdf)> accessed 7 June 2021.

126 European Parliament, ‘Digital Agenda for Europe’ (*Fact Sheets on the European Union*, 2020) <<https://www.europarl.europa.eu/factsheets/en/sheet/64/digital-agenda-for-europe>> accessed 8 June 2021.

under the new 2021-2030 Strategy. The EU has also adopted concrete actions, including EU secondary legislation, to foster ‘digital inclusion’ in the EU. This might have a positive impact on the opportunity of disabled and non-disabled voters to access and use different ICTs, including AT, to participate in EU elections.

4. Conclusions

International human rights instruments should be developed in harmony with one another to provide clear guidance to States Parties on how to fulfil their obligations.¹²⁷ This chapter has noted that Article 31(3) VCLT provides that the *context* of a treaty includes, among others, any relevant applicable rules of international law. The VCLT therefore recognises that there is a mutually re-enforcing nature of all international treaties, i.e., the treaties complement each other.¹²⁸ Consequently, when interpreting the ECHR provisions as they apply to persons with disabilities, it should be important for the ECtHR to take the CRPD into account as a disability-specific global treaty.

In this context, this study analyses to what extent England and Spain comply with relevant international human rights standards regarding voters with disabilities, and mainly Article 29(a) CRPD. Especially pertinent to this question is how the standards set by Article 29(a) and related CRPD provisions interact with the relevant provisions of the ECHR, and mainly regarding the right to use electoral-assistive devices by persons with disabilities. In addressing this enquiry, this section has noted that the ECtHR has acknowledged the importance of the CRPD as a disability-specific treaty, and its relevance for interpreting substantive rights under the ECHR in the context of disability. Nevertheless, the Court has not been consistent in using the CRPD as an interpretative aid when interpreting and applying the ECHR in the context of voting and persons with disabilities. As noted, this was particularly the case in the recent Chamber judgment of *Toplak and Mrak v. Slovenia*.

In *Toplak* case, the ECtHR ruled on positive obligations of Contracting States pertaining to the right to vote of persons with disabilities, and particularly on their obligation to provide accessibility in the voting environment. Nevertheless, the Court did not engage substantively with the CRPD or use it as an interpretative aid. As a result, the Court, among others, did not make the connection between the obligation to provide voters with disabilities with voting AT and the specific question of the right of the first applicant to be enabled to vote in the way he wanted (i.e., voting secretly and independently) under the relevant provisions of the ECHR in

127 Harvard Law School Project on Disability and Centre for Disability Law and Policy (n 42).

128 Office of the United Nations High Commissioner for Human Rights, ‘The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies’ (2012).

light of Article 29(a)(iii) CRPD. Moreover, the Court did not provide Contracting States with clear guidance on how to fulfil their positive obligations regarding the right of persons with disabilities to vote under the ECHR, and particularly their obligation to provide accessibility in the voting environment, including accessible voting materials. As noted, applicants have fewer opportunities to call Contracting States to account for their actions concerning Article 3 of Protocol No. 1 to the ECHR, in light of the CRPD in future disability voting rights matters.

Lastly, this chapter has briefly explained the implications of the CRPD for the EU. Given that the CRPD has acquired the status of EU law, the CJEU is obliged to interpret EU secondary law in line with the CRPD, if possible. Moreover, the EU has already adopted relevant secondary legislation, including rules on accessibility of products and services, and websites and mobile applications of public sector bodies. Such legislation is important to ensure, *inter alia*, the right of persons with disabilities to make an informed political choice under Article 29(a) CRPD. The European Commission has also set out actions to support Member States to improve the conditions for political participation of persons with disabilities, including through promoting accessibility of the voting environment, under the '*Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030*'. As noted, this commitment of the European Commission is important for achieving greater implementation of Article 29(a) CRPD in the EU and its Member States.

Following the analysis of the European legal framework above, the next chapter of this study provides a detailed overview of the research methods used to analyse compliance with relevant international instruments, and mainly Article 29(a) CRPD, by England and Spain.



Chapter V

Qualitative research methodology

1. Introduction

This chapter provides a detailed overview of the qualitative research methodology employed in this study to analyse the compliance by England and Spain with Article 29(a) CRPD. It endorses the idea that scholarly reflections regarding the methods applied to human rights research contribute to a greater understanding of human rights in a variety of contexts and disciplines.¹ Accordingly, this chapter aims to demonstrate that the researcher of this study reflected on the proper research methods for her project and made a justifiable choice. As such, this chapter focuses on both the legal-analytical and the empirical research methods employed to answer the following sub-research questions:

To what extent do England and Spain comply with the international obligations set out in the CRPD and other relevant international human rights instruments to ensure access to electoral-assistive devices by persons with disabilities? And

What are the experiences of voters with disabilities and other key stakeholders from England and Spain in using electoral-assistive devices? To what extent do those experiences influence the decision to vote by persons with disabilities?

The researcher used a mixed methods research design. Research data on legal and policy developments was analysed by means of doctrinal legal research. The implementation of the legal and policy developments (‘*the law in action*’) was analysed by means of empirical research methods. In this regard, semi-structured interviews in the form of focus groups and individual interviews were conducted with participants to gather data on their voting experiences in using electoral-assistive devices. Notably, the semi-structured interviews responses are integrated into the analysis of the compliance by England and Spain with Article 29(a) CRPD, in Chapters VI and VII, respectively.

This chapter is divided into four parts. Following this introductory section, section 2 explains the doctrinal legal research. Section 2 also briefly explains the ‘Bridging the Gap’ CRPD indicators which are used in this study as a reference resource for analysing States Parties’ compliance with Article 29(a) CRPD. Section 3 elaborates on the semi-structured interviews employed to collect and analyse research data. Section 3 also provides a detailed overview of the implementation process of the interviews.

1 Fons Coomans, Fred Gunfeld and Menno Kamminga, ‘Methods of Human Rights Research: A Primer’ (2010) 32 Human Rights Quarterly 179, 184; Bård A. Andreassen, Hans-Otto Sano, and Siobhán McInerney-Lankford, ‘Human rights research method’ in Bård A. Andreassen, Hans-Otto Sano, and Siobhán McInerney-Lankford (eds), *Research Methods in Human Rights: A Handbook*, (Edward Elgar Publishing Limited 2017), 1-13.

Lastly, Section 4 briefly describes important aspects of the research logistics, including sampling and validity issues.

2. Doctrinal legal research

Doctrinal research is used to describe the law in the light of coherence of the law, and to make prescriptions about how a factual or social scenario ought to be interpreted (normative results).² Westerman³ asserts that the legal system itself provides the concepts required to study a certain legal development. This means that the law is the object of research and works as the theoretical perspective from which that object is examined. Accordingly, the relevant national law provided the rationale for conducting this research (i.e., the background that supported the study of the provision and use of electoral-assistive devices). Moreover, some of the ‘peculiarities’ of legal doctrinal research described by Westerman⁴ were taken into account by the researcher: (i) legal scholarship has a practical orientation i.e., the legal system is a theoretical framework that selects facts and identifies them as legally relevant. As a result, the legal doctrinal researcher gives sense and order to the legal system: (ii) if the legal system is seen as a whole, the systematic overview of all relevant domestic law is necessary. This means that, to analyse the provision and use of electoral-assistive devices by persons with disabilities, a systematic viewpoint about how the law is constructed was needed. Also (iii) legal doctrinal research has an intrinsic normativity. Hence, legal principles, which are theoretical and practical criteria, as well as normative, guided legal reasoning and served as points of orientation for the research carried out in this study.

The legal sources used in the analysis of the compliance with Article 29(a) CRPD were national written or unwritten constitutions, national electoral law, and other relevant laws concerning the access to Information and Communication Technologies (ICTs), including AT (at the national level). The researcher also used other relevant (legal) sources including case law from national courts and the academic literature. Policy documents published by national electoral authorities were also included as sources of information on policy actions to ensure compliance with Article 29(a) CRPD. The selection of these information sources was based on three criteria: (i) relevant national applicable law and policy, (ii) availability of primary sources which stated the law and policy, and (iii) language (material published in

2 Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Disciplines?* (1st edn, European Academy of Legal Theory Series Hart Publishing 2011).

3 Pauline Westerman, ‘Open or Autonomous: The Debate on Legal Methodology as a Reflection of the Debate on Law (October 30, 2009)’ in Mark Van Hoecke (ed), *Methodologies Of Legal Research: Which Kind of Method for What Kind Discipline?* (Hart Publishing 2011) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1609575>.

4 *ibid*, 90-94.

English or Spanish). Moreover, the analysis of these sources of information built on the legal interpretation of international and regional human rights law carried out in Chapters III and IV of this study.

Furthermore, the doctrinal legal research was partially guided by the ‘Bridging the Gap’ human rights indicators on the CRPD developed by the UN Office of the High Commissioner for Human Rights (OHCHR), as explained below.

2.1. Human rights indicators on the CRPD

Resources used to measure compliance with human rights include quantitative or qualitative indicators.⁵ In the context of disability rights, in 2021 the OHCHR published a set of human rights indicators on the CRPD within the framework of the project ‘Bridging the Gap’.⁶ These indicators were used in this study as a reference resource (i.e., a tool to help the researcher to assess compliance) for three main reasons. First, these indicators were developed based on the OHCHR’s methodology for drafting human rights indicators, which is positively acclaimed for its reliability and validity by various policy specialists, statisticians, and data scientists.⁷ Second, the CRPD indicators were finalised through a series of consultations involving the CRPD Committee, the Special Rapporteur on the rights of persons with disabilities, DPOs, and academics. Third, the CRPD indicators are qualitative indicators that highlight the practical content of CRPD norms. This is a relevant feature when carrying out an analysis of the implementation of Article 29(a) CRPD ‘in practice’. Accordingly, the following ‘Bridging Gap’ CRPD indicators on Article 29(a) CRPD were used:

- Article 29(a)(i) CRPD: (i) Adoption of a national plan by the election management body to ensure accessibility of, *inter alia*, voting materials; and (ii) consultation processes undertaken to ensure active involvement of persons with disabilities, including through their organisations, in the design, implementation, and monitoring of laws, regulations, policies and programmes, related to the right to vote.

5 UN Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (Office of the United Nations High Commissioner for Human Rights 2012).

6 The Bridging Gap Project, ‘EU-OHCHR Bridging the Gap I: Human Rights Indicators for the Convention on the Rights of Persons with Disabilities in Support of a Disability Inclusive 2030 Agenda for Sustainable Development’ (*European Union*, 2021) <<https://bridgingthegap-project.eu/crpd-indicators/#TheProcess>> accessed 4 April 2021.

7 UN Office of the High Commissioner for Human Rights, ‘A Human Rights-Based Approach to Data: Leaving No One behind in the 2030 Agenda for Sustainable Development’ (*Sustainable Development Goals*, 2018) <<https://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>> accessed 4 April 2021.

- Article 29(a)(ii) CRPD: (i) Legislation and regulations enacted that ensure the right of persons with disabilities to vote through secret ballot on their own; and (ii) existence of awareness-raising measures on the right of persons with disabilities to vote secretly.
- Article 29(a)(iii) CRPD: (i) No provisions in the constitution, legislation, or regulations which restrict the right of persons with disabilities to vote; (ii) legislation and regulations that ensure the right of persons with disabilities to be assisted by a person of their choice, and with full respect of their free expression of will; and (iii) number and proportion of public servants, poll workers, election observers, and citizens carrying out election duties who are trained on the exercise of the right to vote of persons with disabilities, and who have been provided with voting related information, notably on accessibility, the right to assistance from a person of the voter's choice, and the duty to provide reasonable accommodation.

The above indicators were used by the researcher to provide prescriptive guidance on the core elements of Article 29(a) CRPD. Moreover, the researcher addressed key elements to measure the progress of States Parties in the implementation of Article 29(a) CRPD suggested by the OHCHR, including clear lines of responsibility (with measurable goals and timetable for implementation), allocated budget (where this information was available), and monitoring and enforceability mechanism (including effective remedies for non-compliance).

3. Semi-structured interviews

In a semi-structured interview, the researcher has a general plan for the topic to be discussed but does not follow a fixed order of questions or word these questions in a specific way.⁸ Based on the analysis of relevant national legal and policy measures to implement Article 29(a) CRPD, certain topics were identified that could have an impact on the use of electoral-assistive devices by persons with disabilities. In addition, a list of the existing electoral-assistive devices in England and Spain was made. The extent to which these devices are actually available to voters with disabilities, and used by them in practice, was examined through semi-structured interviews conducted with persons with disabilities and election officials from both countries in the period from September 2020 to May 2021 (see Figure No. 1).

8 Martin J Packer, *The Science of Qualitative Research* (Cambridge University Press 2011), 43.

Figure No. 1. Overview of the empirical research conducted

Research action and timeframe	Total number (unit)
Interview requests sent to DPOs to recruit persons with disabilities (Sept-Dec 2020)	58 (DPOs)
Interview requests sent to national and local electoral authorities to recruit election officials (Sept-Dec 2020)	30 (Electoral authorities)
Interviews with persons with disabilities , incl. 8 individual interviews and 4 focus groups (Oct 2020-May 2021)	28 (participants)
Interviews with election officials (Dec 2020-May 2021)	14 (participants)
Research participants in total	42
Of the (n=42) total research participants 47.6% (n=20) were from England.	13 (Persons with disabilities) 7 (Election officials)
Of the (n=42) total research participants 52.4% (n=22) were from Spain (n=22).	15 (Persons with disabilities) 7 (Election officials)

The semi-structured interviews preserved anonymity and provided for consent in line with the ethics clearance received for this study from the Ethical Review Committee Inner City Faculties (ERCIC) at Maastricht University.⁹ Moreover, when quoting research participants' words, some details about them were changed to avoid the risk of identification, where necessary. Names of participants or DPO allies do not appear in this study.

Lastly, this study was conducted during the COVID-19 pandemic, when countries, including England and Spain, adopted different measures to slow the spread of the virus, such as limited possibilities to travel. These measures challenged the original modality of in-person interviews as proposed in the 2019 first ethics submission to the ERCIC. Face-to-face interaction, based on the physical presence of research participants and the researcher at the same location was no longer possible and the research required adaptation and an alternative methodology. Accordingly, a second submission was made to the ERCIC in June 2020 regarding an amendment to the initial methodological approach. This submission outlined a move from in-person interviews to an online approach during the COVID-19 pandemic. The ERCIC concluded that there were no ethical objections to the execution of the research project as amended. Consequently, the interaction with research participants in this study was conducted entirely through 'virtual networking'. To that end, the researcher used the Zoom platform through an institutional account provided by Maastricht University.

9 Reference ERCIC_165_11_12_2019.

3.1. Implementation of (online) focus groups and individual interviews

Online focus groups and individual interviews were used in this study for two main reasons. First, in both methods participants can provide narrative accounts of their own experiences in using electoral-assistive devices. Collecting data from narrative accounts was important in this study because, when actors reflect discursively on their actions, they uncover their understandings of the structural factors surrounding their '*social practices*'.¹⁰ Second, focus groups and individual interviews recognise individuals as 'active partners' in the research process.¹¹ In this study, persons with disabilities were not considered as 'research objects' who shared their experiences,¹² but as active participants contributing social and political recommendations arising from this study. In this regard, dissemination of this research included disclosing results directly to research participants to enhance accurate dissemination of research findings. In doing so, the researcher provided participants with a summary of results in accessible formats at the completion of her study.

Furthermore, piloting for interviews is of great relevance in qualitative research.¹³ Meyer¹⁴ asserts that conducting pilot interviews is important for the researcher to ensure that the questions formulated in the interview guide are suitable for collecting relevant data to answer the research questions. Accordingly, in this study, the researcher's supervisory team reviewed the initial interview questions regarding language, wording, and relevance. At this point in the process, some questions were modified where necessary. The interview guide was also piloted for the interviewer to test the questions and to gain some practice in conducting interviews. Piloting took place in September 2020 with four pilot participants. Some participants were persons with disabilities and others were experts in the disability field or election matters. All suggested amendments raised in piloting the interview guide were included in the final version of the guide.

10 As indicated in the introductory chapter to this study, the concept of 'practices' that is adopted here was drawn from social practice theorists, and in particular Anthony Giddens. See section 4.1.3 of chapter I.

11 Thilo Kroll, Rosaline Barbour and Jennifer Harris, 'Using Focus Groups in Disability Research' (2007) 17 *Qualitative Health Research* 690.

12 Mike Oliver, 'Changing the Social Relations of Research Production?' (1992) 7 *Disability, Handicap & Society* 101.

13 Mohd Aliff Abdul Majid and others, 'Piloting for Interviews in Qualitative Research: Operationalization and Lessons Learnt' (2017) 7 *International Journal of Academic Research in Business and Social Sciences* 1073.

14 Marcus Meyer, *The Position of Dutch Works Councils in Multinational Corporations* (Eleven International Publishing 2018), 37.

3.1.1. Focus groups

The focus group method was adopted in order to provide rich descriptions by participants of phenomena and to enhance the understanding of the context in which these phenomena occur.¹⁵ Focus groups were used to specifically collect information about experiences of voters with disabilities in using electoral-assistive devices. The interview guide was translated into Spanish for Spanish participants. Moreover, in cases where the participants chose to be informed of the questions in advance, they received the interview guide via email.

Based on the analysis of relevant national legal and policy documents, the following main issues were addressed in the focus groups with persons with disabilities:

1. Could you tell me what your voting experience has been like?
2. How easy/difficult is it for you to vote?
3. Can you vote secretly?
4. When you have voted, have you used any device, tool, or voting material to help you to vote?
5. Open dialogue about participant's experience in using electoral-assistive devices as prescribed by law and administrative guidelines, if applicable:

Spain:

- Specific documentation in Braille:
 - The 'accessible voting kit': instructions in Braille; a ballot paper per candidate that indicates the candidate's name in print and Braille, and a standard voting envelope;
- For elections to the Senate: a tactile ballot guide

England:

- Enlarged copy of the ballot paper;
 - Enlarged hand-held copy of the ballot paper;
 - Tactile Voting Device
6. Open dialogue on participant's opinions about accessibility of available voting materials and their recommendations to make it easier for voters with disabilities to vote.
 7. Have you been assisted to vote? What was your experience like?
 8. Are you planning to vote again?

3.1.1.1. Coordination of focus groups

Focus groups involved persons with disabilities older than 18 years old and who had voting experiences at European, national, or local levels. Potential participants were identified through collaborative work with key DPOs. The main representatives of the DPOs were approached

15 Shoshanna Sofaer, 'Qualitative Methods: What Are They and Why Use Them?' (1999) 34 Health Services Research 1101.

via email by the researcher to ask them to contribute to recruitment. All recruitment materials were available in alternative formats (e.g., digital, easy-to-read, large print). The importance of working collaboratively with DPOs was justified for two reasons. First, it was helpful to work with pre-existing groups, such as DPO members, because these individuals were already used to interacting in a group setting.¹⁶ Second, when conducting the focus groups, participants relied on certain assistive devices to receive information and communicate their ideas. DPOs working with persons with disabilities already had this technology available; thus, it was helpful to work with them to link the organisation's technological aids with the Zoom platform. Wherever possible, participants were first approached by the DPOs and, only if they showed an initial interest, by the researcher. Based on the responses, a list of potential participants was made and appointments to collect data were scheduled. Of the total number of persons with disabilities interviewed for this study (n=28), 13 were from England and 15 were from Spain.

Information about the demographic characteristics of the focus group participants can be found in Section 4.1 (sampling) below. Participants were asked in advance of the session to read an electronic message containing the information letter and informed consent form. They consented to participate by answering digitally the specific questions included in the electronic message. Moreover, participants' needs were checked in advance of the focus groups in order to accommodate environmental requests (e.g., sign language interpretation service). The focus group conversations were audio recorded on the premise of anonymity and automatically downloaded to the project network drive set up by the Maastricht University ICT officer for later verbatim transcription. In order to be consistent with conventional focus groups methods,¹⁷ the online focus groups were comprised of small groups of three to five people. This created a comfortable setting, which encouraged participant interaction. Extra time was assured for those participants who experienced fatigue or needed more time to elaborate their responses. Additionally, focus groups which included persons with intellectual impairments or limited communication skills allowed for the involvement of personal assistants, who served as 'translators' of the experiences of the individual with a disability. However, special attention was focused on minimising the use of proxy respondents as much as possible, since the qualitative research had to rely on personal experience. Moreover, when interpretation or verbal facilitation was required, the analysis of the data required disentangling the views of the person with disability and their personal assistant.

Lastly, auxiliary aids were used during focus group sessions to meet the learning and communicative processing needs of some participants, where necessary and appropriate, including computer-based PowerPoint presentations to stimulate group discussions. The focus

16 See Jennifer Harris and others, 'Outcomes for Disabled Service Users. Department of Health Final Report' (2005).

17 David Morgan, *Focus Groups As A Qualitative Method* (3rd edn, SAGE Research Methods Online Publications 2011).

groups were one hour long, including time for ‘warming up’ at the beginning and ‘winding down’ at the end of each session.

3.1.2. Individual interviews

Individual interviews aim to encourage participants to speak ‘in their own words’ in order to obtain a first-person account.¹⁸ This research method was used to collect data from election officials who had experience of making electoral-assistive devices available to voters with disabilities on election day. Individual interviews were also used in certain cases with persons with disabilities who preferred to participate in the study individually, and not within a group setting. In such cases, individual interviews with persons with disabilities followed the same set of questions used in focus groups as outlined in sub-section 3.1.1 above.

Election officials interviewed in this study were people older than 18 years old from England or Spain who had performed duties such as official tasks for local electoral authorities or poll workers. The individual interview guide was translated into Spanish for the Spanish participants. Moreover, in cases where the participants chose to be informed of the questions in advance, they received the corresponding interview guide via email. Based on the analysis of national legal and policy documents, the following main issues were addressed with election officials:

1. From your experience, how do you perceive the process of voting by voters with disabilities? (Is it an easy or difficult task for them?)
2. Do you think voters with disabilities are able to vote secretly? (Do people’s experiences vary depending on their specific impairments?)
3. Have you ever assisted a voter with a disability to vote? What was your experience like?
4. How difficult do you think it is for poll workers to assist voters with disabilities while voting?
5. Open discussion on participant’s knowledge of and experience in making the following electoral-assistive devices available to be used by voters with disabilities in the country:
[Spain:
 - Specific documentation in Braille
 - The ‘accessible voting kit’: instructions in Braille, a ballot paper per candidate that indicates the candidate’s name in print and Braille, and a standard voting envelope;
 - For elections to the Senate: a tactile ballot guide]

¹⁸ Nigel King, Christine Horrocks and Joanna Brooks, *Interviews in Qualitative Research* (2nd edn, SAGE Publications, Ltd 2019).

[England:

- Enlarged copy of the ballot paper
- Enlarged hand-held copy of the ballot paper
- Tactile Voting Device]

6. Open discussion of participant's recommendations on any aspect of the materials used for voting that needs to be improved to make it easier for voters with disabilities to vote.

3.1.2.1. Coordination of individual interviews

Electronic invitations to potential participants were initially sent to national, regional, and local electoral authorities via email by the researcher. Further explanations and information regarding this study was provided by the researcher, where necessary. Thereafter, some of the institutions shared the invitation with their staff networks. An initial contact via email, phone, or Zoom call took place with each potential interviewee who responded affirmatively to the invitation. This first call explained the project in more detail to the potential participant and confirmed their participation by scheduling a second meeting. Of the (n=14) total number of election officials interviewed for this study, seven were from England and seven from Spain.

Participants were asked in advance of the session to read an electronic message with the information letter and informed consent form. They consented to participate by answering digitally the specific questions included in the electronic message. The interviews were audio-recorded and automatically downloaded to the project network drive set up by the Maastricht University ICT officer for later verbatim transcription. The interviews lasted between 40 and 60 minutes.

4. Research logistics

4.1. Sampling

In this study, a non-representative group of persons with disabilities and election officials from England and Spain participated as research participants. In order to ensure a sample of participants as diverse as possible, the researcher employed a purposive sampling technique. A purposive sampling is a selection technique in which the researcher relies on their judgment when choosing members of the population to participate in the study.¹⁹ It is also a non-probability sample, which means that, in this study, not all persons with disabilities or election officials from England and Spain had an equal chance of participating (unlike probability

¹⁹ Lawrence A Palinkas and others, 'Purposeful Sampling for Qualitative Data Collection and Analysis in Mixed Method Implementation Research' (2015) 42 Administration and Policy in Mental Health 533.

sampling).²⁰ As such, criterion sampling was used as a strategy to ensure variation, i.e., a heterogeneous group of participants. DPOs were classified per target population: persons with long-term physical, intellectual, mental, or sensory impairments. DPOs were identified and selected through the information available on the websites of the CRPD Committee, Inclusion Europe, and the European Disability Forum, as well as via relevant national media information. During the recruitment, where possible, the researcher secured the participation in the study of at least two persons per type of long-term impairment per country (see Figure 2).

Figure 2 Demographic characteristics of research participants

Figures are number of participants

Item	England (n = 20)	Spain (n = 22)
<i>Age (years)</i>		
Minimum-maximum	22-65	24-53
<i>Gender</i>		
Male	8 (40%)	12 (54.5%)
Female	12 (60%)	9 (41%)
Binary		1 (4.5%)
<i>Type of impairment</i>		
Physical	2 (10%)	3 (13.7%)
Intellectual or mental	3 (15%)	4 (18.1%)
Hearing (Deaf or hard of hearing)	5 (25%)	2 (9%)
Visual (Blind or low vision)	4 (20%)	6 (27.2%)
None	6 (30%)	7 (32%)

Electoral authorities were classified per role performed at elections: national authority representatives (e.g., returning officers in the UK),²¹ presiding officer or clerk at polling station, and electoral observer (or '*interventor*' in Spanish) (see Figures 3 and 4). During the recruitment, the researcher secured the participation of at least one person per role.

²⁰ *ibid.*

²¹ A returning officer is the person who has overall responsibility for the conduct of any elections held within the county borough. Further elaboration on the responsibilities of returning officers can be found in Chapter VI of this study (section 2).

Figure 3 Experience of election officials (research participants) from England (n=7)

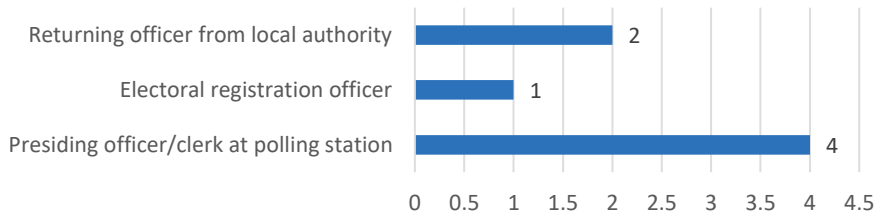
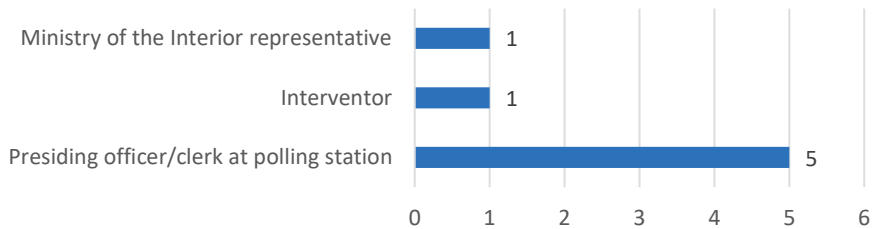


Figure 4 Experience of election officials (research participants) from Spain (n=7)



Research participants were also invited from different parts of the countries as much as possible (see Figures 5 and 6).

Figure 5 Location of the polling stations of research participants from England

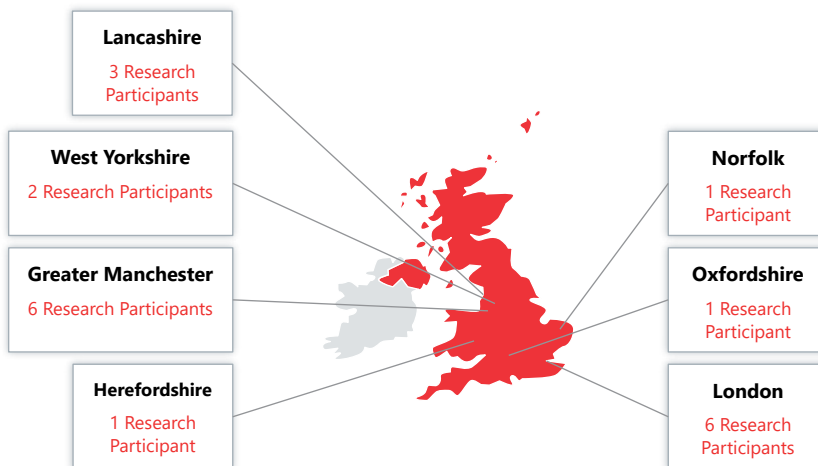


Figure 6 Location of the polling stations of research participants from Spain



Lastly, the qualitative data analysis in this study is essentially descriptive because of the nature of the data collected (interview transcripts) and the limited sample size ($n=42$). No conclusions as to the overall experiences of persons with disabilities and election officials concerning electoral-assistive devices can be drawn from this study because the sample was not representative of the population from England or Spain.

4.2. Validity, reliability, and generalisability

Quality in qualitative research, as for quantitative research, can be assessed in terms of validity, reliability, and generalisability.²² Firstly, in terms of validity (i.e., the ‘appropriateness’ of the tools, processes, and data’),²³ the choice of methodology was guided by a particular theoretical approach (New Legal Realism), as explained in detail in the introductory chapter of this study. This theoretical framework guided the analysis of how Article 29(a) CRPD is implemented in practice through mixed research methods, including legal analysis and semi-structured interviews. Such methods were appropriate for answering certain research sub-questions, mainly those on compliance by countries with Article 29(a) CRPD and experiences of voters with disabilities in using electoral-assistive devices. The mixed methods research design proved to be valid for the desired outcome of this study (to analyse the ‘*law in action*’).

Furthermore, regarding the size of the sample, using a small sample is not *per se* problematic in qualitative research.²⁴ In this respect, due regard was given to declaring the known

²² Lawrence Leung, ‘Validity, Reliability, and Generalizability in Qualitative Research’ (2015) 4 *Journal of Family Medicine and Primary Care* 324.

²³ *ibid.*, 325.

²⁴ Palinkas and others (n 20).

limitations of this work and to including actions to control any potential bias, as explained in the introductory chapter. For sampling, the procedure followed was purposeful, which involved a specific framework: selecting a heterogeneous group of research participants. Furthermore, due to the small number of existing electoral-assistive devices in England and Spain, the researcher was able to select at least two participants who had used each device, and who could discuss their experiences as device users. This strategy aimed to secure data collection on all existing devices in the two countries. For data collection, probing was used to generate further explanation from participants and to enhance data collection. Probing is understood as asking follow-up questions when the researcher does not understand a response, answers are vague or ambiguous, or when the researcher wants to obtain more specific or in-depth information.²⁵ Meyer²⁶ argues that probing allows the researcher to validate the participant's answers. He asserts that probing *'therefore also enhances the reliability of the answers'*.²⁷ In this study, probing was possible verbally with follow-up questions and non-verbally via Zoom video stream of non-verbal behaviour in real time (i.e., video data on pauses or gestures of interviewees and bias eventually introduced by the researcher in the interviews).

Secondly, reliability, which essentially refers to consistency in qualitative research,²⁸ was achieved in this study by extracting data from the 'original sources' (voters with disabilities and election officials). In addition, audio recording of the conversations between the researcher and the interviewees was used to create traceable audio files that thereafter were transcribed. Transcription provided a word-for-word replication of the conversations, which had a positive effect on improving the accuracy of the data collected, as well as the interpretation of the findings. Moreover, evaluating the reliability of a coding scheme is highly recommended as a good practice in qualitative research.²⁹ The researcher reports coding reliability in this study in sub-section 4.3 below.

Thirdly, generalisation of findings is not usually an expected attribute in qualitative research.³⁰ Based on the small size sample of this study and the specific issue addressed (provision and use of electoral-assistive devices by persons with disabilities) in a particular context (elections), as well as in a focused locality (England and Spain), the research findings in this study correspond exclusively to the sample of this study. As a result, an approach of analytical generalisation was not adopted by the researcher.³¹ This means that the researcher did not make projections

25 Leung (n 23).

26 Meyer (n 15).

27 *ibid.*, 51.

28 Leung (n 23).

29 John L Campbell and others, 'Coding In-Depth Semistructured Interviews: Problems of Unitization and Intercoder Reliability and Agreement' (2013) 42 *Sociological Methods & Research* 294.

30 *ibid.*, 326.

31 Bente Halkier, 'Methodological Practicalities in Analytical Generalization' (2011) 17 *Qualitative Inquiry* 787.

about the extent her research findings can be generalised to another situation under similar theoretical and methodological terms. Nevertheless, due to the interpretative rigour in data analysis applied in this study, issues raised might be relevant for other voters with disabilities from England and Spain, and in other countries as well.

4.3. Analysis of the qualitative results in NVivo

In this study, the interview recordings were transcribed in a literal, verbatim manner.³² The interview transcriptions were carried out by a service provider (70%) and the researcher of this study (30%). All transcripts were scanned by the researcher to ensure the accuracy of the recordings. Thereafter, transcripts were imported into NVivo for descriptive coding process. Each transcript imported in NVivo received a unique identification number. Good practice in research shows that such a number can be used for the referencing of interviews in a qualitative study.³³ Accordingly, in Chapters VI (England) and VII (Spain) of this study, quotations from the interviews include paragraph numbers preceded by the identification number of each interview as given in NVivo by the researcher.

A concept-driven coding was employed based on the legal dogmatic and policy analysis. The system of codes developed included preliminary codes and final codes. The NVivo report on the thematic node structure applied in the coding process can be found in Annex 2. The predetermined coding scheme included nine substantial code groups, as follows:

1. Information on voting rights
2. Barriers to voting
3. Information on voting materials
4. Information on electoral-assistive devices
5. Ballot secrecy
6. Being an informed voter
7. Information on voting assistance
8. Training of election officials
9. Recurrent themes (consultation with DPOs, individual strategies in responding to accessibility barriers, signifiers of difference, policy experts' approach, and differences between urban and rural territories).

32 Leandro Da Silva Nascimento and Fernanda Kalil Steinbruch, "The Interviews Were Transcribed", but How? Reflections on Management Research' (2019) 54 RAUSP Management Journal 413, 420.

33 See for instance Meyer (n 15), 51.

Following the above coding scheme, a directed content analysis method was applied to the interview transcripts in order to code the texts. In this coding phase, studies recommend researchers assess the ‘trustworthiness’ or ‘reliability’ of the coding scheme and its application.³⁴ There are numerous different measures to substantiate the credibility of the coding process in qualitative research, including quantitative and non-quantitative measures of reliability.³⁵ In the present work, in order to improve the systematicity and transparency of the coding process, the researcher used two non-quantitative measures for developing her coding scheme for the interview data: intracoder reliability³⁶ and intercoder consistency.³⁷ First, the researcher evaluated the consistency in how she coded a subset of the data (n=5) at two different points in time (August and October 2021). This practice is known as ‘intracoder reliability’.³⁸ Evaluating intracoder reliability was a useful exercise for the researcher in improving her reflexivity. It also helped the researcher to ensure consistency in her coding decisions.

Second, a coding comparison query was carried out by the researcher and another early-stage researcher from the DARE project (n=5) to consider the degree to which coders differed from each other. A coding comparison query consists of comparing coding by two users to measure the ‘intercoder consistency’, meaning specifically the degree of agreement in coding between them.³⁹ Evaluating intercoder consistency does not involve quantifying the degree of consensus.⁴⁰ Instead, intercoder consistency fosters reflexivity and dialogue among coders to clarify the conflicting interpretations.⁴¹ In this study, the coding comparison query enabled the researcher to compare coding and refine her coding scheme to improve precision. This

34 See for instance Cliodhna O’Connor and Hélène Joffe, ‘Intercoder Reliability in Qualitative Research: Debates and Practical Guidelines’ (2020) 19 *International Journal of Qualitative Methods* 1; Jessica T DeCuir-Gunby, Patricia L Marshall and Allison W McCulloch, ‘Developing and Using a Codebook for the Analysis of Interview Data: An Example from a Professional Development Research Project’ (2011) 23 *Field Methods* 136.

35 Bridget C O’Brien and others, ‘Standards for Reporting Qualitative Research: A Synthesis of Recommendations’ (2014) 89 *Academic Medicine: Journal of the Association of American Medical Colleges* 1245.

36 Hélène Joffe and Lucy Yardley, ‘Content and Thematic Analysis’, *Research methods for clinical and health psychology* (SAGE Publications, Ltd 2003).

37 James Thomas and Angela Harden, ‘Methods for the Thematic Synthesis of Qualitative Research in Systematic Reviews’ (2008) 8 *BMC Medical Research Methodology* 1.

38 Joffe and Yardley (n 728).

39 The researcher of this study first approached the transcripts (n=5) and applied relevant codes. She saved the coded files. Afterwards, using the ‘unlink’ option available in NVivo, the researcher created copies of the transcripts without including the codes. These uncoded files were passed to the second coder from the DARE project. See NVIVO, ‘Coding Comparison Query’ (*Queries*, 2021) <<https://help-nv.qsrinternational.com/12/win/v12.1.105-d3ea61/Content/queries/coding-comparison-query.htm>> accessed 27 September 2021.

40 In contrast to ‘intercoder consistency’, ‘intercoder reliability’ (ICR) is a quantified measure of reliability. ICR is ‘a numerical measure of the agreement between different coders regarding how the same data should be coded’. See O’Connor and Joffe (n 35), 2.

41 Joffe and Yardley (n 728).

helped the researcher to ensure that no ambiguous or overlapping codes were used. As such, the researcher did not opt to quantitatively measure the reliability of her coding scheme. However, due to the analytical rigour in coding the interview data in this study, as well as the theoretical expertise and reflexivity of the researcher, reliability of the coding scheme has been thoroughly reviewed.

Having comprehensively explained the mixed research methods applied in this study, the following two chapters provide a substantive analysis of compliance with relevant international legal obligations, mainly Article 29(a) CRPD by England and Spain in Chapters VI and VII, respectively. The countries are addressed in alphabetical order.



Chapter VI

Compliance with Article 29(a) CRPD by England

1. Introduction

This chapter analyses the compliance by England with Article 29(a) CRPD. The scope encompasses relevant parliamentary election legislation, regulations and policies that applied in England at the time this research was completed.¹ The overall aim of this chapter is two-fold. Firstly, to identify whether relevant domestic laws and policies are in compliance with Article 29(a) CRPD, and to identify any lacunae. Secondly, to assess the degree to which electoral-assistive devices, as provided for by domestic law and policy, are actually available to, and used by, voters with disabilities based on research participants' experiences. To that end, this chapter employs the research methodology explained in Chapter V of this study. Of the (n=42) total number of research participants who participated in this study, 20 were from England. Of these, 13 were persons with disabilities and seven were election officials. Of the persons with disabilities, only one person had voted by post. No research participant had experience of voting by proxy.

This chapter is divided into four sections. Following this section, Section 2 introduces the electoral process of the United Kingdom (UK). It also describes the recent Elections Act 2022.² The focus is on highlighting the impact on voters with disabilities of three measures contained in the Act: voter identification, requirement of secrecy, and assistance with voting for persons with disabilities.

Section 3 of this chapter analyses relevant domestic legal and policy measures to implement the obligations under international human rights instruments of States regarding the provision of electoral-assistive devices to be used by persons with disabilities to vote, and particularly under Article 29(a) CRPD. The focus is on the obligations identified in Chapter III of this study. Section 3 briefly elaborates on the incorporation and legal status of the CRPD in the legal order of the UK. This is an essential backdrop for the most substantive part of Section 3, which focuses on discussing the extent to which England complies with Article 29(a) CRPD through law and policy (and in practice). To that end, Section 3 is further divided into subsections. In the first part of Section 3 (sub-section 3.1), compliance with Article 29(a)(i) CRPD is assessed. This provision sets out the obligation to provide voters with disabilities with, *inter alia*, accessible voting materials. In the following sub-section (3.2), compliance with Article 29(a)(ii) is examined. Article 29(a)(ii) CRPD establishes the duty to ensure the right of voters with disabilities to vote secretly. Section 3 in sub-section 3.3 concludes with an examination of the compliance with Article 29(a)(iii) CRPD. This provision sets forth the obligation to guarantee the free expression of the will of persons with disabilities as voters.

1 As such, this chapter is not focused on the entire United Kingdom of Great Britain and Northern Ireland (UK). This is due to the infeasibility of an empirical analysis of all four individual territories constituting the UK: England, Scotland, Wales, and Northern Ireland.

2 The UK Parliament, Elections Act 2022 c.37 2022.

Section 4 includes an overall conclusion.

2. The UK electoral process

The UK is a constitutional monarchy and parliamentary democracy.³ The English legal system is a common law based system.⁴ As such, the law develops from previous decisions of courts (case law), which means that precedent is important in the English legal system. English law is also adopted by Parliament (known as statutory law).⁵ Accordingly, in the English legal system, case law and statutory law are sources of electoral law. The Representation of the People Act 1918 (RPA 1918) introduced universal adult suffrage in the UK, with different regulations of women's and men's voting rights.⁶ In 1928, the pressure to achieve equal franchise rights led to the adoption of the Representation of the People Act 1928,⁷ which reduced the voting age for women to 21 years' old, bringing it into line with the voting age for men. According to Muggeridge,⁸ the 1918 and 1928 legislative changes partially resulted from the campaigning of the women's suffrage movement, involving both constitutional suffragists and militant suffragettes.⁹ The women's suffrage movement sought to achieve the right of women to vote in Parliamentary elections through different methods of campaigning and had different reasons for 'taking up the struggle'.¹⁰ Rosa May Billinghurst and Adelaide Knight were both suffragettes with disabilities.¹¹ They attended meetings, went on suffrage marches, and wrote plays, articles

3 Alisdair Gillespie and Siobhan Weare, *The English Legal System* (7th edn, Oxford University Press 2019), 1-5.

4 Catherine Elliott and Quinn Frances, *English Legal System* (8th edn, Harlow England: Pearson Education 2007).

5 There are two main sources of written law: primary and secondary sources of law. Primary sources of law are authoritative sources of law, meaning they state what the law is (e.g., legislation and case law). Secondary sources comprise a wide variety of materials, including textbooks and commentaries by legal writers. Secondary sources are useful to understand the law and even 'develop' it, however, they are not formal statements on what the law is.

6 The RPA 1918 (Section 1) declared that men were entitled to be registered as parliamentary voters for a constituency if they were over the age of 21, not subject to any legal incapacity, and had the requisite residence qualification. Section 4 granted the franchise to women over the age of 30 who met a property qualification or were local rates payers. The UK Parliament, The Representation of the People Act 1918.

7 The UK Parliament, The Representation of the People Act 1928.

8 Anna Muggeridge, 'The Missing Two Million: The Exclusion of Working-Class Women from the 1918 Representation of the People Act' (2018) XXIII French Journal of British Studies [Revue Française de Civilisation Britannique] 1.

9 Constitutional suffragists believed that debate, petitions, and peaceful protest were keys to success. Conversely, suffragettes took a more militant approach.

10 Muggeridge (n 8), 1.

11 Enable Magazine, 'Meet the Disabled Suffragettes Who Fought for the Vote' (*Activism -Suffragettes*, 2018) <<http://enablemagazine.co.uk/meet-disabled-suffragettes-fought-vote/>> accessed 3 July 2020.

and novels supporting the ‘cause’. They were also victims of police brutality and were arrested several times and imprisoned.¹²

According to Nym Mayhall,¹³ the suffragettes’ campaign is connected to the intellectual, political, and electoral history of Britain. The author asserts that the women’s suffrage campaigners not only played a role in the legal achievement of women’s voting rights in the UK, but also contributed to the practice of engaged citizenship and the growth of liberal democracy.¹⁴ Certainly, the suffragists and suffragettes raised awareness of equality issues in the context of voting. This awareness-raising process was an important example of advocacy effort for other defenders of voting rights. The awareness-raising actions of the suffragists and suffragettes seem to inspire those campaigning for voting rights, *inter alia*, for persons with disabilities.¹⁵ 87 years after having adopted the RPA 1918, the UK Parliament approved the Mental Capacity Act 2005¹⁶ to prohibit voting on behalf of a person with an intellectual or mental impairment. One year later, the UK Parliament abolished the last restrictions on legal incapacity to vote by reason of a persons’ mental state through the Electoral Administration Act in 2006.¹⁷ Nowadays, several DPOs continue to work to report and combat discrimination and under-representation of citizens with disabilities in elections.¹⁸

UK general elections are held to elect members of Parliament’s House of Commons at least every five years. Nevertheless, elections can be held earlier subject to certain requirements. Current primary legislation regulating the exercise of the right to vote in parliamentary elections, as well as referendums, local, and mayoral elections are the amended Representation of the People Act 1983 and the Representation of the People Act 1985 (RPA 1983 and RPA 1985, respectively).¹⁹ For general elections, the UK is divided into local areas called parliamentary constituencies, which are individually represented by one Member of Parliament (MP). Every constituency is divided into polling districts with a designated polling station.

12 *ibid.*

13 Laura E Nym Mayhall, *The Militant Suffrage Movement: Citizenship and Resistance in Britain, 1860-1930* (Oxford University Press 2003).

14 *ibid.*, 135-143.

15 Stanley Engerman and Kenneth Sokoloff, ‘The Evolution of Suffrage Institutions in the New World’ (2005) 65 *Journal of Economic History* 891.

16 The UK Parliament, The Mental Capacity Act 2005 c.9.

17 The UK Parliament, Electoral Administration Act 2006 c.22.

18 See Ismail Kaji, ‘Mencap Welcomes Government Report on Making Elections More Accessible’ (*Mencap: The voice of learning disability*, 2018) <<https://www.mencap.org.uk/press-release/mencap-welcomes-government-report-making-elections-more-accessible>> accessed 9 July 2020; Marcus Redley, ‘Citizens with Learning Disabilities and the Right to Vote’ (2008) 23 *Disability & Society* 375.

19 Pier-Luc Dupont, ‘The Right to Vote for Disabled Persons and Citizens Living Abroad: UK Report’ (*ETHOS-Horizon* 2020, 2019) <https://www.ethos-europe.eu/sites/default/files/uk_right_to_vote.pdf> accessed 5 July 2020.

The UK electoral administration is composed of the UK Electoral Commission and local electoral authorities.²⁰ The Commission is an independent body which oversees elections and regulates political finances. Under Sections 23 and 24 of the RPA 1983, the returning officer (who in England are the sheriffs of a county constituency or the chairman or mayor of a borough constituency) have the duty of conducting elections. The returning officer is responsible for running the polling stations, counting the votes, and announcing the results at elections.²¹ Section 29 declares that the returning officer is responsible for providing each polling station with sufficient voting materials to enable voters to vote.²² Returning officers are also responsible for appointing and paying polling station staff (poll clerks) who ensure that voters can vote on election day.²³

Sections 1 and 2 of the RPA 1983 indicate that the main requirement to be entitled to vote in elections is to be registered in the voters' register of parliamentary or local government voters, respectively. Briefly, under the RPA 1983, all persons with disabilities who are entitled to vote have the right to be listed on the electoral register. The Electoral Registration and Administration Act 2013 amended the RPA 1983 providing for individual registration to vote.²⁴ Applicants can register online or by using a paper form. Moreover, under Section 7 of the amended RPA 1983, patients in mental hospitals (as endorsed in the RPA 1983) can apply for registration. The register of voters is compiled by officers appointed within every local council. Section 5(2) sets forth the right of voters to vote in a parliamentary or local government election in person at the polling station designated to them, unless they are entitled to an absent vote (i.e., vote by post or by proxy). Accordingly, voters, including persons with disabilities, can also vote by post or by proxy.

The recent Elections Act 2022 amended the RPA 1983 introducing the requirement to show photo ID to vote at UK elections (Section 1).²⁵ This new measure is further discussed in section 2.1. below. For the present purposes, it is sufficient to note that every voter entitled to vote receives a ballot paper at the polling station [Rule 35(1) of Schedule 1 to the RPA 1983]. Next, the voter must proceed to a ballot booth and secretly mark their ballot paper by drawing a cross in the box on the right-hand side of the ballot paper opposite the name of the candidate they are voting for. Then, the voter must fold their ballot paper to conceal their vote. Pursuant to Rule 37(5) of Schedule 1 to the RPA 1983, the voter is required to *'show to the presiding officer the back of the paper'* to disclose the printed ballot paper number and put the folded ballot

20 The UK Parliament, The Political Parties, Elections and Referendums Act 2000 c.41.

21 Dupont (n 19), 10-11.

22 The UK Parliament, The Representation of the People Act 1983, Rule 28 of Schedule 1.

23 *ibid*, Rule 26(1) of Schedule 1.

24 The UK Parliament, The Electoral Registration and Administration Act 2013 c.6 (Section 10ZC).

25 The UK Parliament Elections Act 2022 c.37 (n 2).

paper into the ballot box in the presiding officer's presence.²⁶ In the case of a person applying for a ballot paper as proxy, the presiding officer must ask some questions of applicant and mark the proxy's name in the list of proxies. For voters entitled to vote by post, the returning officer issues 'a postal ballot pack', including a ballot paper and an envelope for its return.

Pursuant to Sections 3 and 3A of the RPA 1983, disenfranchisement of all persons, not just persons with disabilities, is legally established based on the fact that they are convicted and detained in a penal institution or '*at any place*' in pursuance of a judicial decision.²⁷ The legal grounds for excluding persons from the register of parliamentary or local government voters, based on Section 49(5) of the amended RPA 1983, are applicable to everyone in the UK. In practice, however, research shows that disenfranchisement has disproportionately impacted persons with intellectual and mental impairments (at least indirectly) due to the significant over-representation of persons with disabilities in prisons.²⁸ In summary, domestic electoral law does not provide for any disability-specific ground for being prevented from voting. Nevertheless, according to a report on political disengagement in the UK published in 2019 by the House of Commons,²⁹ persons with disabilities continue being one of the least politically engaged groups in the UK.

The next section briefly examines the impact on voters with disabilities of some measures introduced in the recent Elections Act 2022.

2.1. The Elections Act 2022

The Elections Act 2022 was introduced in the House of Commons on 5 July 2021 by the UK Government, and received Royal Assent on 28 April 2022.³⁰ The Act aims to ensure that UK elections remain secure, fair, modern, inclusive, and transparent. It is divided into seven parts. Part I includes new measures for the administration and conduct of elections. Three of these measures are particularly relevant for voters with disabilities: (i) a requirement for voters to

26 The UK Parliament The Representation of the People Act 1983, Schedule 1 [Rule 37(5)].

27 Rule 36A of Schedule 1 to the RPA 1983 establishes other reasons for all persons being prevented from voting: a candidate or their election or polling agent declare reasonable cause to believe that the voter has committed an offence of impersonation; or that the voter is arrested on the grounds of being suspected of committing or of being about to commit such an offence.

28 Susan Hayes and others, 'The Prevalence of Intellectual Disability in a Major UK Prison' (2007) 35 *British Journal of Learning Disabilities* 162; Judith Cockram, 'People with an Intellectual Disability in the Prisons' (2005) 12 *Psychiatry, Psychology and Law* 163.

29 Noel Dempsey and Neil Johnston, 'Political Disengagement in the UK: Who Is Disengaged?' (*The House of Commons [Briefing Paper Number CBP-7501, 16 October 2019]*, 2019) <<https://commonslibrary.parliament.uk/research-briefings/cbp-7501/>> accessed 8 July 2020.

30 The UK Parliament Elections Act 2022 c.37 (n 2).

show an approved form of photographic ID before collecting their ballot paper at a polling station (Section 1); (ii) extending secrecy provisions to postal and proxy voting (Section 7); and (iii) making assistance available to voters with a disability (Section 9). These three measures are examined in more depth below.

Firstly, voters in the UK are now required to present a personal ID to vote under Section 1 of the Elections Act 2022. The Act introduces a requirement to present an acceptable form of photo ID (e.g., a passport) before being issued a ballot paper in the polling stations. It also provides that all voters can apply for an electoral ID, free of charge. Implementing a voter ID requirement has at least two implications for voters with disabilities. First, photographic identification requirements at polling stations may deprive some voters with disabilities of their right to vote because they are less likely to have a driving licence or a valid passport.³¹ Cost, lack of access to underlying documents, and inaccessible administrative procedures present further obstacles for persons with disabilities to obtaining an ID.³² Second, accessible information about the electoral process is a prerequisite for equal participation. Nevertheless, persons with disabilities may face disadvantage in accessing such information, including information about the application process for a voter ID. Consequently, accessibility barriers hindering the right of persons with disabilities to access relevant electoral information must be removed before implementing the voter ID requirement.³³

Secondly, current legislation protects the right of persons with disabilities to vote secretly at polling stations. Section 7 of the Electoral Act 2022 extends secrecy provisions to voting by proxy and postal vote to prevent undue influence. Extending requirements protecting secrecy of voting by post and proxy is an important new rule to ensure free and fair elections in the UK. The Electoral Act 2022, however, does not address the inaccessibility of voting materials as an obstacle to vote secretly as described in section 3.2. below in this chapter.

Thirdly, Section 9 of the Elections Act 2022 amended Rule 39 of Schedule 1 to the RPA 1983 by changing requirements regarding who can assist a person with a disability to vote. Under the amended Rule 39, voters with disabilities have the right to enter a polling station with a companion to assist them and their ‘companion’ can be anyone aged 18 or over. Further elaborations on the former qualifying requirement for being a ‘companion’ and its impact on

31 The UK Cabinet Office, ‘Photographic ID Research–Headline Findings’ (*IFF Research*, 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984918/Photographic_ID_research-_headline_findings_report.pdf> accessed 9 January 2022.

32 Adriana Caballero, Mark Priestley and Disability Rights UK, *Unpacking the Elections Bill: Briefing Note*. [Manuscript in Preparation] (2022).

33 UK Electoral Commission, ‘Requirement to Show ID at Polling Stations’ (*Changes proposed by the government*, 2021) <<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/elections-bill/requirement-show-id-polling-stations>> accessed 12 November 2021.

the right of persons with disabilities to voting assistance can be found in section 3.3 below. Furthermore, the presiding officer is also responsible for assisting voters who cannot mark their ballots independently by reason of impairment [Rule 38 of Schedule 1 of the RPA 1983].

Overall, the implementation of the above measures introduced by the Elections Act 2022 must be consistent with domestic and international human rights law, and particularly with the CRPD, as argued in more depth in this chapter below.

3. Implementation of Article 29(a) CRPD

The UK ratified the CRPD on 8 June 2009 and its Optional Protocol on 7 August 2009.³⁴ The incorporation of the CRPD, and other international human rights treaties, into the legal order of the UK is based on the British dualistic or transformation approach to international human rights law.³⁵ Briefly, in a dualistic domestic system, the validity of international law is determined by a rule of domestic law authorising the application of that international norm.³⁶ Moreover, international law can be used only when transposed into the norms of a national legal order.³⁷ This means that a human rights treaty concluded by the government does not form part of the domestic law unless implemented by an Act of Parliament. The provisions of the CRPD are not self-executing in the UK, and the State has not incorporated the CRPD into domestic law at the time of this study.

According to Lawson and Series,³⁸ the fact that the UK is a State Party to the CRPD implies that the State is required to implement the disability rights and legal obligations endorsed in the CRPD. Compliance with the CRPD is achieved via ensuring consistency between domestic law and policy and the CRPD. Nevertheless, in practice, because the CRPD is an unincorporated

34 Reservations did not include Article 29(a) CRPD. UN Treaty Collection, 'Status as at 28/02/2021 Convention on the Rights of Persons with Disabilities, New York, 13 December 2006' (*Chapter IV Human Rights.*, 2021) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-15&chapter=4> accessed 28 February 2021.

35 Eirik Bjorge, 'The Dualist System of the English Constitution and the Victorian Acquis' (*University of Bristol Law School Blog*, 2017) <<https://legalresearch.blogs.bris.ac.uk/2017/04/the-dualist-system-of-the-english-constitution-and-the-victorian-acquis/>> accessed 6 June 2020.

36 Ralf Poscher, 'Heinrich Triepel' in Arthur J Jacobson and Bernhard Schlink (eds), *Weimar: A Jurisprudence of Crisis* (University of California Press 2000); Mario G Losano, 'Kelsen's Theory on International Law during His Exile in Geneva' (2015) 28 *Ratio Juris. International Journal of Jurisprudence and Philosophy of Law* 470.

37 Marko Novakovic, 'Kelsen on Monism and Dualism' in Marko Novakovic (ed), *Basic Concepts of Public International Law: Monism and Dualism* (University of Belgrade Faculty of Law 2013), 323.

38 Anna Lawson and Lucy Series, 'United Kingdom' in Lisa Waddington and Anna Lawson (eds), *The UN Convention on the Rights of Persons with Disabilities in Practice: A Comparative Analysis of the Role of Courts* (Oxford University Press 2018).

human rights treaty, persons with disabilities cannot rely on the substantive rights established in the CRPD or have them enforced in court.³⁹ Certainly, if the UK transposed the CRPD into domestic law, persons with disabilities would be enabled to rely on domestic law to assert, *inter alia*, their right to vote under Article 29(a) CRPD in a UK court.

The analysis of compliance by England with the obligations set out in Article 29(a) CRPD through relevant legal and policy instruments, and ‘in practice’ based on research participants’ experiences, is presented in the following three sub-sections. In sub-section 3.1, compliance with Article 29(a)(i) CRPD is assessed. This provision sets out the obligation to provide voters with disabilities with, among others, accessible voting materials. Sub-section 3.2 presents the analysis of compliance with Article 29(a)(ii) CRPD, which establishes the duty to ensure the right of voters with disabilities to vote secretly. Lastly, sub-section 3.3 concludes with an examination of the compliance with Article 29(a)(iii) CRPD. This provision sets forth the obligation to guarantee the free expression of the will of persons with disabilities as voters.

3.1. Measures to provide accessible voting materials

The analysis in this sub-section concerns the norms established in Article 29(a)(i) read in conjunction with the Preamble(v) and Articles 3(6), 4(1)(f)(g), 9, and 32(1(d)) CRPD. Pursuant to these norms, England is required to make accessible voting materials available in a gradual and unconditional manner, as well as through international cooperation. In this sub-section, special attention is also given to Articles 29(a)(i), 4(1)(g)(h), and 9(2) CRPD, which provide that one of the positive measures that England can adopt to comply with the obligation to provide accessible voting materials is to make ‘technological aids’ available, including electoral-assistive devices, to be used by persons with disabilities when voting.

Furthermore, the analysis below applies certain CRPD indicators developed by the Bridging the Gap Project:⁴⁰ (i) adoption of a national plan by the election management body to ensure accessibility of, *inter alia*, voting materials, and (ii) consultation processes to ensure active involvement of persons with disabilities, including through their organisations, concerning the design, implementation, and monitoring of laws, regulations, policies, and programmes related to the right to vote.

39 Neil Crowther, ‘Making Rights Make Sense’ (*Musings on closing the gap between theoretical rights and lived reality*, 2017) <<https://makingrightsmakesense.wordpress.com/2017/07/03/incorporating-the-un-disability-rights-convention-into-uk-law-what-would-it-mean/>> accessed 28 February 2021.

40 The Bridging the Gap Project (n 7).

3.1.1. Voting materials

Rules 18, 19, 24 and 28-29(3A) of Schedule 1 to the RPA 1983 regulate voting materials: poll cards, ballot papers, polling booths, pens/pencils, ballot boxes, postal voting statements, and voting envelopes. Rule 28 of Schedule 1 to the RPA 1983 addresses the issuing of official poll cards by returning officers. A poll card is a document sent to registered voters by the returning officer shortly before an election day. It gives the voter information about the election, including the date of the election and the location and opening times of the voter's polling station. Returning officers are not legally required to provide poll cards according to an official standardised format. This means that poll cards come in different formats across England.

Rule 19 of Schedule 1 to the RPA 1983 addresses ballot papers, which are issued by returning officers in accordance with an official format indicated in the law. Pursuant to the Appendix of Schedule 1 to the RPA 1983, the heading of the ballot paper instructs voters to vote for one candidate only in general elections (in some other elections more than one candidate can be elected or voted for) by putting a cross [X] in the box next to their choice. The ballot paper must also be easily foldable for voters, as well as have a number and other unique identifying mark printed on the back. Regarding postal voting, under Rule 24 of Schedule 1, the returning officer is required to mail people on request: a ballot paper, a postal voting statement, and an envelope for the return of the ballot paper. Rule 24(2) also provides that the returning officer is required to mail people who request to vote by post additional relevant information about how voters can get access to any directions or guidance on elections in languages other than English and in accessible formats, including Braille. A similar statement about access to information in accessible formats is usually included in poll cards posted to voters who are planning to vote at polling stations. The statement generally informs individuals that they may request an accessible poll card by calling a helpline. Nevertheless, not all poll cards include such a statement, depending on the design followed by returning officers.

There is no additional norm in the RPA 1983 addressing accessibility criteria of any voting material. Notwithstanding, the RPA 1983 does include certain norms on physical accessibility of polling stations. These norms and other relevant legal rules on accessibility of the voting environment are examined below.

3.1.2. Legal and policy developments addressing the obligation to provide accessibility

Although physical accessibility of polling stations is not specifically addressed in this study, it is noteworthy that the amended RPA 1983 establishes in Section 18B(4)(b) that polling stations must be 'accessible' to voters with disabilities. There is no additional explanation of

the meaning of the notion ‘accessible’ in the RPA 1983. Relevant legal criteria to interpret the term ‘accessible’ as incorporated in Section 18B(4)(b) of RPA 1983 is provided by the amended Building Regulations 2010⁴¹ and the Equality Act 2010.⁴²

Part M of the Building Regulations 2010 sets out minimum requirements to ensure that people can access and use facilities within buildings, including accessible entrances, doors, wheelchair spaces and the provision of toilets. These minimum requirements apply to domestic dwellings as well as to non-domestic buildings.⁴³ In 2015, Part M regulations were updated incorporating higher standards for making all new build dwellings accessible.⁴⁴ Nevertheless, at the time of writing, Part M regulations have not been amended to set out higher standards applicable to all non-domestic buildings, including schools which are used as polling stations on election day. Legislative proposals to revise and replace the existing minimum requirements applicable to non-domestic buildings must endorse the idea of ‘maximum accessibility’, which entails ‘universal inclusion in society for all individuals, regardless of personal characteristics’ (Articles 3 and 9 CRPD).⁴⁵

The Equality Act 2010 (EA 2010) prohibits direct and indirect discrimination, as well as harassment in, among others, the provision of goods and services for a total of nine protected characteristics, including disability. In the voting context (context of service provision), the EA 2010 defines discriminatory treatment as rules or policies, one-off actions, or physical, communication and accessibility barriers which generally hinder the right of voters with disabilities to vote on an equal basis with others. The EA 2010 does not define the concept of ‘barriers’ in electoral processes *per se*; however, it imposes relevant legal duties in relation to disability equality for public service providers and their staff, such as election officials, as explained below.

3.1.2.1. The legal duty to make reasonable adjustments under the EA 2010

Pursuant to Sections 20(3-5) and 29(7) of the EA 2010, service providers and persons who exercise a public function, such as election officials, have the duty to make reasonable

41 UK Parliament, The Building Regulations 2010, UK Statutory Instruments 2010 No. 2214.

42 The UK Parliament, The Equality Act 2010, c.15.

43 *Department of Communities and Local Government, Building Regulations and Standards Division, Circular Letter 09 December 2011, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/246023/111209-Divis.*

44 The technical changes include building new accessible and adaptable dwellings that are suitable for a wide range of people, including persons with disabilities and older people. There is also a new requirement regarding building new accessible parking facilities and communal spaces. See HM Government, *Approved Document M: Access to and Use of Buildings, Volume 1: Dwellings. 2015 Edition Incorporating Amendments* (2015).

45 Andrea Broderick, ‘The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities’ (Intersentia 2015), 26.

adjustments for voters with a variety of impairments. Section 6 of the EA 2010 establishes that a person (P) has a disability if *'(a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.'*⁴⁶ A substantial effect is one that is more than a minor or trivial effect (Section 212). Moreover, the Schedule 1, Part 1 of the EA 2010 encompasses impairments that are considered as a disability, including certain medical conditions, such as cancer.

Under the EA 2010, the reasonable adjustment duty is owed to voters with disabilities generally, and is a proactive, anticipatory, and continuing duty. First, as explained by Lawson,⁴⁷ in the context of service provision, the reasonable adjustment duty contains an element of group disadvantage. This duty recognises the group dimension of disability discrimination in, among others, services provided at council offices. Second, the duty to make a reasonable adjustment is also a proactive, anticipatory, and continuing duty.⁴⁸ This means that the duty to make a reasonable adjustment requires prior consideration be given to the needs and circumstances of voters with disabilities, as well as taking action to respond to the disadvantage experienced by them. Pursuant to Section 20 of the EA 2010, election officials must continuously anticipate what barriers their decisions, practices, and premises might create for voters with disabilities and take steps to ensure those barriers do not arise. Election officials must also take such steps as are reasonable to ensure that voters with disabilities are not actually disadvantaged in exercising their right to vote. Under the EA 2010, election officials must make reasonable adjustments to remove any potential disadvantage, even if no voter with a disability has yet actually been disadvantaged. However, as explained by Lawson,⁴⁹ the duty to make a reasonable adjustment *'can be enforced only by an individual with a disability who has been substantially disadvantaged because of non-compliance with the duty.'* Furthermore, Section 21 of the EA 2010 provides that a failure to comply with a reasonable adjustment duty constitutes unlawful discrimination.

Based on Section 20(3-5), the duty to make a reasonable adjustment consists of at least three requirements. The first requirement is that electoral authorities must alter provisions, criteria or practices that cause a substantial disadvantage to which persons with disabilities would otherwise be exposed when compared with their non-disabled counterparts [Section 20(3)].⁵⁰ For example, a person with a visual impairment who relies on a mobile phone application to read their ballot paper independently might face a substantial disadvantage if legal rules,

46 The UK Parliament The Equality Act 2010, c.15, Section 6.

47 Anna Lawson, 'Disability and Employment in the Equality Act 2010: Opportunities Seized, Lost and Generated' (2011) 40 Industrial Law Journal 359, 375-378.

48 *ibid.*

49 *ibid.*, 377.

50 The concept of 'substantial' refers to any disadvantage that is more than minor or trivial (Section 212 of the Equality Act 2010).

administrative guidelines, or practices prevent them from using their own personal assistive devices at polling stations. Such measures usually prioritise security over accessibility.⁵¹ In the UK, using a mobile phone while voting at polling stations is not prohibited by law; however, the UK Electoral Commission has strongly advised voters against it to protect the secrecy of the ballot.⁵² This practice puts persons with disabilities who use AT devices at a substantial disadvantage compared to voters who are not disabled. In overcoming this substantial disadvantage, a reasonable adjustment might be to officially enable voters to use their own personal assistive devices at polling stations to read their ballot paper.

The second requirement is that public service providers must alter, remove, or circumvent physical features, such as access to a building, and equipment in premises, e.g., polling stations, that might cause a substantial disadvantage to voters with disabilities [Section 20(9-10)]. Electoral authorities are required to remove the physical feature in question (whether the feature is temporary or permanent) or provide a reasonable means of avoiding it (e.g., installing a ramp at the entrance to a building used as a polling station).

The third requirement under Section 20(5) is that election officials must take reasonable steps to provide auxiliary aids for voters with disabilities who might otherwise be put at a substantial disadvantage. An auxiliary aid is an auxiliary service, a particular piece of equipment, or staff assistance, and includes anything which provides additional support to a person with a disability, such as an electoral-assistive device.⁵³ Accordingly, in the voting environment, when a voter with low vision cannot easily read the small print on a ballot paper, a voter can request to use, among others, a magnifier device. Failure to ensure that auxiliary aids are working or properly maintained may constitute a failure to make an adjustment. Furthermore, Section 20(6) establishes that where the substantial disadvantage concerns the provision of information, service providers are required to take action to ensure that the information is provided in an accessible format. When considering whether a proposed auxiliary aid or adjustment to a provision, criterion, or practice is reasonable in any particular case, the Code

51 See WebRootsDemocracy, 'The Cratos Principles: An Essential Guide to Assessing Online Voting Systems for Use in Elections' (2020) <<https://webrootsdemocracy.org/2020/04/02/webroots-democracy-publishes-the-cratos-principles/>>

52 See Evening Standard UK, 'General Election 2017: What You Can and Can't Do with Your Phone in a Polling Station?' (*Politics*, 2017) <<https://www.standard.co.uk/news/politics/general-election-2017-what-you-can-and-can-t-do-with-your-phone-in-a-polling-station-a3559616.html>> accessed 8 January 2022; The Guardian, 'Polling Staff Told to Stop People Taking Selfies' (*Local elections*, 2014) <<https://www.theguardian.com/politics/2014/may/21/polling-staff-stop-selfies-local-european-elections>> accessed 8 January 2022; BBC, 'Voters Advised Not to Take Selfies in Polling Booths' (*By Brian Wheeler*, 2014) <<https://www.bbc.com/news/uk-politics-27486392>> accessed 8 January 2022.

53 Equality and Human Rights Commission, 'What Are Reasonable Adjustments?' (*Advice and Guidance*, 2019) <<https://www.equalityhumanrights.com/en/advice-and-guidance/what-are-reasonable-adjustments>> accessed 7 January 2022.

of Practice on Services, Public Functions and Associations⁵⁴ issued by the Equality and Human Rights Commission recommends taking at least the following three factors into account: the effectiveness of any particular steps in overcoming the substantial disadvantage; the extent to which it is practicable for the service provider to take the steps; and financial costs of making the adjustment.

The three requirements above must be met by electoral authorities. In summary, election officials must prevent discriminatory treatment throughout the electoral cycle by taking prompt action to identify and implement reasonable adjustments. The duty to make reasonable adjustments is therefore established in conformity with the principle of human dignity and the prohibition of discrimination as endorsed in Articles 2(1) and 26 ICCPR, Article 14 ECHR, and Articles 3, 5(3), and 29(a) CRPD.

3.1.2.2. The public sector equality duty under the EA 2010

Section 149 of the EA 2010 introduced the Public Sector Equality Duty (PSED). According to the UK Equality and Human Rights Commission, the PSED ‘was created by the Equality Act 2010 in order to harmonise the previous race, disability and gender equality duties and to extend protection to the new protected characteristics listed in the Act.’⁵⁵ The PSED aims to achieve greater equality for all. Section 149 sets out the duty of public authorities and those exercising public functions to consider how they can address discrimination and disadvantage that affect, among others, persons with disabilities, and act accordingly. Under Section 149, public (electoral) authorities are required to have due regard to the need to achieve the following three objectives: to eliminate unlawful discrimination, harassment, and victimisation and other conduct prohibited by the EA 2010; to advance equality of opportunity between voters who share a relevant protected characteristic, such as disability, and those who do not share it; and to foster good relations between persons with disabilities and their non-disabled counterparts (e.g., tackling prejudice against voters with disabilities).

Pursuant to Section 149, having due regard to advancing equality in the electoral process involves at least the following three tasks: to remove or minimise disadvantages experienced by voters due to environmental factors; to take steps to meet the needs of voters with disabilities, where these are different from the needs of their non-disabled counterparts; and to encourage voters with disabilities to participate in elections and in other activities where their participation

⁵⁴ Equality and Human Rights Commission, *Services, Public Functions and Associations: Statutory Code of Practice* 2011.

⁵⁵ Equality and Human Rights Commission, ‘The Public Sector Equality Duty’ (*Overview of the Public Sector Equality Duty*, 2019) <<https://www.equalityhumanrights.com/en/corporate-reporting/public-sector-equality-duty>> accessed 6 January 2022.

is disproportionately low. This is a process rather than an outcome duty.⁵⁶ Lawson⁵⁷ states that the EA 2010 does not regulate the ultimate outcome or content of decisions made by public authorities, but it does provide that disability equality be considered in making those decisions. This is a process for electoral authorities that involves considering how their practices could positively contribute to achieving equality in elections, and taking action in that regard. For example, providing voter education that meets the diverse needs of voters with disabilities might result in more effective participation in elections for persons with disabilities. Notably, the EA 2010 only protects persons with disabilities from discrimination and not people without disabilities. Therefore, it is not discriminatory to treat a disabled voter more favourably than a non-disabled voter. Indeed, treating voters with disabilities more ‘favourably’ than their non-disabled counterparts in order to overcome barriers to their participation in elections can improve the experiences of persons with disabilities when voting.

Building on the EA 2010, policy actions aiming to improve accessibility of, *inter alia*, voting materials include the 2017 Call for Evidence launched by the Cabinet Office asking for views on how persons with disabilities experience voting.⁵⁸ The Cabinet received in total 256 responses, including from individuals, organisations, and local authority election teams. Numerous concerns were expressed by respondents regarding the accessibility of the voting environment, as well as the awareness of the right of persons with disabilities to vote, both legally and practically. Based on the evidence received in response to the Call for Evidence, the government published a report in 2018.⁵⁹ The report lists several actions to be taken to improve the accessibility of, among others, voting materials in future elections. It was written in partnership with the Government-chaired Accessibility of Elections Working Group. This working group includes representatives from organisations acting on behalf of persons with disabilities and from bodies that oversee and conduct elections. There is no official or independent report regarding implementation of the actions announced in 2018 available at the time of writing. It is, however, important to note that the responses to the Call for Evidence on how persons with disabilities experience voting provides the Government with a better understanding of the problems voters with disabilities face when participating in political life, and how those problems can be solved. It also gives insights to DPOs and other key stakeholders on what they can do to help electoral authorities make elections more accessible.

56 Anna Lawson, ‘Inclusive Services and Public Functions: Remembering the Equality Act 2010’ (*Oxford University Disability & Policy Project*, 2020) <https://www.law.ox.ac.uk/sites/files/oxlaw/anna_lawson_0.pdf> accessed 6 January 2022, 8.

57 *ibid*, 8.

58 The Electoral Commission, ‘Elections for Everyone: Experiences of People with Disabilities at the 8 June 2017 UK Parliamentary General Election’ (2017) <https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Accessibility-report-call-for-evidence.pdf> accessed 8 July 2020.

59 Cabinet Office, ‘Call for Evidence: Access to Elections’ (*Government Response*, 2018) <<https://www.gov.uk/government/consultations/access-to-elections-call-for-evidence>> accessed 20 August 2020.

As part of the UK Electoral Commission's response to the evidence submitted to the 2017 Call for Evidence and a series of recommendations made by the House of Commons Political and Constitutional Reform Committee, which published a report on voter engagement in the UK in 2014,⁶⁰ the UK Electoral Commission has recently issued several guidelines to help election officials perform their functions. For example, the UK Electoral Commission published the '*UK Parliamentary elections in Great Britain: guidance for returning officers (2018)*'.⁶¹ The guidance highlights returning officers' legal duty to ensure that planning for, and delivery of, the poll enables voters, including voters with disabilities, to vote easily and know that their vote will be counted in the way they intended. The guide emphasises the returning officers' duty to ensure access of voters to an accessible voting environment without elaborating on the meaning of the term 'accessibility'.

Following this description of relevant domestic law and policy, this section proceeds with an analysis of its implementation in practice, based on the experiences of research participants in this study.⁶²

3.1.3. The experiences of research participants in using voting materials

The use of a theoretical framework in qualitative research is highly recommended by experts in the field to increase the utility, rigour, and credibility of research findings.⁶³ Collins and Stockton⁶⁴ define a theoretical framework as '*the use of a theory (or theories) in a study that simultaneously conveys the deepest values of the researcher(s) and provides a clearly articulated signpost or lens for how the study will process new knowledge.*'⁶⁵ This study endorses the idea of using a theoretical framework that enables the researcher to realise

60 The report includes information and recommendations to the UK government and the Electoral Commission concerning the removal of barriers to political participation faced by persons with disabilities. See House of Commons Political and Constitutional Reform Committee, 'Voter Engagement in the UK' (HC 232 [Incorporating HC 1059, Session 2013-14], 2014) <<https://publications.parliament.uk/pa/cm201415/cmselect/cmpolcon/232/232.pdf>> accessed 8 July 2020, 36-39.

61 The Electoral Commission, 'Part A-(Acting) Returning Officer Role and Responsibilities: UK Parliamentary Elections in Great Britain-Guidance for (Acting) Returning Officers' (2018) <https://www.electoralcommission.org.uk/sites/default/files/pdf_file/UKPE-Part-A-Returning-Officer-role-and-responsibilities.pdf> accessed 30 July 2020.

62 Quotations from the interviews include paragraph numbers preceded by the identification number of each interview as given in NVivo by the researcher.

63 See for instance Christopher Collins and Carrie Stockton, 'The Central Role of Theory in Qualitative Research' (2018) 17 International Journal of Qualitative Methods 1; Peter Rule and Vaughn Mitchell John, 'A Necessary Dialogue: Theory in Case Study Research' (2015) 14 International Journal of Qualitative Methods 1; Kerry E Howell, *An Introduction to the Philosophy of Methodology* (1st edn, SAGE Publications, Ltd 2013).

64 Christopher Collins and Carrie Stockton, 'The Central Role of Theory in Qualitative Research' (2018) 17 International Journal of Qualitative Methods 1, 2.

65 *ibid.*, 2.

emerging findings in the interview data. Accordingly, the experiences of research participants in using voting materials are analysed in this section using Anthony Giddens' structuration theory, as described in the introductory chapter of this study (sub-section 4.1.3).

In Giddens' structuration theory, social actors draw upon structures to act. Structures consist of the virtual existence of two main elements: *rules* and *resources*.⁶⁶ Both *rules* and *resources* exist virtually in the sense that they can be reinforced or altered in the continuity of daily social life. *Rules* are understood as 'generalisable procedures' that actors understand and use in various circumstances.⁶⁷ Research participants' *rules* are, for example, their understandings about the relevance of voting, knowledge about voting materials and electoral laws, and assumptions about their disability. Giddens explains that *rules* can take many forms. They include tacit or discursive ideas that actors have, for example, in connection with disability. Overall, *rules* contribute to the maintenance of social practices because *rules* operate as 'core knowledge' which actors use to act. *Resources* are the means to act, which can be material and non-material. Material *resources* are called by Giddens 'allocative resources'.⁶⁸ These *resources* are raw materials and goods that people use to act. For example, ICTs (whether available at home or at polling stations) are used by some persons with disabilities to vote, as well as when making the decision to vote in the first place. Non-material *resources* are 'authoritative resources', which term refers to a capacity to have influence over persons or actors. For example, peer influence might be determinant for some persons with disabilities when deciding whether to participate in elections. Giddens asserts that the set of *rules* and *resources* actors draw on to act are not deterministic, but are rather applied reflexively by knowledgeable actors. Giddens also explains that social actors, during their activities from birth onwards, become reflexive.⁶⁹ Reflexivity is thus an emergent property of individual human action. As reflexive subjects, actors can change, recreate, and recombine *rules* and *resources*, which makes structures 'transformational'. In other words, both *rules* and *resources* (structure) are produced and reproduced over time and space.

Observations from the interviews carried out for this study indicate that some participants transformed their *rules* or understanding of their voting rights over time through their participation in DPOs. These participants indicated that their decision to vote was prompted by a better understanding of their voting rights after joining in a DPO. As one participant noted:

'The first time I was eligible to vote in general elections was in 1983; back then, I understood that I had no voice in elections. I guess I just accepted that only non-

66 Anthony Giddens, *Profiles and Critiques in Social Theory* (Macmillan Press 1982), 9.

67 Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (1st edn, Cambridge: Polity Press 1984), 22-23.

68 *ibid.*, 33.

69 Giddens, *Profiles and Critiques in Social Theory* (n 66).

disabled people should vote.’ He added, *‘The 1997 election was different. I heard from a lot of friends from [a DPO] that they didn’t like the political party running the country, so they were going to vote... thanks to these friends, I realised I could vote too.’*⁷⁰

Similarly, other participants talked about the role of DPOs in providing them with an opportunity to develop skills and knowledge (*new rules*) about their voting rights.⁷¹ Such illustrations reinforce Giddens’ notion that social interactions are critical for social actors for instilling feelings of social belonging, stability, security and ‘practical knowledge’ to act.⁷² Indeed, some participants in this study referred to their participation in DPOs as an opportunity to develop new interpretations (*rules*) of their role as voters before an election day. Relationships between participants and other persons with disabilities (within DPOs) were based on what Giddens calls ‘mutual positioning’.⁷³ This means that through interactions with others, the authoritative positioning of peers and members of DPOs influenced the decision to vote of some research participants. Therefore, there is a relationship between individual ‘agency’ and wider ‘social structures’ as determinants of social practice.⁷⁴ Such a relationship between individuals with disabilities and DPOs can be used by the UK Government to adopt further voter education initiatives. Indeed, participants suggested that national authorities must convene meetings and workshops with DPOs to discuss what the areas needing the most attention are and which would make the biggest difference to promote participation of persons with disabilities in elections.⁷⁵

Furthermore, in this study, many research participants talked about how *rules* and *resources* they use to vote have changed across time and space. Through human action, some research participants, for example, transformed their own assumptions about participating in elections. In developing this point, one participant said:

‘I think actually, the first few times I was eligible to vote, I didn’t vote because I thought it would be too difficult. I didn’t think I could do it... And then, I decided this was ridiculous. I wanted to try it, so I started facing the challenges.’ She added, *‘It’s the same inaccessible ballot paper, but I use it now without thinking I can’t make it.’*⁷⁶

70 Focus Group 3:145

71 Focus Group 4:12

72 Jonathan H Turner, *The Structure of Sociological Theory* (Wadsworth Publishing 1998), 498.

73 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 67), 89-92.

74 George Ritzer, *Sociological Theory* (4th edn, McGraw-Hill 1996); Laura Ahearn, ‘Agency’ (2000) 9 *Journal of Linguistic Anthropology* 12.

75 See for instance Focus Group 4:115-118

76 Interview 20:302

This example provides evidence of Giddens' 'double hermeneutic principle' where individuals reflect on their position considering new knowledge or understanding.⁷⁷ It also illustrates how actors might act reflexively to change their position in society and recognise their own capacity to face any barriers to participating in society. In elaborating on how further inclusive voter education could enable persons with disabilities to participate in elections, research participants suggested different initiatives.⁷⁸ Such initiatives can be summarised as mainstreaming and targeted messages. Firstly, regarding mainstreaming, one participant told the researcher:

*'Information about rights of voters with disabilities, if included in voter education materials meant for the general electorate, would help reduce the stigmatisation of voters with disabilities among non-disabled voters.'*⁷⁹

According to most participants, voter education campaigns should promote the inclusion of voters with disabilities in elections, including messages that serve to combat discriminatory attitudinal barriers to participation and inclusion in elections.⁸⁰ Secondly, targeted messages can include information about the right of persons with disabilities to voting assistance,⁸¹ and availability of political party manifestos in easy-to-read language.⁸²

Furthermore, although certain research participants could have been discouraged by 'core knowledge' gathered through their life about their disability and associated voting difficulties, some of them were also capable of learning 'new rules' and transforming their practices toward becoming active members of political life. For example, one participant elaborated on how she had surmounted communication barriers with election officials. Firstly, she noted how the dominant 'able-bodied approach' to voting is an obstacle for her, as a deaf person, to vote at polling stations. She said:

*'I didn't vote when I was younger because I was embarrassed. I was getting anxious about being asked questions at the polling station... I think a lot of people who can't communicate orally, they feel a bit overwhelmed for having to reply to questions orally like when they have to confirm their name and address orally.'*⁸³

Secondly, to overcome communication barriers with election officials, this participant opted to start bringing her poll card to the polling station, which lists her name and address. Bringing

77 Turner (n 72), 493.

78 See for instance Interviews 24:32-36; 28:67; and Focus Group 3: 122-127.

79 Interview 24:34

80 See for instance Interviews 30:12-16 and 29:45.

81 Focus Group 3:124

82 Focus Group 3:126

83 Focus Group 3:175

poll cards to the polling station is not mandatory. However, this participant decided to create new *structures* by using her poll card as an ‘*allocative resource*’ to act. She noted:

‘Now, I always bring the poll card with me, which means that I’m registered to vote, so my name’s on there and things like that... I know that I must show that information because communications are difficult. And then they give me the thumbs-up.’⁸⁴

This example illustrates how participants’ agency is determinant of their social practices.⁸⁵ Availability of a poll card is not a determinant of action *per se*. Only once poll cards are ‘put to work’ through human actions do they truly become a *resource*. Adopting a similar approach, other deaf participants commented on their individual strategies to address communication barriers in what they described as the ‘able-bodied’ voting environment, including bringing an invoice with their address on it and going to vote with a companion.⁸⁶ In doing so, these participants attempted to alter (at least to some extent) inaccessible structures within polling stations. Notably, the measure of voter identification introduced by the Elections Act 2022 can help some voters in communicating with poll workers. However, as noted above in this chapter, accessible information and accessible administrative procedures to apply for a voter ID must be a precondition for equal participation of persons with disabilities.

Overall, participants considered poll cards as useful tools.⁸⁷ However, some participants highlighted several accessibility barriers they had encountered when using their poll cards, including the following:

- *‘The print is so small that I can’t read it easily.’⁸⁸*
- *‘To read the card is a struggle for me; text is illegible and unrecognisable for me.’⁸⁹*
- *‘Some of the cards will have basic mistakes. One example is the card will say, “If you require this information in an accessible format, please call our helpline.” But then the helpline will be on the other side of the card. So, it’s not even in a very easy, user friendly way for people who have a visual or an intellectual impairment to participate.’⁹⁰*
- *‘The map of the polling station location is unhelpful. It doesn’t include a scale bar or direction indicators like north arrows...QR code locations would be more useful.’⁹¹*

84 Focus Group 3:147

85 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 67), 258.

86 Focus Group 3:145-147

87 See for instance Interviews 25:6; 30:18; and Focus Group 3:147.

88 Focus Group 4:10

89 Interview 19:18

90 Interview 15:19

91 Focus Group 4:19

When using inaccessible poll cards, many of the focus group participants used their individual *resources*. For example, some participants talked about using ICTs at their home to access information on the poll card.⁹² Using ‘*allocative resources*’, such as ICTs, to access information contained in poll cards was a common experience among most research participants.⁹³ They talked about how availability of technological aids at their home enabled them to make poll card content easier to understand, as well as to go to vote unaccompanied. A few participants also reflected on how not having access to technological aids at polling stations made them feel different and powerless.⁹⁴ As one person commented:

*‘The table [ballot booth table] is not readily accessible to me, then I usually end up holding the ballot paper between my legs to mark it outside the booth... people staring at me like “Is he committing a fraud”? This is so uncomfortable...I’d just need an adjustable table to avoid the awkward look.’*⁹⁵

Many participants acknowledged that accessibility of voting materials is a problem, yet tended to agree that not having access to accessible electoral information (at an early stage of the electoral cycle), including information on poll cards, is the ‘point zero’ of their problems.⁹⁶ Moreover, one recurrent topic raised by participants was the fact that poll cards come in different formats across England. In practice, this meant that some research participants did not draw upon the same ‘*allocative resource*’ (poll card) to act. In this regard, one election official told the researcher:

*‘So, in our poll cards, we used to put on the bottom if there was wheelchair access [at the polling station]. So, a person would know if they had a disability... As part of our polling station reviews, we always tried to get premises that had disability access. And sometimes we hired in special ramps to make sure they had the disabled access.’*⁹⁷

Poll cards issued by the local council (where this election official works) included important information for users of wheelchairs. Moreover, this election official’s narrative indicates other good practices adopted by them to make the access to polling stations easier for persons with disabilities, e.g., installing a ramp at the entrance to a polling station. Similar practices as elaborated by this participant were not common among other election officials interviewed for this study. As another election official told the researcher:

92 Focus Group 4:31

93 See for instance Interviews 25:16; 28:20-23; and Focus Groups 3: 45-49, and 4:18-22.

94 Interviews 26:12; 28:9; and Focus Group 4:36

95 Focus Group 4:33

96 See for instance Focus Group 3:67-72 and Interviews 24:18-20 and 30:9.

97 Interview 13:16

*'As it gets near an election, we issue our poll cards with basic information... disabled voters know to where they must go to vote... Voting at polling places is usually difficult for them... you know, we always have to do too much stuff... It's not easy for us to offer disabled people all they need; voting by post is better for them, I think.'*⁹⁸

The quotations above serve to reveal the various means through which social actors (in this case, election officials) comply with their legal duty to provide accessibility in the voting environment. The first election official (first cited above) illustrates certain good practices adopted by them that can significantly remove inaccessible conditions for voters with disabilities. The second quotation (cited above), however, indicates that not all election officials interviewed for this study have adopted practices to remove barriers to participation. Such practices are critical from the perspective of the principles of non-discrimination and accessibility in elections under Articles 3, 9 and 29(a) CRPD.

Moreover, the second official cited above believed (these are his '*rules*') and acted accordingly that it was not possible to accommodate differential characteristics of individuals within polling stations (as required by the EA 2010). Furthermore, not having accessibility standards to follow when issuing poll cards and other voting materials, as well as when setting up the layout of polling stations, creates barriers to participation. The absence of accessibility standards applicable to poll cards and other voting materials explains why some research participants had access to 'better' *resources* to draw on to vote than others, e.g., poll cards with information about wheelchair accessibility at polling stations. Access to these 'better' *resources* depended on disability-inclusive practices adopted by election officials. In this regard, some participants with disabilities considered that inaccessible voting materials and certain attitudes of some election officials are based on an individual model to disability, and not on a social model and rights-based ideas in accordance with the CRPD. As one participant told the researcher:

*'If I can't mark the ballot paper within the ballot booth as everyone else does; they [electoral authorities] assume it's my fault. You know, like they think my body is the problem, so I have to do whatever I can to "fit in".'*⁹⁹

Oliver¹⁰⁰ and Priestley¹⁰¹ explain that 'individual models' of disability characterise disability in terms of individual problems caused by impairments. Approaches based on the individual model involve rules, policies, and social practices which seek to address the deficits of

98 Interview 21:10

99 Interview 19:20

100 Michael Oliver, *Understanding Disability: From Theory to Practice* (2nd edn, Palgrave Macmillan 2009).

101 Mark Priestley, 'Constructions and Creations: Idealism, Materialism and Disability Theory' (1998) 13 *Disability & Society* 75.

individuals. Accordingly, the main approach adopted by public authorities is to assume that impairment is the cause of the ‘problem’ and that interventions should be focused on the individual. Some voters with disabilities interviewed for this study related to social attitudes that reinforced the idea that their disability is somehow reducible solely to their individual impairment (thus ‘making the voter responsible’), while refusing effectively to address accessibility barriers.¹⁰² They argued that fundamental changes (which frame disability as a social problem) are necessary in England regarding, among others, voting materials to ensure equality of opportunity in voting. Focus group participants discussed, for example, how changing the way information is written and presented on ballot papers can make the information easier for everyone to understand.¹⁰³ These participants, as knowledgeable and reflexive actors, also discussed different ways in which their voting experience could be made easier by providing them with ballot papers with large print, making an audible version of the ballot paper available, and including colourful pictures of candidates. One participant noted that one positive aspect of the current design of the ballot paper was that it contains instructions for voters on how to mark their ballot paper depending on the election.¹⁰⁴

Most research participants with intellectual impairments said they usually practise marking their ballot papers before an election day.¹⁰⁵ These participants used practise voting tools published by some DPOs to enable persons with disabilities to develop practical skills to vote. They also attended sessions at their DPOs to practise marking their ballot paper, which helped them to reduce voter errors and anxiety about voting. This finding illustrates Giddens’ idea that actors put material and allocative *resources* to work through various routines.¹⁰⁶ Routines ensure actors’ security in acting. However, not having access to examples of correctly and incorrectly marked ballot papers was a constraint to vote for one participant with an intellectual impairment who was not part of any DPO.¹⁰⁷ This experience reinforces the importance of implementing voter education initiatives targeted at persons with disabilities to ensure their right to vote on an equal basis with others.

The following section describes relevant legislation and policy concerning electoral-assistive devices used by voters with visual impairments.

102 See for instance Interviews 18:9; 14:15; and Focus Groups 3:29-32 and 4:25-28; 46.

103 Focus Groups 3:97-110 and 4:73.

104 Focus Group 4:38

105 See for instance Focus Group 4:38-40 and Interview 14:26-30.

106 See Anthony Giddens, ‘Structuralism, Post-Structuralism and the Production of Culture’, *Social Theory Today* (Stanford University Press 1987).

107 Focus Group 4:15

3.1.4. Electoral-assistive devices used by persons with visual impairments

Rule 29(3A) of Schedule 1 to the RPA 1983 sets forth the duty of returning officers to provide each polling station with two specific electoral-assistive devices to be used by persons with visual impairments: a large version of the ballot paper and a tactile voting device. These devices, and research participants' experiences in using them, are addressed below.

3.1.4.1. Using the enlarged copy of the ballot paper

Pursuant to Rule 29(3A)(a) of Schedule 1 to the RPA 1983, a large version of the official ballot paper, known as a 'poster', must be displayed in a well-lit area where voters can easily see it before being issued their ballot paper. The poster is a visual aid used by some voters when marking their ballot paper, as explained in Chapter II of this study (sub-section 4.4). Two research participants who used the poster to help them vote considered the legal requirement to make the poster available an important '*allocative resource*' that respects their inherent dignity and worth as human beings. As one participant said:

*'Having access to it [the poster] because the law says so, it's not the same thing as having it because someone was eager to give it to you. There is a difference; it's not pity, it's my right.'*¹⁰⁸

As Giddens asserts,¹⁰⁹ legislation is one of the most influential *resources* people can draw upon to frame their social practices. Voters, as social actors, must also become knowledgeable about legislation if they are to draw upon them to act, for example, by participating in voter education initiatives. Providing the poster as an electoral-assistive device, which is in accordance with Article 29(a) CRPD, improved the voting experience of a few participants. However, legislation *per se* did not have an influence on other participants' ability to use the poster effectively. This was because two of the four research participants who could have used the poster did not know about its availability.¹¹⁰ Not knowing about their right to use the poster and, in general, accessible voting materials resulted in some research participants not making use of the poster when they could have benefited from it. This fact might be related to either insufficient voter education or the unavailability of the poster. Based on the interviews carried out for this study, it is only possible to say that most research participants who had visual impairments were insufficiently informed about their right to use the poster as a technological aid.

Furthermore, users of the poster, as 'reflexive thinkers', elaborated on at least three main constraints which impeded them from using the poster. Firstly, they talked about how the

108 Interview 20:222

109 Giddens, *Profiles and Critiques in Social Theory* (n 66), 9-12.

110 Focus Group 4:65

secrecy of their ballot and the actual usefulness of the poster were compromised because the poster was not a hand-held device. As this participant recounted:

'Not making errors is critical. And yet, even if I look at the poster, I still make mistakes because no one can concentrate while standing up on the middle of a noisy room.'
She added *'It's not like I can take it [the poster] to complete my vote in the booth.'*¹¹¹

Secondly, one participant told the researcher that another barrier was improper positioning of the device within polling stations. The display of the poster does not need to follow any technical guideline, aside from the requirement to be placed 'in a well-lit area' stated in Rule 29(3A) of Schedule 1 of RPA 1983. In practice, this meant that some participants could not use the poster effectively because people had to stand either too close or too far away from the poster. In these cases, participants had no suitable points for viewing the poster. As one participant said:

'Larger texts help me, but at the polling place, it's possible the poster may be overkill; it's a small room.' He added *'The key to providing me with a good viewing experience is to secure an adequate distance between the poster and the spot where I'm supposed to stand up... lighting also influences my sight.'*¹¹²

Katzir and others¹¹³ assert that a larger text or device only improves visibility if people have enough space in the location to mount it and sit or stand far enough away from it. In other words, if users are too close, as might be the case in certain polling stations, they cannot properly see the poster. Certainly, those research participants who used the poster experienced a few issues, including eye strain¹¹⁴ and blurriness.¹¹⁵

Thirdly, barriers to effectively use the poster included, in some cases, certain attitudes by poll workers, and mainly the perceived pity towards voters with disabilities. As one participant commented:

*'I asked them [poll workers] where is it? I couldn't see it [the poster]. They felt sorry because they believed I wasn't capable of voting. So, a poll clerk was standing there the whole time; he was looking at me... I said, "please don't feel sorry for me".'*¹¹⁶

111 Interview 19:28

112 Interview 19:22

113 Tami Katzir, Shirley Hershko and Vered Halamish, 'The Effect of Font Size on Reading Comprehension on Second and Fifth Grade Children: Bigger Is Not Always Better' (2013) 8 PLOS ONE 1.

114 Interview 20:102

115 Interview 19:21

116 Interview 16:55

One critical aspect of the implementation of Articles 9 and 29(a) CRPD stems from the obligation of England to provide training for key stakeholders, e.g., poll workers, on accessibility barriers experienced by voters with disabilities. Participants in this study indicated that it is common that most election officials do not have the knowledge and practical skills to use the poster. Indeed, most poll workers who were interviewed acknowledged they did not have enough ‘practical knowledge’ or technical skills to secure a good experience for users of the poster. As one poll worker commented:

‘We just show it [the poster] where all people can see it, not sure if there is any requirement in that regard. If there are technical recommendations for the display of the poster, we didn’t know anything about it.’¹¹⁷

Evidence from the interviews in this study suggests that training of poll workers in, *inter alia*, the rights and needs of persons with disabilities varies in England, depending on practices adopted by returning officers.¹¹⁸ The failure to adopt a standardised training programme for all poll workers to be used by returning officers is problematic, both legally and technically, in the context of disability. Lack of proper training is clearly a major problem for those poll workers who do not know anything about legal rules and policies concerning disability rights that they are obliged to comply with, e.g., the EA 2010. A further complication is that interacting with poll workers who do not have proper training on the rights of voters with disabilities places these voters at a substantial disadvantage. This might hinder, among others, the ability of certain voters with disabilities to use the electoral-assistive devices which are available.

Giddens explains that structures are generally quite stable in social systems, but can be changed, especially through human action.¹¹⁹ Accordingly, in 2019, the UK Electoral Commission published the ‘Handbook for Polling Station Staff’ to assist polling station staff working on UK Parliamentary elections.¹²⁰ The handbook indicates that the presiding officer should check the availability and visibility of the electoral-assistive devices prescribed by the RPA 1983. The handbook also sets guidelines for an enlarged hand-held sample ballot paper. This device was not initially prescribed by the RPA 1983. As a good practice, the handbook prescribes its use (as an additional electoral-assistive device), which can be taken into the polling booth by voters who need it for reference when marking their ballot paper in private. Research participants had not used the hand-held device at the time of writing. However, it is noteworthy that the 2019

117 Interview 21:23

118 See for instance Interviews 18:16 and 14:28

119 Anthony Giddens, *New Rules of Sociological Method* (Basic Books 1976); Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 67).

120 The Electoral Commission, ‘Handbook for Polling Station Staff: Supporting a UK Parliamentary Election in Great Britain’ (*Order code: UKPE19G001E*, 2019) <[https://www.electoralcommission.org.uk/sites/default/files/2019-09/UKPGE Polling Station Handbook English web.pdf](https://www.electoralcommission.org.uk/sites/default/files/2019-09/UKPGE%20Polling%20Station%20Handbook%20English%20web.pdf)> accessed 6 July 2020.

Handbook seeks to contribute to fulfilling the right to use accessible voting materials for some voters with visual impairments. Related to this, some election officials interviewed for this study reflected on their need to gain additional knowledge, understanding, and appreciation of voters with other impairments.¹²¹ Notably, reversing inequalities in the voting context for all voters with disabilities is likely to be facilitated by means of well-trained polling station staff. In that regard, some election officials commented on how electronic technology, e.g., mobile phone applications, can support training of poll workers.¹²² As described in Chapter II of this study (sub-section 5.2.2), mobile phone applications and online training platforms for election officials already exist to enhance election officials' performance on election day. These technologies can cover learning, evaluation, and communication modules on voters with disabilities' rights, polling stations' layouts, and accessibility standards.

3.1.4.2. Using the tactile voting device

Rule 29(3A)(b) of Schedule 1 to the RPA 1983 provides details on how to make a tactile voting device ('TVD') available to be used by voters with visual impairments. A TVD is a haptic aid used by some voters with disabilities to vote (see sub-section 4.1 of Chapter II). Rule 29(3A)(b) of Schedule 1 was implemented through Regulation 12 of the Representation of the People (England and Wales) Regulations 2001.¹²³ Regulation 12 provides:

12. -Device referred to in rule 29(3A)(b) of parliamentary election rules

- (1) *The device referred to in rule 29(3A)(b) of the Rules in Schedule 1 to the 1983 Act shall be of the description set out in this regulation.*
- (2) *The device must be capable of being attached firmly to a ballot paper and of being removed from it after use without damage to the paper.*¹²⁴

In compliance with Regulation 12, the Government introduced in 2007 a cardboard-based carton TVD.¹²⁵ The TVD is the same length as the ballot paper. It is placed on top of the ballot paper and has flaps on its right-hand side, which are numbered from 1 at the top and so on down the page. The TVD makes no reference to candidates' names, or the order in which they are listed on the official ballot paper. The number of flaps only corresponds to the number of candidates standing for election in the constituency. The number which is printed on each

¹²¹ See for instance Interviews 14:18 and 18:26

¹²² See for instance Interviews 18:11 and 21:36.

¹²³ The UK Parliament, *The Representation of the People (England and Wales) Regulations 2001*.

¹²⁴ *ibid*, Regulation 12.

¹²⁵ In London, the provision of TVD at each polling place is a statutory requirement under the Greater London Authority Elections Rules 2007. See UK Statutory Instruments No. 3541, *The Greater London Authority Elections Rules 2007*.

flap is in large print and raised, so that it can be felt by touch. In addition, the flap number is printed in Braille to assist those who are blind and know Braille.

Reflections by one blind research participant, who had used the TVD, revealed that making the TVD available was a facilitator for her decision to vote back in 2001 when this device was first made available. As the participant noted:

*'And then they started using this cardboard contraption, it's a piece of cardboard [TVD]. Since then, after that experience, I thought I wanted to go to vote... I didn't usually vote before because I had to go with a friend; I wanted to go on my own... It feels important to go on my own; I'm like everyone else.'*¹²⁶

Foley and Berri¹²⁷ argue that AT offers a lot of potential to raise disability-based consciousness and politicisation of persons with disabilities. However, this depends on the proper functioning of AT devices. According to the authors,¹²⁸ technological aids that do not work properly create barriers to participation and worsen social exclusion. In this study, three of the four users of the TVD reflected on at least three technical faults with the device that discouraged them from using it, and, ultimately, in some cases, from voting. Firstly, one participant indicated that the TVD needs to be quite rigid to work properly. Since the TVD is cardboard-based and reusable, some old TVDs become soft over time. This might compromise users' voting experience, including contributing to voter errors. As one participant noted:

*'The last time it was a bit of a nightmare because it was an old cardboard [TVD], so it was really soft. And I was quite worried... I was using the edge of the card beneath the one I'd pulled back to write my X on, but I was a bit scared that it was so soft that it had come down below the line... I ended up asking for help.'*¹²⁹

Secondly, when placing the TVD on top of the ballot paper, the TVD does not stay in place.¹³⁰ This is because there is no friction to hold the device and the ballot paper together while voters mark their ballots. Thirdly, the TVD does not include the same information (i.e., candidates' names and/or order) as the official ballot paper. This forced some users of the TVD to request in-person assistance to mark their ballots. As one participant commented:

126 Interview 20:110

127 Alan Foley and Beth Ferri, 'Technology for People, Not Disabilities: Ensuring Access and Inclusion' (2012) 12 *Journal of Research in Special Educational Needs* 192, 194.

128 *ibid.*

129 Interview 20:114 and 116

130 Interview 19:28

*'The idea is that you count down; you have to remember which number is your candidate. If you forget the order [of the candidates], you have to ask them [poll workers] to help you... I always ask them to check just in case.'*¹³¹

The above technical faults linked to the TVD must be redressed by national electoral authorities in consultation with persons with disabilities [Articles 4(3) and 29(a) CRPD]. Notably, when making tactile ballot guides available, as described in Chapter II of this study (sub-section 4.1.2), a good practice is to include a Braille, large print, or aural format guide on the order in which the names of the candidates appear on the ballot paper. This measure enables persons with disabilities to vote independently.

Election officials interviewed for this study also talked about how they were constantly required to assist users of the TVD. As one election official told the researcher:

*'At the end, they [TVD users] ask us to double-check their votes. We tell them who the cross has come out for. People need this double-checking in case they've made a mistake in counting.'*¹³²

Such illustrations indicate that, in practice, the TVD users still required in-person assistance to vote, which compromises the secrecy and independence of their ballot. Notably, in one case, the research participant wanted to ask for help when using the TVD. For her, asking for help was not an uncomfortable experience.¹³³ However, this was not the case for another user of the TVD. Indeed, this participant told the researcher that, despite using the TVD, he felt disappointed that he was 'obliged' to ask for help from others to vote effectively.¹³⁴ This means that using the TVD did not enable all users of the TVD who were interviewed for this study to vote independently, as they expected to do. The technical faults linked to the TVD which is currently in use created additional barriers to voting for most participants with visual impairments. These participants discussed the possibility of using internet voting to overcome accessibility barriers to vote at polling stations.¹³⁵ They agreed that any voting technological solution, including voting via the Internet, must meet the needs of persons with disabilities and be available for all voters, including persons with disabilities.

Furthermore, this study found evidence of a knowledge gap in using the TVD among some election officials.¹³⁶ Most elections officials interviewed for this study talked about the

131 Interview 19:30

132 Interview 22:16

133 See for instance Interview 19:34.

134 Focus Group 4:72-77 and Interview 20:118-120.

135 Focus Group 4:109-115.

136 See for instance Interviews 21:35; 14:23; and 18:29-31.

importance of providing them with training opportunities to develop ‘practical knowledge’ or skills in using the poster and the TVD.¹³⁷ In this regard, two election officials suggested providing them with a disability-sensitive training plan that would enable them to develop practical skills to assist voters with disabilities.¹³⁸ Such a training plan must include both theoretical guidance and practical opportunities to understand how the existing electoral-assistive devices operate. These participants were aware that it is necessary to familiarise themselves with how to use the TVD to properly perform their duties on election day. In summary, the evidence from this study unambiguously reinforces the view that, in practice, the current design and functioning of the TVD does not ensure the right of some participants with visual impairments to vote on an equal basis with others, as required by Articles 4, 5(2) and 29(a)(i) CRPD.

3.1.5. Concluding remarks

This section has illustrated that national legislation, including the RPA 1983, the amended Building Regulations 2010, and the EA 2010, provides for positive measures on the part of the State to ensure that persons with disabilities can enjoy their right to vote in practice. Such measures include general accessibility requirements for public buildings, such as schools, which are regularly used as polling stations on election day. There are, however, no specific electoral legal rules addressing the issue of accessible voting materials. Furthermore, this section noted that the EA 2010 requires England to put reasonable adjustments to ensure accessibility for persons with disabilities in place to fulfil their right to vote or to enable them to benefit from the right. The EA 2010 also requires that public authorities (e.g., returning officers), and any person who exercises a public function (e.g., a poll worker), to ensure that their decisions and practices do not amount to disability discrimination throughout the electoral cycle, as provided in the ICCPR,¹³⁹ ECHR,¹⁴⁰ and CRPD.¹⁴¹ It was also indicated that the inclusion of the duty to make reasonable adjustments under the EA 2010 provides concrete legal obligations regarding the provision of AT (as ‘auxiliary aids’) to be used by persons with disabilities (where appropriate). In the absence of these measures, the right to vote of persons with disabilities might be ineffective.

Despite existing legal protections, evidence from the interviews carried out for this study has indicated that certain research participants with disabilities continue to face barriers to the enjoyment of their right to use accessible voting materials. This is likely to be the situation for persons with disabilities who did not participate in this study as well. Inaccessibility of

¹³⁷ Interview 21:33

¹³⁸ Interviews 14:25; 12:13; and 18:29-31.

¹³⁹ Articles 2(1) and 26 ICCPR read in conjunction with Article 25(b) ICCPR.

¹⁴⁰ Article 14 ECHR and Article 3 of the Additional Protocol No. 1 to the ECHR.

¹⁴¹ Articles 3, 4 and 29(a) CRPD.

voting materials is caused by, among others, lack of accessibility standards, which is a breach of Articles 9 and 29(a)(i) CRPD. As noted, design variations in poll cards lead to different levels of accessibility. It is, therefore, necessary to provide returning officers with guidelines on how to issue accessible poll cards. The development of such guidelines might be considered in the broader context of compliance with the non-discrimination norms under the ICCPR, ECHR, and CRPD, as well as with the obligation to provide accessible voting materials to be used by voters with disabilities under Articles 9 and 29(a) CRPD.

This section has also revealed that persons with visual impairments have access to three electoral-assistive devices on election day: an enlarged ballot paper copy (poster), a tactile voting device (TVD), and a hand-held large ballot paper copy (recently implemented). No additional aids are provided to these voters to assist them in performing other election-related activities, such as voter registration. The ‘appropriateness’ of the poster and the TVD to assist voters with visual impairments to mark their ballots is, however, relative. Most research participants who used these devices confirmed that the poster and the TVD did not ensure their right to vote on an equal basis with others. This means that, in practice, the requirement under Article 29(a) CRPD to implement effective measures to address the needs of voters with visual impairments through, *inter alia*, the provision and use of technological aids has not been effectively observed by England. This has at least three implications in the context of the progressive realisation of the obligation of England to provide accessibility in the voting environment.

Firstly, England has not developed disability accessibility standards for existing electoral-assistive devices to ensure that these devices effectively provide technological assistance to users. A promising means to comply with this obligation is the current work of the Accessibility of Elections Working Group. In the context of this group, the government has committed itself to work with DPOs, which is a collaborative approach as recommended by the CRPD Committee in its General Comment No. 2.¹⁴² It is also important to note that the development and implementation of accessibility standards *per se* will not always result in *de facto* realisation of the right to vote for every person with a disability. In such cases, England has a suitable legal framework (the EA 2010) to ensure that individualised substantive equality measures,¹⁴³ such as the anticipatory duty to provide reasonable adjustments, are imposed on electoral authorities to ensure that the right of individuals with disabilities to vote can be exercised on an equal basis with others. Secondly, under Articles 4, 5(2) and 29(a) CRPD, England is required to eradicate practices and attitudes of election officials that constitute

142 CRPD Committee, General Comment No 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014.

143 CRPD Committee, General Comment No. 6(2018) on Equality and Non-Discrimination, CRPD/C/GC/6 of 26 April 2018.

barriers in the voting environment through, *inter alia*, the provision of training. This section has provided evidence that some election officials interviewed for this study had not received proper training in disability voting rights. This lack of training compromised the voting experience of some research participants. The section also concluded that, besides receiving written guidelines, election officials should also receive practical training to develop skills in assisting voters with disabilities. Thirdly, voter education for voters with disabilities, which concerns a duty that falls on England under a transformative equality model, has not been implemented effectively. Evidence from the interviews suggests that some participants were not aware of their right to access accessible voting materials or were not informed about the availability of such materials. Notably, voter education for voters with disabilities is an action that would serve to foster respect for the agency of persons with disabilities.

Furthermore, this section has discussed important policy actions adopted by England to identify barriers that impact on the enjoyment of voting rights for persons with disabilities (e.g., the 2017 Call for Evidence and guidelines published by the UK Electoral Commission). The general principles of the CRPD, and particularly ‘equality of opportunity’ [Article 3(e) CRPD] require England to eliminate existing barriers to the enjoyment of voting rights by persons with disabilities.

3.2. Measures to ensure ballot secrecy

The analysis in this sub-section concerns Article 29(a)(ii) CRPD. This provision sets out the obligation of States Parties to ensure the right of all persons with disabilities to vote by secret ballot through the adoption of positive measures, such as the provision of assistive and new technologies. Furthermore, the analysis in this sub-section applies certain CRPD indicators developed by the Bridging the Gap Project: (i) legislation and regulations enacted that ensure the right of persons with disabilities to vote through secret ballot on their own, and (ii) existence of awareness raising measures on the right of persons with disabilities to vote secretly.

3.2.1. Ballot secrecy legislation and policy

The RPA 1983 protects the secrecy of the vote at polling stations and prevents violations of the right to vote of all voters, including persons with disabilities, by third parties, both State and non-State actors.¹⁴⁴ A requirement to disclose how a person has voted is prohibited and the law sets forth the secrecy of the ballot as an absolute legal standard. The Elections Act

¹⁴⁴ The UK Parliament The Representation of the People Act 1983, Section 66 and Rules 21, 25, and 32-33 of Schedule 1.

2022 includes measures for extending secrecy requirements to voting by proxy and postal vote to prevent undue influence. This legislation is in compliance with the relevant ICCPR,¹⁴⁵ ECHR,¹⁴⁶ and CRPD norms.¹⁴⁷ Other legal protections of voting rights include the Data Protection Act 2018¹⁴⁸ (DPA 2018) and certain norms in the RPA 1983 aimed at preventing individual interferences with the exercise of the right to vote.¹⁴⁹

Firstly, the DPA 2018 updates data protection regulations in the UK. It applies the EU General Data Protection Regulation (EU GDPR) standards.¹⁵⁰ Post-Brexit, the UK Government launched its consultation '*Data: a new direction*' in 2021 to reform the UK's data protection laws.¹⁵¹ For the present purposes, the government asked for views on proposals for removal of consent requirements in relation to communications from political parties. Based on the evidence received in response to the consultation, the UK Government published a report in 2022.¹⁵² According to the report, numerous concerns were expressed by respondents regarding proposals for excluding political parties from rules on direct electronic marketing, including rules on explicit consent.¹⁵³ In its report, the UK Government indicates that it plans to consider further whether political communications should remain within the scope of data protection rules for democratic engagement. Legislative proposals in that regard must provide an opportunity to all voters, including persons with disabilities, to refuse political communications. Data protection requirements applicable to such communications are important because political parties and election officials process personal data of voters to support or promote democratic engagement. Moreover, election officials process personal data of voters when issuing voting materials. Currently, under Sections 7-8 and Schedule 1 of the current DPA 2018, election officials are required to meet accountability and transparency obligations. Accordingly, the UK Electoral Commission adopted in 2018 the '*Part D–Absentee*

145 Article 25(b) ICCPR.

146 Article 3 of the Additional Protocol No. 1 to the ECHR.

147 Article 29(a)(ii) CRPD.

148 The UK Parliament, The Data Protection Act 2018 c.12.

149 The UK Parliament The Representation of the People Act 1983, Schedule 1 (Rule 21) and Sections 60-62A and 160.

150 The European Parliament and the Council of the European Union, 'Regulation (EU) 2016/679 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)' <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>> accessed 12 June 2020.

151 UK Government, 'Consultation Data: A New Direction' (*Department for Digital, Culture, Media & Sport*, 2021) <<https://www.gov.uk/government/consultations/data-a-new-direction>> accessed 12 July 2022.

152 UK Government, 'Consultation Outcome. Data: A New Direction-Government Response to Consultation' (*Department for Digital, Culture, Media & Sport*, 2022) <<https://www.gov.uk/government/consultations/data-a-new-direction/outcome/data-a-new-direction-government-response-to-consultation>> accessed 12 July 2022.

153 *ibid*, Communications for political campaigning (questions 2.5.1 and 2.5.2).

voting. *UK Parliamentary elections in Great Britain: guidance for returning officers*'.¹⁵⁴ This guide for returning officers regarding absentee voting takes account of the EU GDPR and the DPA 2018. It indicates that the returning officer is responsible for ensuring that staff are aware of data protection considerations and must require staff to confirm in writing at the point of recruitment that they will abide by the returning officers' data protection policy. Similarly, the aforementioned 2019 'Handbook for Polling Station Staff' published by the UK Electoral Commission indicates that the presiding officer and poll clerks share the same duties regarding prevention of third-party interference with the right of individuals to a secret ballot. However, presiding officers have the overall responsibility for the polling station and perform an additional supervisory role.

Secondly, pursuant to Section 60 of RPA 1983, a person is guilty of a corrupt practice if that person commits, or aids, abets, counsels, or procures the commission of voter impersonation. Section 62 lists additional offences targeting election officials, including fraudulently taking a ballot paper out of the polling station or destroying it. A final set of offences are established in Sections 113-115 and 166 of the RPA 1983. These offences target interference with the exercise of the right to vote committed by candidates or their supporters. In summary, domestic law establishes legal protection of all voters from third parties' wrongful practices. This protection includes strict rules for respecting political choices; processing voters' personal data; and ensuring the secrecy of the vote of all voters, including persons with disabilities, and is in compliance with Articles 5(1) and Article 29(a) CRPD. Nevertheless, evidence gathered in this study reveals that many research participants encountered barriers to vote secretly as elaborated below.

3.2.2. Voting secretly: the experiences of research participants

Giddens bases his social practices analysis on the perspective of self-reflective actors who make choices.¹⁵⁵ Based on their ability to reflect on their voting experiences, a substantial number of research participants made statements about how not voting secretly is a problem for them.¹⁵⁶ Such a problem was mainly caused by not having access to an accessible ballot paper or booth.¹⁵⁷ As one participant noted:

154 The Electoral Commission, 'Part D -Absent Voting. UK Parliamentary Elections in Great Britain: Guidance for (Acting) Returning Officers' (2018) <[https://www.electoralcommission.org.uk/sites/default/files/2019-11/UKPE Part D-Absent voting.pdf](https://www.electoralcommission.org.uk/sites/default/files/2019-11/UKPE%20Part%20D-Absent%20voting.pdf)> accessed 24 July 2020.

155 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 53); Anthony Giddens, *Central Problems in Social Theory* (Macmillan Publishers Limited 1979).

156 See for instance Focus Groups 3:30-33; and 4:14-22

157 Focus Group 4:7.

*'If I had access to coloured pictures of candidates on it [ballot paper], it'd be easier for me to vote alone. As the ballot is designed, it's always possible for me to get confused, so other people help me to mark my ballot.'*¹⁵⁸

This example illustrates how, for some research participants, inaccessibility of voting materials was an obstacle to vote secretly and independently. Moreover, the participant (cited above), and other participants,¹⁵⁹ as reflexive agents, understand what adjustments they would need to cast a secret ballot, such as making ballot papers accessible. Examples of accessible formats include colour contrast, tactile graphics, large print, audio, and digital text conforming with accessibility standards. Focus group participants also discussed other measures to enable them to vote secretly.¹⁶⁰ These measures include developing a mobile phone application with integrated accessibility features to support voters when reading ballots,¹⁶¹ as well as implementing an easy-to-read¹⁶² or aural version¹⁶³ of voting instructions at polling booths. Most participants agreed that using accessible voting materials is necessary to enable them to vote secretly and independently. Implementing ballot papers in accessible formats, and other voting materials, requires close consultation with and active involvement of voters with disabilities [Article 4(3) CRPD]. Notably, listening to the voices of persons with disabilities as experts when developing accessible voting materials is important to addressing the structural inequalities that they face when attempting to vote secretly.

Other participants also referred to additional barriers to casting a secret ballot. Some of these barriers were created by participants' companions. As one participant commented:

*'My mother thinks I'm not capable of doing it [voting]; she watches me mark my ballot to make certain that everything is done correctly... She is the "official" supervising my ballot... then, at home, she tells everyone whom I voted for.'*¹⁶⁴

This illustration partly reinforces the notion of Frederic Mégret: *'because much of the assistance that persons with disabilities need will be provided by family members and/or within the home, they will be particularly at risk of their rights being obstructed in this context.'*¹⁶⁵ Voters' companions, who are usually family members, are actors who might support or constrain the full and effective enjoyment of the right to vote secretly by persons with disabilities. Families

158 Focus Group 4:22.

159 See for instance Interview 15:20 and Focus Group 4:95-97.

160 Interviews 4:12; 11:26 and Focus Groups 3:48-51 and 4:114-119.

161 Focus Group 3:49

162 Interview 16:56

163 Focus Group 4:116

164 Focus Group 4:118

165 Frédéric Mégret, 'The Disabilities Convention: Towards a Holistic Concept of Rights' (2008) 12 The International Journal of Human Rights 261, 266.

may make decisions on behalf of persons with disabilities or offer them help to the point that persons with disabilities are not capable of voting secretly anymore. Such barriers are part of the existing ‘informal barriers’ documented in the literature.¹⁶⁶ Measures adopted by England to ensure the right of persons with disabilities to vote secretly must, therefore, address the systemic or structural disadvantage caused to persons with disabilities not only by physical conditions of the voting environment but also by conventional societal structures that include family relationships. In this regard, Article 8 CRPD sets out the obligation of States Parties to take measures to ‘*raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights.*’¹⁶⁷ Pursuant to Articles 8 and 29(a) (ii) CRPD, England is required to combat stereotypes and harmful practices, in both the public and private spheres, that hinder the full enjoyment of the right to a secret ballot of persons with disabilities. A few research participants talked about how awareness-raising measures at the family level are still necessary to promote an environment of understanding and respect for their right to vote secretly. Examples of specific government initiatives addressing barriers to the right to vote secretly arising from the private sphere were not identified by the researcher or referenced by the research participants at the time of writing.

The importance of making reasonable adjustments to enable persons with disabilities to vote secretly was also addressed by some research participants.¹⁶⁸ Under Articles 2, 5(3), and 29(a) (ii) CRPD, implementing the duty to provide a reasonable accommodation (or adjustment) requires England to ensure that election officials are well trained in the implementation of this duty, and particularly about the EA 2010. Making a reasonable adjustment might include allowing a voter with a disability (who needs and requests it) to use a personal assistive device, e.g., a screen reader mobile application. Accordingly, at the 2019 general elections, the UK Cabinet Office encouraged returning officers to allow the use of mobile phones with specially designed applications for reading ballot papers by voters with visual impairments, where necessary.¹⁶⁹ Evidence from the interviews indicates, however, that not all election officials were sufficiently trained in the implementation of their legal duty to make an adjustment or the way this duty enables a person with a disability to vote secretly. As one election official said:

166 See Virginia Atkinson, Rebecca Aaberg and Staffan Darnolf, ‘Disability Rights and Election Observation: Increasing Access to the Political Process’ (2017) 35 *Nordic Journal of Human Rights* 375; Luciana Thuo, ‘Implementation of Political Participation Standards for Persons with Intellectual Disabilities in Kenya’ (2016) 2 *Strathmore Law Journal* 97.

167 UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, Annex I, available at: <https://www.refworld.org/docid/4680cd212.html> [accessed 10 September 2020], Article 8.

168 See for instance Focus Groups 3:38-43; and 4:25-27

169 The UK Parliament, ‘Ballot Papers: Visual Impairment’ (*Question for Cabinet Office*, 2020) <<https://questions-statements.parliament.uk/written-questions/detail/2020-06-02/53512>> accessed 8 January 2022.

*'There are people who ask to use their mobile phones, you know, they always have reasons for that... The thing is, we [poll workers] can't allow people to use their mobile phone to vote no matter if they're disabled or not... using mobile phones might put the security of the whole process at risk.'*¹⁷⁰

Firstly, this election official's narrative is indicative that some election officials are not well trained in understanding that reasonable adjustments are possible and necessary in certain cases, and that this is required under the EA 2010. Secondly, based on the narrative of the election official (cited above), it is possible to argue that proper training of election officials on their duty to make reasonable adjustments must also cover practical skills to enable officials to engage in a constructive dialogue with individuals with disabilities to determine the most appropriate adjustment to enable them to vote secretly. In the absence of these measures, the right to vote secretly of some research participants was ineffective.

In this study, experiences of not casting a secret and independent ballot were also shared by users of the TVD and poster who participated in this study. They stated that voting secretly was not always possible for them due to the technical faults with these devices, as explained above.¹⁷¹ Giddens asserts that actors' reflexivity may lead to different outcomes when acting.¹⁷² This assertion focuses on the continuous human process of reflecting on how actors act and what they think about their behaviour. This is an evolving process exemplified by one of the participants, a TVD user, who said:

*'So, the first few times I used it [the TVD], I liked it. I thought I was capable of voting... Now, if I have to ask for help from others to confirm who the cross came out for, what is the point of using it?... I still wish I could vote alone.'*¹⁷³

This participant's discursive reflexivity gave her the opportunity to change her perception about using the TVD. Indeed, this participant's reflection on experiences (or knowledge) led her to create a more critical appreciation of the need to ask for help, and even reveal her political choice to others. This was a common realisation among other participants.¹⁷⁴ They considered it burdensome to be forced to ask for help to vote, despite using the TVD. Furthermore, these participants explained if they did not want to ask for help, they faced additional barriers in having to remember the numbers linked to their political choices. Other voters, and particularly non-disabled voters, are not subject to the same requirement. Therefore, in practice, the current

¹⁷⁰ Interview 22:24

¹⁷¹ See for instance Interviews 19:26 and 20:199.

¹⁷² Giddens, *Central Problems in Social Theory* (n 154).

¹⁷³ Interview 20:202.

¹⁷⁴ See for instance Interview 19:28 and Focus Group 4:44-47.

TVD did not ensure certain research participants were able to exercise their right to a secret ballot on an equal basis with others.

The link between the current poor design of the TVD and the *de facto* realisation of the right to a secret ballot by users of the TVD was addressed by the England and Wales High Court of Justice (Administrative Court) in its judgment in ‘the Queen on the application of Rachael Andrews and Minister for the Cabinet Office’.¹⁷⁵ In the case, the claimant, who was a blind registered voter, argued that the TVD made available to her to cast her ballot did not allow her to vote without being assisted by another person who read the names of the candidates aloud and the order in which they appeared on the ballot paper. Such information was not contained on the TVD. The claimant contended that such a difference of content between the TVD and the official ballot paper hindered her right to vote secretly under the RPA 1983.¹⁷⁶ In its judgment, the Court recalled that, under the RPA 1983, the ballot must be secret.¹⁷⁷ Vote secrecy of the claimant was formally protected by obligations placed on returning officers, presiding officers, and others under the RPA 1983. Furthermore, the Court noted that the purpose of Rule 29(3A) (b) of Schedule 1 of RPA 1983 (addressing the right of persons with visual impairments to use the poster or the TVD) is ‘*enabling voters who are blind (...) to vote without any need for assistance*’.¹⁷⁸ The Court considered that the main failure of the TVD is that it only contains the numbered tabs, but not the name of each candidate and/or the party the candidate stands for, either in raised lettering or Braille, or both. Consequently, for the Court, if the TVD does no more than guide blind voters to mark an ‘X’ on their ballot paper, without enabling them to distinguish one candidate from another, the TVD ‘*does not in any realistic sense enable that person to vote*’.¹⁷⁹ Accordingly, the Court concluded that the TVD in its current form was a device that contravenes Rule 29(3A)(b) of Schedule 1 of RPA 1983.¹⁸⁰ It indicated that to meet the objectives specified in Rule 29(3A)(b), the Government had to take further action to comply with the RPA 1983, and the Court ruled in favour of the claimant.

Although the High Court did not refer to Article 29(a) CRPD in its judgment, the right of the claimant to vote secretly was protected by the Court under domestic electoral law. As it was held by the Court, voting is a ‘purposive act’ that involves the specific rights of persons with disabilities to make an informed political choice and mark their ballots independently. Therefore, under Rule 29(3A)(b) of Schedule 1 of RPA 1983 read in conjunction with Section 20 of the EA 2010, any auxiliary aid provided to be used by voters with disabilities when

175 High Court of Justice, *The Queen on the Application of Rachael Andrews and Minister For The Cabinet Office*, [2019] EWHC 1126 (Admin) Case No: CO/3098/2018 (2019).

176 *ibid*, para 10.

177 *ibid*, para 11.

178 *ibid*, para 22.

179 *ibid*, para 22.

180 *ibid*, para 22.

voting, such as the TVD, must ensure their effective participation, i.e., to vote secretly and independently. The standard of protection available before the CRPD was, therefore, not lowered in the case of *Rachael Andrews v Minister for the Cabinet Office*. In addition, following this judgment, the Government is required to make suitable arrangements to resolve the fundamental design problem with the TVD. In this regard, one election official who was interviewed, and who is part of the Accessibility of Elections Working Group, confirmed that the Government is considering developing a new TVD to be used by voters with visual impairments.¹⁸¹ At the time of writing, however, a new TVD has not been made available to be used by voters in the UK.

3.2.3. Concluding remarks

This section has indicated that ballot secrecy is protected under national legislation, and particularly the RPA 1983. Voters with disabilities are entitled to the equal protection of the RPA 1983 without any discrimination. England is also obliged, under Articles 4(b); 5(1); 9; and 29(a)(ii) CRPD, to adopt positive measures to ensure persons with disabilities can vote secretly on an equal basis with others. A range of low- and high-tech electoral-assistive devices already exist to enable persons with disabilities to vote secretly, including haptic, reading, and writing aids, such as those illustrated in Chapter II of this study. Nevertheless, evidence from the interviews carried out for this study indicates that England has not taken all appropriate measures to modify or abolish existing discriminatory barriers that put some research participants with disabilities at a substantial disadvantage when attempting to cast a secret ballot. This might be the situation for persons with disabilities who did not participate in this study as well.

As noted, many barriers to vote secretly are related to inaccessible voting materials and technical malfunctions of existing electoral-assistive devices to be used by persons with visual impairments. These problems reduced the real opportunities for certain participants to vote secretly, even when using AT devices. In that regard, users of the TVD and other participants positively regarded the potential use of technological solutions to enable them to vote secretly and independently, including electronic voting systems with integrated accessibility features. As observed, developing and implementing any voting technological solution must ensure equal dignity without discrimination for voters with disabilities.

In addition, not all research participants had access to any ‘auxiliary aid’ as explicitly required by Section 20(5) of the EA 2010 to cast a secret ballot. These participants require further measures to equalise their opportunities when voting in light of the nature of their impairment. This highlights the importance of weighing the measures developed and implemented by

181 Interview 13:16

England, both in determining compliance with Article 29(a)(ii) CRPD and in consideration of alleged violations under the RPA 1983 and the EA 2010. These norms ultimately place responsibility on the Government to prevent and address the disadvantage emerging from the interaction of all types of impairment with existing barriers in the voting environment.

Lastly, the legal duty to make reasonable adjustments might enable a person with a disability to vote secretly. Nevertheless, such a duty has not been fully and effectively implemented by England to support (in practice) some participants to cast a secret ballot as required by the RPA 1983, EA 2010, and Article 29(a) CRPD. As noted, positive (active) measures directed at these voters might include the provision of multiple (and well-functioning) low- or high-tech technological aids to overcome the limitations related to their impairment.

3.3. Measures to ensure the free expression of voters

The analysis in this section concerns the implementation of Article 29(a)(iii) CRPD that sets out the legal obligation to guarantee that persons with disabilities can express their free will as voters. The legal interpretation of Article 29(a)(iii) in conjunction with Articles 4, 9, 12, and 21 CRPD presented in Chapter III of this study concluded that the right of persons with disabilities to freely express their political opinions and choices on an equal basis with others consists of three dimensions. First, this right is inextricably linked to the recognition of the legal capacity of persons with disabilities (see sub-section 3.3.1. below). Second, persons with disabilities have the right to access accessible electoral information upon which their informed political choice can be made (see sub-section 3.3.2. below). Third, persons with disabilities have the right to be assisted when voting where necessary (see sub-section 3.3.3. below). This last right covers the entirety of the electoral process, and includes live and technological voting assistance.

The analysis in this part of the chapter also applies certain CRPD indicators developed by the Bridging the Gap Project: (i) absence of provisions in the constitution, legislation, or regulations restricting the right of persons with disabilities to vote; (ii) legislation and regulations that ensure the right of persons with disabilities to be assisted by a person of their choice, and with full respect of their free expression of will; and (iii) number and proportion of public servants, poll workers, election observers, and citizens carrying out election duties who are trained in the exercise of the right to vote of persons with disabilities, and who have been provided with voting-related information, notably on accessibility, the right to assistance from a person of the voter's choice, and the duty to provide reasonable accommodation.

3.3.1. Discrimination in elections

The UK has established a suitable legal framework to prohibit discrimination against persons with disabilities when voting, as required by the ICCPR,¹⁸² ECHR,¹⁸³ and CRPD.¹⁸⁴ Domestic law has also abolished restrictions on legal incapacity to vote by reason of a person's mental state. Relevant legislation in this regard includes the Mental Capacity Act 2005 ('MCA 2005'), the Electoral Administration Act 2006, and the Equality Act 2010 ('EA 2010').

The primary purpose of the MCA 2005 is to promote and safeguard decision-making about care and treatment by persons aged 16 and over, and particularly persons with intellectual or mental impairments.¹⁸⁵ Section 29 of the MCA 2005 declares that nobody can vote on behalf of a person on the grounds that that person lacks capacity. The law thus prohibits proxy voting on capacity-related grounds and aims to protect and safeguard decision-making in the voting context for individuals who are eligible to vote. Accordingly, all persons with disabilities who are registered to vote must be assumed to have the capacity to decide whether to vote, and for whom to vote. Furthermore, under Section 29 of the MCA 2005, any person who lacks capacity (in the terms of the MCA 2005)¹⁸⁶ can be supported to vote. England is required to provide persons with assistance to participate in elections, where appropriate. One year after adopting the MCA 2005, the UK Parliament abolished the last restrictions on legal incapacity to vote by reason of a person's mental state through the Electoral Administration Act.¹⁸⁷ Section 73 of the Electoral Administration Act 2006 abolished '*any rule of the common law which provides that a person is subject to a legal incapacity to vote by reason of his mental state.*' Sections 73 and 76 also amended sections of the RPA 1983 and replaced outdated terminology (e.g., the terms 'idiocy' and 'lunacy') with the term 'disability'.

The EA 2010 is an important piece of legislation in the UK with regard to equality and non-discrimination.¹⁸⁸ It protects people from discrimination on the basis of certain protected characteristics, including disability (Section 4). Moreover, the EA 2010 protects a person with a particular protected characteristic from discrimination in a wide range of fields, including in the provision of goods and services. Sections 13(1) and (3) of the EA 2010 prohibit direct discrimination. Direct discrimination occurs, for example, when an election official treats a

182 Articles 2(1) and 26 ICCPR read in conjunction with Article 25(b) ICCPR.

183 Article 14 ECHR read in conjunction with Article 3 of the Additional Protocol No. 1 to the ECHR.

184 Articles 3(2), 4(1), 5(3), 12, and 29(a) CRPD.

185 The UK Parliament The Mental Capacity Act 2005 c.9.

186 Section 2 of the MCA 2005 provides '*... a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.*' *ibid.*

187 The UK Parliament Electoral Administration Act 2006 c.22.

188 Mark Butler, *Equality and Anti-Discrimination Law: The Equality Act 2010 and Other Anti-Discrimination Protections* (Spiramus Press 2016), 29.

disabled voter less favourably or puts a disabled voter at a disadvantage for a reason that relates to their disability. Section 15 prohibits discrimination arising from disability. This provision protects persons with disabilities from being treated unfavourably because of something connected to their disability. For example, discrimination arising from disability occurs when an election official does not allow a voter with a disability to enter the polling station with their assistance dog. Such a form of discrimination is unlawful unless the election official is able to prove that there is an objective justification, i.e., there is a good reason for the treatment, and it is proportionate.¹⁸⁹ Moreover, discrimination did not occur if the election official did not know, and could not reasonably be expected to know, that the person had a disability [Section 15(2)]. Section 19 prohibits indirect discrimination. Indirect discrimination focuses on the impact a rule, practice or policy has on a group of individuals with a shared protected characteristic. For example, introducing a photo ID requirement to vote without inclusive measures to apply for a voter card from the electoral registration officer, would have an effect which particularly disadvantages some persons with disabilities who are less likely to have a driving licence or a valid passport. The application of such an apparently neutral rule to voters with disabilities might be considered as a disproportionate means of achieving a legitimate aim.

Furthermore, as noted in sub-section 3.1.2. above, under Sections 20 and 21 of the EA 2010, a failure to make a reasonable adjustment constitutes a discrimination, e.g., to not provide a voter, who requested it, with electoral information in accessible formats. Section 26 prohibits harassment on grounds of disability. Harassment is caused by an unwanted conduct that is related to a relevant protected characteristic, e.g., disability. Such conduct has the purpose or effect of violating the person's dignity or creating an intimidating, hostile or degrading, humiliating or offensive environment. For example, harassment occurs when an election official repeatedly makes offensive jokes about a voter's disability. Section 27 prohibits victimisation. Victimisation occurs when a person is subjected to a detriment because they have brought proceedings under the EA 2010, have given evidence or information in connection with proceedings, or have made an allegation (whether or not expressly) that an election official, for example, has contravened the EA 2010. The EA 2010 protects persons with disabilities from victimisation to ensure they are not deterred from bringing a complaint of disability discrimination. Accordingly, under the EA 2010, returning officers and their staff may not discriminate, harass, victimise, or engage in any other discriminatory conduct against voters who have a disability. In summary, existing relevant legislation protects (at least formally) persons with disabilities from discrimination during the electoral process, as required by the ICCPR¹⁹⁰ and ECHR,¹⁹¹ and in accordance with Articles 5, 12, and 29(a)(iii) CRPD.

¹⁸⁹ *ibid*, Section 15(1)(b).

¹⁹⁰ Articles 2(1) and 26 ICCPR read in conjunction with Article 25(b) ICCPR.

¹⁹¹ Article 14 ECHR and Article 3 of the Additional Protocol No. 1 to the ECHR.

Notably, the MCA 2005, the Electoral Administration Act 2006, and the EA 2010 are relevant legislation prohibiting discrimination against voters with disabilities. Building on this legislation, in July 2021, the UK Government published a new policy framework: the National Disability Strategy.¹⁹² The Strategy was informed by respondents to the UK Disability Survey carried out between January and April 2021 by the Secretary of State for Work and Pensions. The Strategy set out immediate actions to be taken to improve the everyday lives of persons with disabilities. It explicitly stated that the UK Government is committed to removing historic barriers to participation in public life. In this regard, two specific actions were included in the Strategy: to present the Elections Bill 2021-22 (now the Elections Act 2022) to Parliament. The recent Elections Act 2022 sets out the duty of returning officers to meet the needs of people with disabilities, and to work with the Electoral Commission to provide guidance to help returning officers meet the requirements introduced in the Act, including on ATs that can be provided in polling stations. Six months after the publication of the Strategy, in its recent judgment in ‘the Queen on the application of Miriam Binder, Jean Eveleigh, Victoria Hon and Douglas Paulley and Secretary of State for Work and Pensions’,¹⁹³ the High Court of Justice declared that the defendant failed to consult lawfully with persons with disabilities or DPOs, via the Disability Survey, before publishing the Strategy and that, consequently, the Strategy itself was unlawful. The Court noted that the Survey did not provide respondents with information ‘in clear terms’ so that they knew what the proposal was, and exactly why it was under consideration.¹⁹⁴ In its analysis, the Court did not engage with relevant international standards, and particularly Article 4(3) CRPD that provides for the duty to consult DPOs when developing and implementing legislation and policies relating to persons with disabilities. Nevertheless, the standard of protection available before the CRPD was not lowered in the case. The Court held that the defendant carried out a consultation, principally by means of the Survey, which did not comply with relevant requirements of fair consultation under common law.¹⁹⁵ In the Court’s view, the Survey was a mere information-gathering exercise, not a fair consultation, as it was not effective, targeted at and easily accessible to those with a clear interest in the policy in question. Following this judgment, the Government is required to draft new Strategy proposals through meaningful consultations with persons with disabilities. At the time of writing, however, consultations supporting the adoption of a new Strategy have not been implemented by the Government. Notably, to inform the new Strategy, certain policies,

192 UK Government. Disability Unit, ‘National Disability Strategy’ (*Policy Paper*, 2021) <<https://www.gov.uk/government/publications/national-disability-strategy>> accessed 31 January 2022.

193 High Court of Justice, *The Queen on the Application of Miriam Binder, Jean Eveleigh, Victoria Hon and Douglas Paulley and Secretary of State for Work and Pensions*, [2022] EWHC 105 (Admin) Case No: CO/1142/2021 (2022).

194 *ibid*, para 75.

195 The common law principle of fair consultation was approved by the Supreme Court in *R (Moseley) v Haringey London Borough Council* [2014] UKSC 56, [2014] 1 WLR 3947.

activities, and measures listed in the Council of Europe's 'Disability Strategy 2017-2023'¹⁹⁶ can serve as guidelines to the UK Government. For example, in its Strategy, the Council of Europe committed to work with the Contracting Parties to make the services of governments, e.g., voter registration services, accessible to persons with disabilities by implementing technological solutions, including ATs (see Section 2 of Chapter IV of this study).¹⁹⁷

Next, this section briefly elaborates on the implementation of the legislation mentioned above and policy based on the experiences of this study's research participants.

3.3.1.1. Experiences of discriminatory practices in the electoral process

In this study, not having access to accessible electoral information throughout the electoral cycle was a common experience shared by research participants.¹⁹⁸ They considered this experience as discriminatory. Most research participants associated inaccessibility of the electoral information, and the voting environment in general, with ableism. Ableism, as explained by Campbell,¹⁹⁹ refers not only to ignorance or negative attitudes towards persons with disabilities, but is '*a trajectory of perfection, a deep way of thinking about bodies, wholeness, permeability and how certain clusters of people are en-abled via valued entitlements.*' According to some participants, only voters considered as having 'healthy bodies' (as elaborated by one participant) are valuable.²⁰⁰ Electoral information and campaigns are addressed to them. In the view of some participants, political parties prioritise persons with a 'healthy body' when informing voters about their policies.²⁰¹

Campbell²⁰² argues that an 'ableist imaginary' erases differences among human beings. Corporeal otherness is rendered sometimes as 'deviant' or 'abnormal'. Such 'ableist imaginary' triggers the denial of the right of voters with disabilities to reasonable adjustments in breach of the EA 2010. This was a form of discrimination experienced by one participant, who said:

*'I told them [presiding officers] to allow me to use my mobile. I just wanted to use my screen reader app. They said no and looked at me as if I were corrupt or something like that... They didn't even ask me why I needed to use my mobile.'*²⁰³

196 Council of Europe, 'Council of Europe Disability Strategy 2017-2023. Human Rights: A Reality for All' (n 588).

197 *ibid*, paras 55-60.

198 See for instance Interview 18:34-36 and Focus Group 3:147

199 Fiona Jumari Campbell, 'Precision Ableism: A Studies in Ableism Approach to Developing Histories of Disability and Abledment' (2019) 23 *Rethinking History: The Journal of Theory and Practice* 138, 146.

200 See for instance Interviews 18:14 and 20:57.

201 See for instance Interview 16:75

202 Campbell (n 198), 147.

203 Focus Group 4:73

This is a clear example of non-compliance with the duty to make a reasonable adjustment which is centred on removing discriminatory barriers to the exercise of the right to vote by persons with disabilities under the EA 2010 and the CRPD. Direct discrimination was also experienced by one research participant, who told the researcher that an electoral registration official recommend that he vote by post, and not at the polling station, to avoid any inconvenience arising from individual needs. This participant further remarked:

*'He [the electoral registration official] told me I should apply for a postal vote. I was just calling them to report a technical failure when filling in the online voter registration form.'*²⁰⁴

This participant told the researcher that as a form of 'resistance', he acted in accordance with his intention, and voted at a polling station. This decision made by the participant serves to exemplify the notion of Giddens that the individual is free (at least to some extent) to follow *rules* differently: *'the individual could have acted otherwise'*.²⁰⁵ Nevertheless, this participant faced a discriminatory practice that England is required to abolish under the EA 2010.²⁰⁶ Certainly, recommending that the participant vote by post to avoid inconveniences in voting at polling stations was directly linked to disability. This practice affects persons with disabilities because it stigmatises them. Moreover, such practice makes it less likely that structural inequalities in the voting environment will be addressed. Pursuant to relevant norms of the EA 2010,²⁰⁷ the ICCPR,²⁰⁸ the ECHR,²⁰⁹ and Articles 5(2) and 29(a)(iii) CRPD, England is required to address any discriminatory aspect of the various decisions and actions carried out by election officials concerning voting rights of persons with disabilities, such as the practice to 'encourage' them to vote by post or proxy. In that regard, many participants in this study,²¹⁰ including various election officials,²¹¹ agreed that national electoral authorities must provide training for election officials about disability issues. One of the main challenges in the training of election officials is the elimination of stigmatisation of the capabilities of voters with disabilities in terms of making a political choice and voting independently. Guaranteeing the right of persons with disabilities to make an informed political choice starts with ensuring access to accessible electoral information. This topic is further discussed below.

204 Focus Group 4:60

205 Giddens, *New Rules of Sociological Method* (n 180), 75.

206 This research participant did not file a formal complaint of discrimination. Under Sections 114 and 118 of the EA 2010, discrimination claims can be brought to a county court or a sheriff within six months after the incident, or *'such other period as the county court or sheriff thinks just and equitable.'* The UK Parliament The Equality Act 2010, c.15 (n 775).

207 Section 149 (PSED) of the EA 2010

208 Articles 25(b) and 2(1) ICCPR

209 Article 26 ECHR and Article 3 of Protocol No. 1 to the ECHR

210 See for instance Focus Groups 3:157 and 4:202; and Interviews 19:40-42 and 21:39.

211 See for instance Interviews 17:36 and 21:43.

3.3.2. Guaranteeing access to accessible electoral information

Section 20(6) of EA 2010 provides that making information available in an accessible format is a common form of reasonable adjustment to overcome a barrier experienced by persons with disabilities. In compliance with the EA 2010, some returning officers print a statement on poll cards informing voters how to request poll cards in accessible formats via a helpline, as explained above. A similar statement is also found on websites of the UK Electoral Commission, the Cabinet Office, and certain local councils. Accordingly, under the EA 2010, the duty to make reasonable adjustments is one of the numerous positive obligations imposed on election authorities regarding the provision of access to information and communication for persons with disabilities on an equal basis with others.

Furthermore, the Accessibility Regulations 2018 (Websites and Mobile Applications) came into force for public sector bodies, such as the UK Electoral Commission and local councils, in 2018.²¹² These regulations set out accessibility requirements which are meant to make a website or mobile application accessible, by making it perceivable, operable, understandable, and robust (Section 2). Moreover, under the Regulations, public sector bodies are explicitly required to meet the international Web Content Accessibility Guidelines (WCAG 2.1) AA accessibility standard.²¹³ Section 12(2) of the Accessibility Regulations 2018 provides that a person may request information in an accessible format where the information has not already been included in that format on a website or mobile application. The public sector body is required to provide a response to this request within a reasonable timeframe. In addition, Section 11(2) explicitly provides that a failure by a public sector body to provide a satisfactory response to a request to provide information in an accessible format *‘is to be treated as a failure to make a reasonable adjustment’* (for the purposes of Sections 20, 21, and 29 of the EA 2010).

Other measures to guarantee access to electoral information by persons with disabilities include administrative guidelines. In 2018, the Electoral Commission published the ‘Absent voting–UK Parliamentary elections in Great Britain: guidance for returning officers’.²¹⁴ This publication indicates that returning officers must issue information to those entitled to vote by post about how to obtain any guidance sent with the ballot paper in accessible formats (Section 4). In that year, the UK Government published an updated version of the ‘Guidance: Accessible

212 UK Parliament, The Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018, UK Statutory Instruments, 2018 No 852, available at <https://www.legislation.gov.uk/uksi/2018/852/introduction/made>, accessed on 3 March 2021.

213 World Wide Web Consortium (W3C), ‘Web Content Accessibility Guidelines (WCAG) 2.1, W3C Recommendation 05 June 2018’ (2018) <[https://www.w3.org/TR/WCAG21/#:~:text=Web Content Accessibility Guidelines \(WCAG\) 2.1 defines how to make,%2C learning%2C and neurological disabilities.>](https://www.w3.org/TR/WCAG21/#:~:text=Web Content Accessibility Guidelines (WCAG) 2.1 defines how to make,%2C learning%2C and neurological disabilities.>) accessed 3 March 2021.

214 The Electoral Commission, ‘Part D–Absent Voting. UK Parliamentary Elections in Great Britain: Guidance for (Acting) Returning Officers’.

Communication Formats’.²¹⁵ The Guidance recommends that Government communicators make effective use of accessible communication formats (or ‘alternative formats’) when providing information to UK registered voters. Furthermore, the Guidance indicates that public authorities should consult with persons with disabilities when developing a strategy for producing information in accessible formats that meets their information and communication needs (Section 8.1). In this context, the UK Electoral Commission has worked collaboratively with some DPOs, mainly Mencap and the Royal National Institute of Blind People (RNIB), to write and publish electoral information in plain language, as well as training materials for election officials. Examples of these materials include an easy-to-read guide about the right of persons with disabilities to register as voters and to vote in elections;²¹⁶ an easy-to-read guide to support persons with intellectual or mental impairments to exercise their right to vote in the 2019 general elections;²¹⁷ and a series of short videos sharing experiences of voters with disabilities when casting their ballots at polling stations.²¹⁸ These videos are intended for polling station staff to provide them with useful insights on which measures can be put in place to properly assist voters with disabilities at polling stations. Developing these collaborative materials is a specific measure adopted by the Commission to increase participation of persons with disabilities in political life, as required by Article 29(a)(iii) CRPD. This is a significant measure to provide voter education directed at persons with disabilities, as well as election officials with training materials based on lessons learned from voters’ experiences.

Lastly, it is noteworthy that in 2021 the UK Central Digital and Data Office (CDDO) updated the Technology Code of Practice.²¹⁹ The Code is a set of cross-government agreed criteria aimed at supporting the public sector to design, build, and buy technology. Local authorities are recommended to use the Code for all their technology projects and programmes, e.g., voter education campaigns. Digital services offered by local authorities should be accessible to everyone who needs to use them, including persons who wish to register to vote or wish to file a complaint as a voter. Furthermore, local authorities should offer digital assistance to those users with low digital skills or limited access to the web. In doing so, local authorities are recommended to introduce or update technology, e.g., the websites and helplines, with

215 UK Government (Department for Work & Pensions. Office for Disability Issues), ‘Guidance: Accessible Communication Formats’ (*Updated 13 December 2018*, 2018) <<https://www.gov.uk/government/publications/inclusive-communication/accessible-communication-formats>> accessed 4 March 2021.

216 Gov.UK, ‘Registering to Vote: Easy Read Guide’ (*Guidance*, 2018) <<https://www.gov.uk/government/publications/registering-to-vote-easy-read-guide>> accessed 30 July 2020.

217 Mencap & The Electoral Commission, ‘2019 Easy Read Guide to Voting in the General Election’ (2019) <[https://www.mencap.org.uk/sites/default/files/2019-11/2019.119 Guide to voting 2019_2.pdf](https://www.mencap.org.uk/sites/default/files/2019-11/2019.119%20Guide%20to%20voting%202019_2.pdf)> accessed 20 August 2020.

218 UK Electoral Commission & Mencap, ‘Accessible Voting for All’ (*Videos*, 2019) <<https://www.gov.uk/guidance/accessible-voting-for-all>> accessed 19 August 2020.

219 The Central Digital and Data Office, ‘Technology Code of Practice’ (*Guidance (updated)*, 2021) <<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>> accessed 28 June 2021.

a view to meeting the needs of users. In this context, the UK Government has made some new investments in ICT. According to TechUK,²²⁰ which is the UK's leading network for technology entrepreneurs, the UK central Government's investment in digital goods and services grew almost six-fold between 2014 and 2019. TechUK has partnered with public sector bodies, such as the National Health Service (NHS), to accelerate the transformation of public services through the application of digital technology. TechUK does not report on any specific technology partnerships between AT vendors and electoral authorities. Nevertheless, investment in digital technology and the building of 'technology partnerships' might be a promising development in the context of political participation of voters, including voters with disabilities. Furthermore, such an initiative could support the development and implementation of new electoral-assistive devices.

In summary, England has adopted appropriate legislation and policies protecting the right of persons with disabilities to access accessible electoral information. Nevertheless, evidence gathered in this study reveals that inaccessible electoral information is often central to the disadvantage experienced by many research participants, and hampered them from making an informed political choice, as elaborated below.

3.3.2.1. The experiences of participants in accessing electoral information

Not having access to accessible electoral information throughout the electoral cycle was a common experience shared by research participants.²²¹ As a result, it was more difficult for some participants to make an informed political choice.²²² Moreover, a couple of deaf participants talked about a practice adopted by national authorities consisting of not providing British Sign Language (BSL) interpretation services or subtitles in official announcements, including electoral debates.²²³ These participants did not always access electoral information (and other public information) through the same means as other voters, and in particular non-disabled voters. In practice, this meant that these deaf participants could access information only through their own means and strengths, or otherwise face exclusion from voting. Other research participants also reflected on several information and communication barriers they faced in the process of making an informed political choice, including:

- Voter education guides and political party manifestos which were not legible²²⁴ or available in plain language.²²⁵ This made it difficult for some participants to understand information.

220 TechUK, 'Developing Markets' (*Central Government*, 2020) <<https://www.techuk.org/developing-markets/central-government.html>> accessed 28 June 2021.

221 See for instance Focus Group 3:218

222 See for instance Focus Group 3:218-221

223 Focus Group 3:143

224 Interview 16:55 and Focus Group 4:17

225 Focus Group 4:18-19

- Electoral information in accessible formats published by some DPOs was not made available to the public by returning officers on local councils' websites.²²⁶
- Information on how to request documents in accessible formats was not available for all participants.²²⁷
- Electoral information in accessible formats was not always provided in an expeditious manner.²²⁸
- Communication with voters was mostly in written format. This decreased accessibility of the information for participants with visual impairments.²²⁹

Furthermore, research participants talked about problems with accessibility they have encountered when navigating the website www.gov.uk/register-to-vote of the UK Government, which contains information about voter registration. For example, screen readers cannot access several PDF files or understand certain images on pages because these images do not have suitable alternative text; some links and buttons are without colour contrast; and some text does not use simple language.²³⁰ According to the latest accessibility testing carried out by Socitym Ltd,²³¹ the websites of local councils reveal similar problems regarding compliance with accessibility requirements.

A few participants favourably evaluated some features of another website: www.gov.uk/voting-in-the-uk, where users can find information about ways of voting, eligibility to vote, and elections people can vote in. Positive aspects which were identified included titles and headings that are logically named, large font size for some headings, identification of bulleted or numbered lists, proper colour contrast, and the display of most information in text rather than in images.²³² Other research participants, however, told the researcher that the web content was not fully accessible for them.²³³ These participants elaborated on some barriers to accessibility they encountered when navigating the website. They said, for example, that text was not always effectively displayed across the range of devices they used, including desktops, mobile phones, and tablets. In addition, some deaf participants commented that some videos available on the UK Government website did not include captioning or transcripts.²³⁴

226 Focus Group 4:21

227 See for instance Interview 19:32 and Focus Group 3:145-147

228 Focus Group 4:20

229 Focus Group 3:206

230 Focus Groups 3:52-56 and 4:47-49.

231 In its 2020 report, Socitym Ltd indicates that four out of ten local councils' websites fail basic tests for accessibility. See Socitym Ltd & Silktime, 'Top Five Most Common Accessibility Issues Faced by UK Council Websites' (*Report by Socitym using Silktime's accessibility reporting data*, 2020) <<https://socitym.net/download/top-five-most-common-accessibility-issues/>> accessed 20 August 2020.

232 Focus Group 4:20 and 48-51.

233 See for instance Focus Groups 3:14; 26; 54-56, and 4:29-32.

234 Focus Group 3:321-327.

In summary, several research participants faced barriers when navigating the websites of local councils and the UK Government website, finding and accessing information, or inputting information into web-based forms, such as when registering to vote. Focus group participants highlighted the importance of adopting measures to remove all barriers to website accessibility to make electoral information and voting services offered through the web usable by them.²³⁵ Good practices in that regard include ensuring that websites can be read by screen readers, including proper alt text for images, giving links a unique and descriptive name, and adding tabs with accessibility options, such as the option to enlarge font sizes (see sub-section 4.5.4 of Chapter II). Overall, measures to make online electoral information accessible must include ensuring that official websites effectively meet the government guidelines in the Web Content Accessibility Guidelines.²³⁶

Furthermore, recent voter education materials published by the UK Electoral Commission, in collaboration with DPOs, were positively regarded by some research participants.²³⁷ For example, two participants who had access to easy-to-read materials published by Mencap and the UK Electoral Commission regarded these materials as a helpful tool to enable them to access information about voting. This improved their performance at polling stations.²³⁸ Developing and implementing voter education materials targeted at persons with disabilities is a practice that exemplifies the dualism between *structure* and *agency*. In making these publications available, certain social structures (e.g., inaccessible electoral information) have been transformed through practices of social actors. In other words, social structures are made by actors (in this case, election officials and DPOs), and may be replaced and changed through time and space. Moreover, many research participants told the researcher that making these collaborative materials available on the websites of local councils is also important.²³⁹ This practice can increase opportunities to access accessible information for those persons with disabilities who do not participate in DPOs.

A few election officials interviewed for this study also reflected on the need to remove discriminatory information barriers to voter education.²⁴⁰ Others agreed with this, and another election official reflected on how to improve access to accessible information through the use of ICTs, e.g., helplines incorporating a special teletypewriter (TTY) for voters with hearing impairments.²⁴¹ In this participant's view, such improvements would be a means of bringing

235 See for instance Focus Group 4:159-163.

236 World Wide Web Consortium (W3C), 'Web Content Accessibility Guidelines (WCAG) 2.0' (*W3C Recommendation*, 2008) <<https://www.w3.org/TR/2008/REC-WCAG20-20081211/>> accessed 13 October 2020.

237 See for instance Focus Group 4:45-49 and Interview 16:207-209.

238 See for instance Focus Group 4:47 and Interview 16:209.

239 Focus Group 4:48-49.

240 See for instance Interview 17:23

241 Interview 21:31-36

about equal access to information. Another official told the researcher that implementing electoral services using web integrating AT can be an effective means to enhance access to the voting environment for all voters.²⁴² He developed this idea by referring to a significant increase in voter registration rate after introducing an online voter registration service in 2014. He noted:

*'Previously, if you wanted to register you had to get a physical form from the post office and then post it off. But since 2014, they introduced individual electoral registration. In that system, you can register online... And there was a huge spike in voter registration, just because of how easy it was to do it online.'*²⁴³

As explained by Loeber²⁴⁴ and Gilbert and others,²⁴⁵ positive attitudes towards voting technologies create opportunities to overcome barriers to electoral information and counter low turnout. Achieving greater accessibility in the electoral process should be a reason for supporting the use of ICT.²⁴⁶ In the context of disability, as noted in Chapter II of this study, the introduction of ICT, including ATs, is a valuable step in overcoming barriers encountered by some persons with disabilities when attempting to make and express their political choices independently. This is particularly important for those persons with disabilities who do not want to be assisted when voting, which is a right provided by domestic law, as explained below.

3.3.3. Provision of voting assistance

Voting assistance is regulated under Rules 32(1)(h); 38; 39 (as amended); and 66(5) of Schedule 1 of the RPA 1983. These provisions establish that voters with disabilities have the right to enter a polling station with their companion to assist them. The presiding officer is also responsible for assisting voters with disabilities when voting (Rule 38). Experiences in being assisted when voting were framed by participants in the context of Rule 39 of Schedule 1 of the RPA 1983 in its previous version. Before being amended by the Elections Act 2022, Rule 39 listed specific requirements for a person to be considered as a 'companion' and entitled to assist a person with a disability to vote. It provided:

242 Interview 17:25-28

243 Interview 17:27

244 Leontine Loeber, 'Use of Technology in the Election Process: Who Governs?' (2020) 19 Election Law Journal 149, 151-152.

245 Juan E Gilbert and others, 'Universal Access in E-Voting for the Blind' (2010) 9 Universal Access in the Information Society 357, 358.

246 *ibid*, 358.

Rule 39*(...)**(3) For the purposes of these rules, (...) a person shall be qualified to assist a voter with a disability to vote if that person-**(a) is a person who is entitled to vote as an elector at the election; or**(b) is the father, mother, brother, sister, spouse, civil partner, son, or daughter of the voter and has attained the age of 18 years.²⁴⁷*

In practice, the requirements above for being a companion limited who can assist a voter with a disability when voting. These requirements excluded many persons employed in the role of personal assistant (PA) who were not British citizens or not a relative of the voter.²⁴⁸ Therefore, some voters with disabilities encountered statutory barriers to be assisted in voting, and particularly by ‘a person of their own choice’, as provided in Article 29(a)(iii) CRPD.²⁴⁹ The Elections Act 2022 amended Rule 39 of Schedule 1 of the RPA 1983 by changing the qualifying requirement for a person to assist a voter with a disability as their ‘companion’ at the polling station. As a result of this change, a companion is no longer required to be someone either entitled to vote in the election or a close family member of the voter who has attained the age of 18, but can be anyone aged 18 or over. Notably, the new requirements can ensure that the human dignity of voters with disabilities is respected when being assisted to vote.

Lastly, the UK Electoral Commission has provided poll workers with administrative guidelines on how to fulfil their duty to provide voting assistance to disabled voters. The Commission’s ‘Handbook for Polling Station Staff (2019)’ mentioned above, for example, indicates that, when interacting with voters with disabilities who need the assistance of a companion, poll workers must make sure to directly address and respond to the voter, and not only the companion. In addition, Appendix 1 of the Handbook indicates that some voters with disabilities can request the assistance of the presiding officer to mark the ballot paper for them. By publishing the Handbook, the Electoral Commission sought to make election officials aware of how to address the requirements of persons with disabilities at polling stations, and particularly the right of voters to live assistance when voting. The experiences of research participants in exercising this right are discussed below.

3.3.3.1. The experiences of participants in being assisted when voting

Structuration refers to the active process by which individuals, informed by (virtual) structures, act in the world to reproduce (or change) the structures which confront them.²⁵⁰ Various

247 The UK Parliament The Representation of the People Act 1983, Rule 39 of Schedule 1.

248 A PA is a person who provides support services but is not provided through a care agency. See Caballero, Priestley and Disability Rights UK (n 32).

249 See for instance Interviews 21:29; 22:26; and 17:17.

250 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 67).

research participants requested voting assistance when confronted with inaccessible voting materials.²⁵¹ This was a common practice among them to avoid being excluded from the voting environment. As one participant noted:

*'If that's the only option I have, I ask to get support... It's just about to make sure that the support I need is available, so I can use it to vote when I need it. This is better for me than not voting at all.'*²⁵²

This participant's narrative indicates that being assisted in voting cannot reduce the agency of voters with disabilities. Compliance with Article 29(a)(iii) CRPD involves the duty to respect the individual autonomy and capacity of voters with disabilities (their agency). Indeed, those participants who reported having a positive voting assistance experience linked this experience to being 'in control' of the decision to request assistance.²⁵³ Article 29(a)(iii) CRPD has a transformative potential for implementing the right to voting assistance by establishing that such assistance must be provided throughout the electoral process by a person of the voter's choice and at their request. This provision also raises an issue regarding the means of providing 'assistance in voting'. The legal interpretation of Article 29(a)(iii) CRPD presented in Chapter III of this study concluded that the term '*inter alia*' at the end of paragraph (a) reflects the intention of the drafters of Article 29 to indicate that the measures as set out under subparagraph (iii) are illustrative, not exhaustive. This means that the scope for 'the radical transformation' in voting assistance services under Article 29(a)(iii) is broad, and covers the provision of alternative forms of voting assistance, such as technological aids.

Furthermore, in this study, some users of the TVD regarded being assisted as the only (and not always wanted) option they had in practice to vote.²⁵⁴ This was related to these participants' expectation of being able to use a technological aid to vote independently, which was difficult in practice due to design faults of the TVD. Overall, many research participants, as reflexive actors, felt that using well-functioning electoral-assistive devices would equalise opportunities and outcomes for them.²⁵⁵ In these participants' view, without implementing technological solutions, the exercise of their right to vote will continue to be hindered compared to their non-disabled counterparts.²⁵⁶ In that regard, Section 9 of the recent Elections Act 2022 is an important new electoral rule. This provision sets out the duty of returning officers to provide voters with disabilities with such 'equipment' as '*it is reasonable to provide for the purposes of enabling, or making it easier for, relevant persons to vote independently in the manner*

251 See for instance Interview 18:27 and Focus Group 4:27-29.

252 Focus Group 4:20

253 Focus Group 4:36-39 and Interview 16:79.

254 Interviews 19:34 and 18:25.

255 See for instance Interview 15:44-46 and Focus Group 3:201-213.

256 See for instance Interview 15:44 and Focus Group 3:206-207.

*directed by rule 37 (including in relation to voting secretly).*²⁵⁷ The term ‘equipment’ is not defined in Section 9. According to the explanatory notes of Section 9, the term ‘equipment’ refers to ‘assistive equipment’ (Section 284). Section 9 is thus an important new rule that provides for the right to use electoral-assistive devices to ensure the freedom of expression of the will of persons with disabilities as voters, as required by Article 29(a) CRPD. Moreover, facilitating access to technological voting aids for voters with disabilities is part of the agenda of the Government-chaired Accessibility of Elections Working Group.²⁵⁸ As explained in sub-section 3.1.2.2 above, the Working Group includes representatives from organisations acting on behalf of persons with disabilities and from bodies that oversee and conduct elections. As such, England is already planning to adopt new forms of voting assistance, including technological solutions, in consultation with key stakeholders. This is a promising measure in line with Articles 4(3) and Article 29(a) CRPD.

3.3.4. Concluding remarks

This section has revealed that the equal recognition of persons with disabilities under domestic electoral law is established in the Mental Capacity Act 2005 and the Electoral Administration Act 2006 that amended the RPA 1983, as well as the Equality Act 2010. This legislation prohibits discrimination against persons with disabilities in, *inter alia*, electoral processes, as required by the ICCPR,²⁵⁹ ECHR,²⁶⁰ and CRPD.²⁶¹ There are also other measures in place aiming to guarantee the right of persons with disabilities to access accessible electoral information and communication on an equal basis with others. These measures include the Accessibility Regulations 2018 (addressing accessibility of digital communication channels) and voter education materials, as well as election officials’ training materials, published by the UK Electoral Commission in collaboration with DPOs. These are important measures to transform the structural disadvantage and exclusion engendered by discriminatory barriers, as required by Article 29(a)(iii) CRPD.

Enforcement and application of the legislation mentioned above is, however, not fully achieved in England. Most research participants in this study confirmed that they had encountered discriminatory barriers within the voting environment. These barriers include inaccessible electoral information throughout the electoral process, which hindered the right of some participants to make an informed political choice on an equal basis with others. Moreover, failures in making reasonable adjustments under Section 20(6) of the EA 2010 (addressing the right to access public information in an accessible format) was an unlawful discrimination

257 The UK Parliament Elections Act 2022 c.37 (n 2).

258 Interview 13:16

259 Articles 2(1) and 26 ICCPR read in conjunction with Article 25(b) ICCPR.

260 Article 14 and Article 3 of the Additional Protocol No. 1 to the ECHR.

261 Article 12 CRPD read in conjunction with Article 29(a)(iii) CRPD.

experienced by several participants. Other discriminatory practices which were reported were linked to practices of election officials, and involved covert forms of discrimination. This was particularly the case for one research participant who was ‘strongly recommended’ by an election registration official to vote by post, and not at the polling station, to avoid difficulties arising from the participant’s impairment. This practice disadvantaged the participant who, as a disabled person, was protected from discrimination under the EA 2010.

This section has also explained that personal support is a measure adopted by England to enable voters with disabilities (who need it) to exercise their right to vote under the RPA 1983. In that regard, the recent Elections Act 2022 is an important new piece of legislation which changes former requirements regarding who can assist a person with a disability to vote. As noted, the Elections Act 2022 has the potential to achieve greater respect for the agency of persons with disabilities as voters when exercising their right to voting assistance. The Elections Act 2022 also provides for the right of persons with disabilities to use assistive equipment to be enabled to vote, including electoral-assistive devices. The effective implementation of the new electoral rules to assist persons with disabilities when voting through, *inter alia*, technological solutions can contribute significantly to the elimination of discrimination in the context of voting.

4. Conclusion

The UK ratified the CRPD on 8 June 2009 and the Optional Protocol on 7 August 2009. As such, England is required to implement the disability rights and legal obligations provided for in the Convention. This chapter has indicated that the incorporation of the CRPD, and other international human rights treaties, into the legal order of the UK is based on domestic legislation. England has not incorporated the CRPD into domestic law. Compliance with the CRPD is instead to be achieved through ensuring consistency between domestic law and policy and the CRPD. As noted, in practice, because the CRPD is an unincorporated human rights treaty, voters with disabilities cannot rely on Article 29(a) CRPD directly, or a domestic law incorporating the CRPD, to assert their right to vote. Instead, other domestic law determines the right of voters with disabilities to vote.

This chapter has noted that the equal recognition of persons with disabilities under domestic electoral law is established in the Mental Capacity Act 2005 (Sections 1, 2, and 29) and the Electoral Administration Act in 2006 (Section 73), that amended the Representation of the People Act (RPA) 1983 (Sections 1 and 2); as well as the Equality Act (EA) 2010 (Sections 13-15; 19-21; and 26-27). This legislation prohibits discrimination against persons with

disabilities in, *inter alia*, voting, in compliance with the ICCPR,²⁶² ECHR,²⁶³ and Articles 12 and 29(a) CRPD. Under the RPA 1983, electoral registration is a right applicable to all qualifying persons with disabilities and there is no disability-specific requirement applicable to them. Voters with disabilities are, therefore, subject to the same legal restrictions on the right to vote as all other voters.

There is also legislation providing for positive measures on the part of England to ensure that persons with disabilities can enjoy their right to vote in practice. Such measures include providing voters with disabilities with voting assistance, including assistive equipment, under the amended RPA 1983, making reasonable adjustments (EA 2010), and implementing general accessibility requirements at polling stations, in compliance with the RPA 1983 and the Building Regulations 2010. These are fundamental positive measures in line with the general principles of the CRPD. Evidence from the interviews carried out for this study indicates, however, that many research participants continue to face barriers to the enjoyment of their right to vote. These barriers are primarily related to inaccessible voting materials, including voter education guides and political party manifestos. Other discriminatory barriers arise from certain practices adopted by election officials, which represent covert forms of discrimination. In addition, the denial of reasonable adjustment, and the lack of knowledge of some officials about their duty to make adjustments under the EA 2010, were forms of discrimination experienced by some participants. This is a breach of the EA 2010 and the CRPD.

This chapter has also described that ballot secrecy at polling stations is protected under the RPA 1983, in compliance with Article 25(b) ICCPR, Article 3 of the Additional Protocol No. 1 to the ECHR, and Article 29(a)(ii) CRPD. Furthermore, measures for extending secrecy provisions to postal and proxy voting were included in the Elections Act 2022. The entitlement of persons with disabilities to equal protection of the right to a secret ballot, without any discrimination, imposes positive duties on England under the CRPD. In this regard, this chapter has illustrated that, to remove certain barriers to exercising voting rights on an equal basis with others, persons with visual impairments have access to three electoral-assistive devices: an enlarged ballot paper copy (poster), a tactile voting device (TVD), and a hand-held large ballot paper copy (recently implemented). According to some research participants who had used the poster and the TVD to vote, these devices did not effectively enable them to cast a secret and independent ballot. This was linked to technical failures in the functioning of these devices. These failures compelled some participants to ask others to help them vote, which involved revealing their political choice to others. This means that technical failures of the existing electoral-assistive devices diminished real opportunities for some participants to vote on an equal basis with others, which amounts to a breach of Article 29(a) CRPD.

262 Articles 2(1) and 26 ICCPR read in conjunction with Article 25(b) ICCPR.

263 Article 14 ECHR read in conjunction with Article 3 of the Additional Protocol No. 1 to the ECHR.

Furthermore, not all research participants who needed help had access to, or knew about, their right to access technological aids to vote secretly and to be assisted when voting. These participants, and probably also other persons with disabilities, require further positive (active) measures to equalise their opportunities and outcomes throughout the electoral cycle due to their individual needs or impairments. As noted, the UK Electoral Commission has recently adopted measures to implement the right of persons with disabilities to access publicly available electoral information in easy-to-read language. This kind of electoral information is an important additional electoral-assistive device, which has been made available by the Commission in collaboration with DPOs to transform the structural disadvantage and exclusion of voters with disabilities engendered by information and communication barriers, as required by Article 29(a) CRPD. Similar further endeavours are necessary to prevent and eliminate discrimination based on disability, and to ensure substantive equality in the voting environment. These endeavours should include, but are not limited to, the development and implementation of new electoral-assistive devices. In that regard, the new legal framework (the Elections Act 2022) providing for ‘equipment’ allows for all technological solutions, including ATs. The Accessibility of Elections Working Group has an important role to play in this respect to ensure that the accessibility needs of voters with disabilities can be taken into account by national electoral authorities. These are promising measures to ensure the effective and full participation of persons with disabilities in elections.

This study proceeds with an analysis of the different legislative and policy measures adopted by Spain to comply with Article 29(a) CRPD in the following chapter. As indicated in the introductory chapter (sub-section 5.3 on research limitations), this study does not apply a comparative analysis approach. As such, the researcher does not aim to make an analysis of the similarities, differences, or patterns across England and Spain.



Chapter VII

Compliance with Article 29(a) CRPD by Spain

1. Introduction

This chapter assesses the compliance by Spain with Article 29(a) CRPD. The aim of this chapter is two-fold. Firstly, to identify whether relevant Spanish laws and policies are in compliance with Article 29(a) and related CRPD provisions, and to identify any lacunae.¹ Secondly, to assess the degree to which electoral-assistive devices, as provided for by domestic law and policy, are actually available to, and used by, voters with disabilities based on research participants' experiences. To that end, this chapter employs the research methodology explained in Chapter V of this study. Of the (n=42) total number of research participants of this study, 22 were from Spain. Of these, 15 were persons with disabilities and seven were election officials. All persons with disabilities interviewed for this study had voted in person at polling stations. No research participant had experiences in voting by post.

This chapter is broken down into four principal sections. Following this introductory section, Section 2 describes the Spanish electoral process. This section provides an overview of the significance and historical value of voting rights for the transition to democracy in Spain. It also briefly presents the current regulation of the right to vote in the context of disability and the Spanish electoral administration.

Section 3 of this chapter analyses relevant domestic legal and policy measures to implement Article 29(a) CRPD and related provisions. The focus is on the obligations identified in Chapter III of this study. Section 3 briefly elaborates on the incorporation and legal status of the CRPD in the Spanish legal order. This is an essential backdrop for the most substantive part of Section 3, which focuses on discussing the extent to which Spain complies with Article 29(a) CRPD through law and policy, and in practice. To that end, Section 3 is further divided into sub-sections. In the first part of Section 3 (sub-section 3.1), compliance with Article 29(a)(i) CRPD is assessed. This provision sets out the obligation to provide voters with disabilities with, *inter alia*, accessible voting materials. In the following sub-section (3.2), compliance with Article 29(a)(ii) is examined. Paragraph (ii) of Article 29(a) CRPD establishes the duty to ensure the right of voters with disabilities to vote secretly. Section 3 in sub-section 3.3. concludes with an examination of the compliance with Article 29(a)(iii) CRPD. This provision sets forth the obligation to guarantee the free expression of the will of persons with disabilities as voters.

Section 4 includes an overall conclusion.

¹ Unless otherwise indicated, translations of relevant documents from Spanish into English were done by the researcher.

2. The Spanish electoral process

Spain is a democratic sovereign country. In the late 1970s, Spain initiated a democratic transformation after 36 years of authoritarian rule under the dictatorship of Francisco Franco (the Franco regime).² The transition to democracy is a crucial reference point for Spanish society. After the end of the Franco regime, it took less than two years for Spain to hold its first democratic elections, in June of 1977, and it took three years to approve a new democratic Constitution in 1978. Thomson³ and Radcliff⁴ claim that the Spanish transition to democracy was not a simple process of ‘liberalisation’ by an authoritarian State, but the result of multiple factors. Some of those factors were the civic and political activities promoted by a new generation of public civic associations in the late 1960s, such as those linked to families and students, as well as the reception of democratic ideas at the provincial and local levels.⁵ These associations later became part of the ‘citizen movement’ in the mid-1970s. They engaged in civic activities to promote dialogue about self-governance, which raised issues of democratic procedure, such as voting.⁶ Those activities enabled people to explore new mechanisms for collective participation in public affairs and to find new meanings in their relationship with the State. Certainly, the formal transition to democracy transcends a monocausal explanation. The transition is also linked to popular agency, or ‘*transition from below*’ as Radcliff describes it.⁷ Persons with disabilities reconstituted themselves as democratic citizens, just like everyone else in Spain, to make the transition to democracy possible. In other words, popular participation was undoubtedly crucial for the democratic process.

As a continental system (also known as a civil law system), Spain has a codified legal system. This means that voting rights in Spain are codified, and Spanish electoral laws are all set forth in written texts. There is no formal system of precedent *per se*, i.e., Spanish courts are not legally obliged to use and apply previous judicial decisions. Nevertheless, as in other civil law countries,⁸ Spanish courts follow and consider the interpretations of the law made by other judges when ruling on contentious cases.⁹ This means that, in practice, the law also

2 See Ismael Saz Campos, ‘Fascism, Fascistization and Developmentalism in Franco’s Dictatorship’ (2004) 29 *Social History* 342.

3 Guy Thomson, *The Birth of Modern Politics in Spain: Democracy, Association and Revolution 1854-75* (Palgrave Macmillan 2010).

4 Pamela Beth Radcliff, *Making Democratic Citizens in Spain: Civil Society and the Popular Origins of the Transition, 1960-78* (Palgrave Macmillan 2011).

5 Thomson (n 3), 295-300.

6 *ibid*, 322.

7 Radcliff (n 4), 327-328.

8 See Mary Ann Glendon, Michael Wallace Gordon and Paolo Carozza, *Comparative Legal Traditions: In a Nutshell* (4th edn, West Academic Publishing 2015), 208.

9 Francisco Fernández Segado, *El Sistema Constitucional Español* (Editorial Dykinson 1992), 12-19.

develops through judicial discretion. Moreover, judges use legal scholarship as a guidance to interpret the law.¹⁰

Article 23 of the Spanish Constitution of 1978 establishes the right of citizens to participate in public affairs. This article delineates the path to further development and brought closer the promise of democracy, participation in civil society, and an accountable government. The first Constitutional Electoral Law was adopted in 1985: ‘Organic Law of General Electoral Regime’ (abbreviated as ‘LOREG’ in Spanish).¹¹ The relevant constitutional principles were accompanied by political action and the mobilisation of civil society and led Spain to transform its legal system into a democratic system that aims to protect human rights. Such a new ‘culture of law’ has encouraged subjects of law to invoke international human rights treaties to which Spain is a State Party not only in court cases, but also in advocacy campaigns.

An example of the achievements of these advocacy campaigns is the most recent electoral legal reform: the Organic Law 2/2018 (*Organic Law of the General Electoral Regime to Guarantee the Right to Vote of All Persons with Disabilities*) that amended Article 3 LOREG.¹² This recent law guarantees equal voting rights to all persons with disabilities and restores the right to vote of persons with disabilities who were under guardianship, and, consequently, deprived of the right to vote. Briefly, the Organic Law 2/2018 was approved unanimously in Parliament and marked the legal recognition of long-lasting demands by disability advocates.¹³ These advocates raised awareness about Article 12, read in conjunction with Article 29(a) CRPD, to change an electoral legal tradition that denied the recognition of legal capacity and equal value of persons with disabilities as voters. The Organic Law 2/2018 is further elaborated in Section 3 below in this chapter. For the present purposes, it is important to note that under Article 3 LOREG as amended, there are only three legal requirements for persons with disabilities to vote, as it is the case for their non-disabled counterparts. A person must: be 18 years old or older; be registered in the Electoral Census; and not be covered by the legal exclusion of Article 3 LOREG (criminal disenfranchisement imposed as part of the sentence). Therefore, formally, there is no additional requirement which must be met for any Spanish citizen to be able to

10 Caslav Pejovic, ‘Civil Law and Common Law: Two Different Paths Leading to the Same Goal’ (2001) 42 *Victorian University Wellington Law Review* 7, 9.

11 LOREG has the status of constitutional law; thus, any amendment to LOREG must follow the formal procedures reserved for amending constitutional laws. Míghel Angel Presno Linera, ‘El Sistema Electoral Español Desde Sus Orígenes Hasta La Constitución de 1978’ (2018) 19 *Revista Electrónica de Historia Constitucional* 89, 105-120.

12 Under Article 81.1 of the Spanish Constitution ‘organic laws’ are those related to the development of fundamental rights and public liberties, those that approve Statutes of Autonomy and the general electoral regime, and others provided for in the Constitution.

13 Plena Inclusión, ‘El Pleno Del Congreso Aprueba Hoy La Reforma de La Ley Electoral Para Permitir El Voto de Personas Con Discapacidad Intelectual’ (*Infórmate. Actualidad Noticias*, 2018) <<https://www.plenainclusion.org/informate/actualidad/noticias/2018/el-pleno-del-congreso-aprueba-hoy-la-reforma-de-la-ley-electoral>> accessed 6 June 2020.

vote. Furthermore, three years after the approval of Organic Law 2/2018, the most recent legal reform in the context of disability is Law 8/2021, which abolished all forms of guardianship.

LOREG as amended regulates four types of elections: general elections held for the Spanish Parliament (*‘Cortes Generales’* in Spanish);¹⁴ elections to the legislatures of the autonomous communities; local elections; and elections to the European Parliament. Additionally, voters have also been called on three occasions to vote in referenda on particular proposals at the national level.¹⁵ Article 2 LOREG declares that citizens are automatically included in the Electoral Census at the age of 18. Before an election day, voters receive a letter that confirms their voter registration and indicates their assigned polling station (Article 38 LOREG). Pursuant to Article 4 LOREG, the right to vote is exercised personally. Moreover, Article 72 LOREG provides that voters who expect to be absent from the place where they are entitled to vote, and those who cannot vote in person, may vote by post. Voters do not receive an ID electoral card to allow them to vote; instead, their identity is confirmed at polling stations by showing a national identity card, passport, or driver’s licence (Article 85 LOREG). On election day, polling stations are run by poll workers who are citizens selected by lottery (Articles 26 and 135 LOREG). Pursuant to Articles 84-94 LOREG, the voting procedure at a polling station, for most elections, consists of voters picking up the ballot paper which reflects their political choice, and placing it in an envelope. In elections to the Senate, voters mark the square corresponding to the candidate of their choice on the respective ballot paper and put it in the ballot box.

Lastly, elections are overseen by the Spanish Electoral Administration: the Central Electoral Commission and the Electoral Census Office.¹⁶ The practical organisation of the electoral process is conducted by the Ministry of Internal Affairs (Article 10 of Royal Decree 952/2018).¹⁷ The Ministry performs certain functions, including management of electoral processes and implementation of the Central Electoral Commission’s regulations, coordination with local competent bodies to realise certain tasks, such as printing ballot papers, financial management of public expenses incurred in elections, and public dissemination of electoral results. These are the most relevant national electoral authorities involved in the enforcement of the obligations set out in Article 29(a) CRPD, as explained in more depth in this chapter below.

14 The Parliament consists of two chambers: The Congress of Deputies and the Senate.

15 Spanish Constitution (1978); Spanish NATO membership (1986); and Spanish European Constitution (2005).

16 Junta Electoral Central, Administración Electoral 2020.

17 Ministerio del Interior, Dirección General de Política Interior: Funciones 2020.

3. Implementation of Article 29(a) CRPD

The CRPD and its Optional Protocol became part of the Spanish legal order on 3 May 2008.¹⁸ The incorporation of the CRPD, and other international human rights treaties, into the Spanish legal order is based on Kelsen's monistic theory of international law.¹⁹ Briefly stated, underlying Kelsen's theory is the concept of law as a system of norms, where every legal norm belongs to a group of legal norms which are interrelated in certain ways.²⁰ Kelsen's theory, derived from this concept of law, reduces the legal system to a formal unity. As such, the legal system incorporates all norms (national and international law) into a pyramidal structure, culminating in 'the fundamental norm'.²¹

As explained by Campoy Cervera,²² human rights treaties prevail over domestic law in Spain. The Constitutional Court has the ultimate control over the review process which assesses the constitutionality of domestic law and policy (Articles 159-165 of the Spanish Constitution).²³ The Court considers both the text of the Spanish Constitution and international treaties that comprise the 'block of constitutionality'²⁴ when doing this. The 'block of constitutionality' reflects the fact that the Spanish Constitution, EU law, and the CRPD are theoretically at the same level in the hierarchy of norms, namely at the constitutional level (see Figure 7).²⁵

The rules relating to constitutionally recognised fundamental rights and liberties, e.g., the right to vote, must be interpreted in conformity with the international treaties which are legally binding on the State under Article 10(2) of the Constitution. This means that the CRPD norms are applicable in Spain and are a guide for interpreting all human rights norms recognised in the internal legal order. Accordingly, interpreters and enforcers of the law are required to interpret and apply the voting rights enshrined in the Spanish legal order in accordance with Article 29 CRPD. Moreover, domestic electoral law must be consistent with the CRPD. In summary, given that the CRPD is incorporated directly into the Spanish legal order and is part

18 Cortes Generales, Instrumento de Ratificación de la CRPD, BOE núm.96 de 21 de abril de 2008.

19 Hans Kelsen, *Introduction to the Problems of Legal Theory* (1st edn, Clarendon Press 1992); Mario G Losano, 'Kelsen's Theory on International Law during His Exile in Geneva' (2015) 28 *Ratio Juris*. *International Journal of Jurisprudence and Philosophy of Law* 470.

20 Kelsen (n 19), 55.

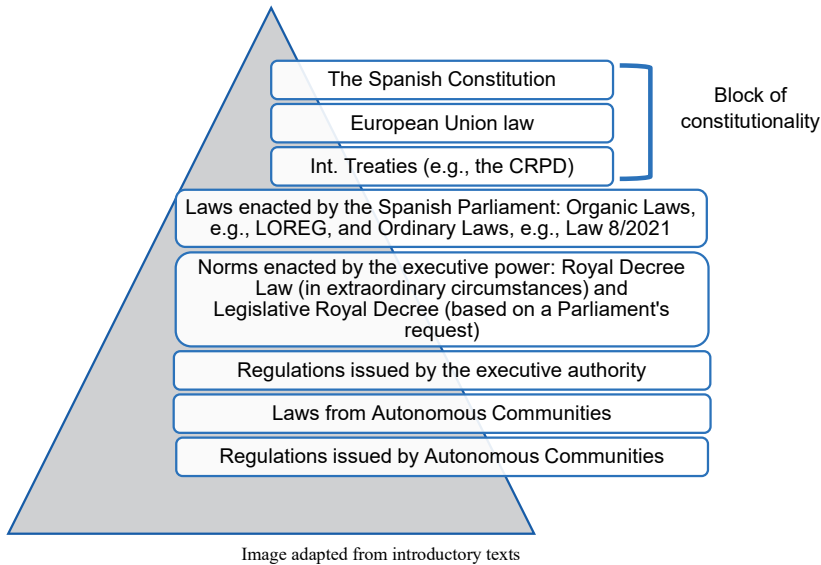
21 The fundamental norm is a general or 'supreme' norm, which constitutes the logical origin of the system. See Hans Kelsen, *Pure Theory of Law* (Translatio, The Lawbook Exchange Ltd 2002), 110-111.

22 Ignacio Campoy Cervera, 'Spain' in Lisa Waddington and Anna Lawson (eds), *The UN Convention on the Rights of Persons with Disabilities in Practice: A Comparative Analysis of the Role of Courts* (Oxford: Oxford University Press 2018), 386.

23 Enrique Guillén López, 'Judicial Review in Spain: The Constitutional Court' (2014) 41 *Loyola of Los Angeles Law Review* 529, 540.

24 The term 'block of constitutionality' is a legal term found in French doctrine. *ibid*, 543.

25 Juan Carlos Duque Villanueva and others, 'Doctrina Del Tribunal Constitucional Durante El Primer Cuatrimestre de 2018' (2018) 113 *Revista Española de Derecho Constitucional* 229.

Figure 7 The hierarchy of norms in the Spanish legal system.

of the ‘block of constitutionality’, the norms contained in the CRPD must be implemented in accordance with the treaty as a whole.

The legislature has approved several legal reforms to achieve conformity with the CRPD: Law 26/2011 (*‘Normative Adaptation to the CRPD’*)²⁶ that amends several pieces of Spanish legislation to adapt them to the CRPD. It declares that there is a societal responsibility to provide conditions necessary for achieving a more inclusive society, which aims at promoting participation of persons with disabilities in society; Legislative Royal Decree 1/2013 (*‘Revised General Law on rights of persons with disabilities and their social inclusion’*)²⁷ that incorporates the conceptual understanding of disability endorsed in the CRPD and aims at promoting, *inter alia*, universal accessibility and the elimination of all forms of discrimination; and the Organic Law 2/2018 and the Law 8/2021.²⁸ This legislation is interpreted in more depth below in this chapter. Here, it is noteworthy that legal reforms have been put in place in

26 Cortes Generales, Ley 26/2011 de 1 de agosto de adaptación normativa a la Convención sobre los derechos de las personas con discapacidad. BOE núm. 184, de 2 de agosto de 2011.

27 Ministerio de Sanidad Servicios Sociales e Igualdad, Real Decreto Legislativo 1/2013 del 29 de noviembre de 2013. Por el cual se aprueba el Texto Refundido de la Ley General de Derechos de las Personas con Discapacidad y de su Inclusión Social. BOE A-2013-12632.

28 Cortes Generales, Ley 8/2021, de 2 de junio, por la que se reforma la legislación civil y procesal para el apoyo a las personas con discapacidad en el ejercicio de su capacidad jurídica. BOE núm. 132, de 3 de junio de 2021.

Spain to expressly achieve conformity with the CRPD. Furthermore, the CRPD has influenced national judgments and prompted courts to render judgments which are compatible with the CRPD.²⁹ Notably, the integration of the CRPD into national law following ratification by Spain facilitates the application of the CRPD by both the legislature and the judiciary.

The analysis of compliance by Spain with the obligations set out in Article 29(a) CRPD through relevant legal and policy instruments, and ‘in practice’ based on research participants’ experiences, is presented in the following three sub-sections. In sub-section 3.1, compliance with Article 29(a)(i) CRPD is assessed. This provision sets out the obligation to provide voters with disabilities with, among others, accessible voting materials. Sub-section 3.2 presents the analysis of compliance with Article 29(a)(ii) CRPD, which establishes the duty to ensure the right of voters with disabilities to vote secretly. Lastly, sub-section 3.3 concludes with an examination of Spain’s compliance with Article 29(a)(iii) CRPD. This provision sets forth the obligation to guarantee the free expression of the will of persons with disabilities as voters.

3.1. Measures to provide accessible voting materials

The analysis in this sub-section concerns the norms established in Article 29(a)(i) read in conjunction with the Preamble(v), and Articles 3(6), 4(1)(f)(g), 9, and 32(1)(d) CRPD. Pursuant to these norms, Spain is required to make accessible voting materials available in a gradual and unconditional manner, as well as through international cooperation. In this sub-section, special attention is also given to Articles 29(a)(i), 4(1)(g)(h), and 9(2) CRPD, which provide that one of the ‘specific measures’ and ‘other (active) measures’ that Spain can adopt to comply with the obligation to provide accessible voting materials is to make ‘technological aids’ available, including electoral-assistive devices, to be used by persons with disabilities when voting. Furthermore, the analysis below applies certain CRPD indicators developed by the Bridging the Gap Project:³⁰ (i) adoption of a national plan by the election management body to ensure accessibility of, *inter alia*, voting materials, and (ii) consultation processes to ensure active involvement of persons with disabilities, including through their organisations, concerning the design, implementation, and monitoring of laws, regulations, policies and programmes, related to the right to vote.

29 Campoy Cervera (n 22), 400-414.

30 The Bridging Gap Project, ‘EU-OHCHR Bridging the Gap I: Human Rights Indicators for the Convention on the Rights of Persons with Disabilities in Support of a Disability Inclusive 2030 Agenda for Sustainable Development’ (*European Union*, 2021) <<https://bridgingthegap-project.eu/crpd-indicators/#TheProcess>> accessed 4 April 2021.

3.1.1. Voting materials

Voting materials correspond to ballot papers, voting envelopes, booths, ballot boxes, and pens (for Senate elections) under Articles 70, 81, and 172 LOREG. In practice, voters also have access to other materials, including information sheets and letters, Electoral Census lists, voter education guidelines, election officials' guidelines, and political party manifestos. These voting materials apply to both voting procedures by post and voting in person at polling stations. Pursuant to Article 70(1) LOREG, Electoral Commissions at the national and local levels are required to decide on the official form of ballot papers for their respective constituency, in accordance with the criteria established in the LOREG. This provision also provides that the Ministry of Internal Affairs is required to ensure the availability of ballot papers and voting envelopes. Political parties, however, are also allowed to prepare and distribute ballot papers and voting envelopes by post before an election day [Article 70(2) LOREG]. The ballot papers and voting envelopes supplied by political parties are verified by the Electoral Commission, based on the standards set out by the LOREG. There is no additional norm in the LOREG addressing accessibility criteria of any voting material. The term 'accessible' is referred to in Article 91(2) LOREG in the context of physical accessibility of polling stations.³¹ However, Article 91(2) does not define the term 'accessible'. In that regard, relevant legal criteria for interpreting the term 'accessible' are provided by further legislation, as explained below.

3.1.2. The legal obligation to provide accessibility in the voting environment

Relevant legislation on accessibility of the voting environment includes Law 26/2011 and Royal Decree 422/2011. Law 26/2011 amends several domestic laws and introduces norms into the Spanish legal order concerning non-discrimination and universal accessibility for persons with disabilities.³² Royal Decree 422/2011 aims to determine the basic conditions of accessibility that must be met by environments, products, and services, and as required for the participation of persons with disabilities in political life (Article 1).³³ The Preamble recalls the State's obligation under Article 29(a)(i) CRPD to ensure that persons with disabilities can participate in political life through an accessible voting environment. Article 3 of Royal Decree 422/2011 establishes the accessibility conditions which must be met by polling stations. Positive (active) measures for enforcing the provisions are, however, not set out in the law.

31 Cortes Generales, Ley Orgánica 5/1985 de 19 de Junio del Régimen Electoral General (BOE núm. 147 de 20 de junio de 1985 modificada en 2018).

32 Cortes Generales Ley 26/2011 de 1 de agosto de adaptación normativa a la Convención sobre los derechos de las personas con discapacidad. BOE núm. 184, de 2 de agosto de 2011.

33 Ministerio de la Presidencia, Real Decreto 422/2011 Reglamento sobre la participación de las personas con discapacidad en la vida política y procesos electorales. BOE núm. 76, de 30 de marzo de 2011.

Royal Decree 422/2011 (2nd additional provision) also provides that, after each election, the Ministry of Internal Affairs is required to submit a report to the National Council on Disability and the Central Electoral Commission on compliance with Article 3 of Royal Decree 422/2011. This evaluation report must refer to quantitative and qualitative indicators. At the time of writing, there is only one evaluation report carried out by the Ministry of Internal Affairs available on the Ministry's website.³⁴ This report concerns elections held in 2011. There is no information available on the evaluation process of the latest 2019 General Elections. The report for the 2011 elections indicates the actions carried out by the Ministry to implement Royal Decree 422/2011. The report describes the main accessibility barriers encountered by voters in public places used as polling stations, mainly school buildings. It also reports on multiple complaints made by voters relating to inaccessible voting materials, e.g., the ballot font size is too small.³⁵ These complaints are only mentioned in the report, without indicating what follow-up procedures or actions were adopted by electoral authorities to address accessibility barriers of voting materials.

Another relevant domestic law in the context of accessibility is Legislative Royal Decree 1/2013. Article 2 of Royal Decree 1/2013 provides:

Article 2. Definitions

[...]

(g) Positive action measures are actions preventing or compensating for disadvantages arising from disability as well as furthering equality for persons with disabilities. These actions aim to ensure full participation of persons with disabilities in political...life [...].

(k) Universal accessibility is the condition met by providing environments, processes, goods, products and services as well as items, instruments, tools and devices that accommodate all people [...]

(l) Universal design, or design for all persons, is the activity by which environments, processes, goods, products, services, objects, instruments, programmes, devices, or tools are conceived or projected at an early stage to be used by all people, as far as possible, without the need for adaptation or specialised design.

34 Ministerio del Interior, 'Informe de Evaluación Sobre Accesibilidad y Procesos Electorales Del 24 de Abril de 2012' (*Dirección General de Política Interior. Subdirección General de Política Interior y Procesos Electorales*, 2012) <http://www.infoelectoral.mir.es/documents/10184/18279/Inf_Accesibilidad_Procesos_Electorales.pdf/1f909eca-263f-412c-9cc1-890b70756279> accessed 21 February 2021.

35 *ibid.*, 52-73.

*(m) Reasonable adjustments are those necessary and appropriate modifications and adaptations required by an individual with a disability in a particular case, to ensure them the capacity to enjoy or exercise their rights on an equal basis with others [...].*³⁶

Article 2 recognises inherent differences among human beings and responds to such differences through its endorsement of positive action measures that the State is obliged to adopt. As such, Royal Decree 1/2013 seeks to enhance participation, and to accommodate the difference of, *inter alia*, Spanish voters. It explicitly provides for adopting measures, such as ‘universal accessibility’, ‘universal design’, and ‘reasonable accommodations’, in tandem with other positive measures to tackle individual and structural disadvantage. The scope of application of Royal Decree 1/2013 is established in Article 5. This provision states that positive measures to ensure equality of opportunities, non-discrimination, and universal accessibility apply to, among others, all products, environments, programmes, and services made available to the public, which clearly covers voting. Consequently, pursuant to Articles 2 and 5 of the Royal Decree 1/2013, electoral authorities are required to ensure that voters with disabilities have access to, among others, voting materials that meet their individual needs and preferences, while protecting their personal autonomy. Although voters with disabilities might sometimes only require the same materials to vote as everyone else, this is often not the case. Royal Decree 1/2013 recognises this fact, and aims to redress inequalities and contains procedural mechanisms for implementing positive measures. These measures are necessary to prevent and eliminate barriers and factual inequalities in the voting environment, as required by Articles 5, 9, and 29(a) CRPD. Moreover, Article 2(c-f) of Royal Decree 1/2013 addresses all forms of prohibited discrimination in line with the ICCPR,³⁷ ECHR,³⁸ and CRPD,³⁹ and mainly direct and indirect discrimination, as well as a denial of reasonable accommodation. Article 2(c-f) recognises that in cases where persons with disabilities do not have access to universally designed products and services, they can face indirect discrimination. Furthermore, the denial of reasonable accommodation in, *inter alia*, the context of voting is a form of discrimination prohibited under Article 2 of Royal Decree 1/2013. In short, under Royal Decree 1/2013, any discriminatory legal provision or practice hindering the right to vote of persons with disabilities is prohibited in compliance with Article 29(a) CRPD.

Furthermore, Article 22 of Royal Decree 1/2013 endorses accessibility as a constituent element of the right of persons with disabilities to live independently and be included in the

36 Ministerio de Sanidad Servicios Sociales e Igualdad Real Decreto Legislativo 1/2013 del 29 de noviembre de 2013. Por el cual se aprueba el Texto Refundido de la Ley General de Derechos de las Personas con Discapacidad y de su Inclusión Social. BOE A-2013-12632, Article 2(k) [Official translation].

37 Articles 2(1) and 26 ICCPR read in conjunction with Article 25(b) ICCPR.

38 Article 14 ECHR read in conjunction with Article 3 of the Additional Protocol No. 1 to the ECHR.

39 Article 12 CRPD read in conjunction with Article 29(a) CRPD.

community. It explicitly declares that: *'Public authorities must take appropriate measures to provide accessibility to persons with disabilities from both urban and rural areas in all public environments, [...]*'.⁴⁰ Royal Decree 1/2013 (3rd additional provision) also contains a mandate addressed to the government for the implementation of accessibility in the voting environment. As it is not realistic to expect the State to immediately provide accessibility of all public items, environments, and services, Article 23 provides for the gradual implementation of accessibility. To comply with this obligation, Royal Decree 1/2013 (3rd additional provision) establishes specific time-bound benchmarks:⁴¹ all new and existing voting materials had to be accessible to voters with disabilities by 2008. By 2017, all rules, administrative measures, and practices within the electoral system had to be in conformity with Article 29(a) CRPD.

Royal Decree 422/2011 and Legislative Royal Decree 1/2013 entitle voters with disabilities to use accessible voting materials. Building on this legislation, policy actions aiming to improve accessibility of the voting environment include a government pilot project related to providing technological aids to enable voters with disabilities to vote in the 2011 elections, the National Disability Survey on Accessibility of the 2019 elections,⁴² and the Spanish Strategy on Disability 2022-2030.⁴³

Firstly, one interesting government pilot project related to providing innovative technological aids to enable voters with disabilities to vote is documented in the publication *'General Elections 2011: Modernisation of the Electoral Management'*, published by the Ministry of Internal Affairs.⁴⁴ This publication indicates that, in the General Elections of 2011, the Ministry provided voters with visual impairments at one polling station in Madrid with accessible ballot papers to enable them to vote secretly through the use of experimental computer software. The software used a voice module to allow voters with visual impairments to select and print accessible ballots on their own, regardless of whether or not they knew Braille. A description of the computer software is available in the evaluation report on accessibility and electoral processes drafted by the Ministry regarding the national elections of 2011 mentioned above.⁴⁵ The report states that the software, called 'accessible ballot papers', uses a voice module

40 *ibid*, Article 22.

41 These benchmarks were initially established by Law 51/2003, which was repealed by Royal Decree 1/2013.

42 Plena Inclusión & Ministerio de Sanidad Consumo y Bienestar, 'Encuesta Sobre La Accesibilidad En Las Elecciones.' (*#MiVotoCuenta*, 2019) <<https://www.plenainclusion.org/informate/publicaciones/encuesta-sobre-la-accesibilidad-cognitiva-en-las-elecciones-mi-voto-cuenta>> accessed 24 June 2020.

43 Ministerio de Derechos Sociales y Agenda 2030, 'Estrategia Española Sobre Discapacidad 2022-2030' (*Información sobre discapacidad*, 2022) <<https://www.mdsocialesa2030.gob.es/derechos-sociales/discapacidad/informacion/index.htm>> accessed 12 July 2022.

44 Ministerio del Interior, 'Elecciones Generales 2011: Modernización de La Gestión Electoral' (*Dirección General de Política Interior*, 2011) <<http://www.infoelectoral.mir.es/documents/10184/18279/ModernizacionGestionElectoral2011.pdf/6515f162-e51e-47c1-8389-74d86812f686>> accessed 23 June 2020.

45 Ministerio del Interior (n 34).

that reads aloud the contents of PDF files corresponding to ballot papers. There is no further elaboration in the report on the results reached with the experimental software or further actions pursued by the Government, based on the results of the pilot project. Participants in this study did not have any experience with the software.

Secondly, the Ministry of Health, Consumer Affairs, and Social Welfare partially funded Plena Inclusión Spain⁴⁶ to carry out a national disability survey on accessibility in the 2019 elections. The survey collected data on accessibility barriers encountered by more than 1,000 persons with disabilities when voting.⁴⁷ It is part of the wide set of actions carried out by #MyVoteCounts, which is an advocacy campaign led by Plena Inclusión.⁴⁸ Based on the survey results, Plena Inclusión made recommendations to national electoral authorities with a view to improving, among others, voting materials from the perspective of voters with disabilities. At the time of writing, electoral authorities have not published official information about their ongoing plans regarding accessibility for voters with disabilities based on the results of the 2019 survey.

Thirdly, the Spanish Strategy on Disability 2022-2030 (the Strategy) was modelled on the *'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030'* (see sub-section 3.2 of Chapter IV). It aims to ensure the human rights of all persons with disabilities, including the right to participate in democratic processes. Moreover, the Strategy recognises the structural and systemic nature of discrimination against persons with disabilities due to different aspects of people's identity: impairment, gender, and place of residency (urban-rural). For the present purposes, active citizenship, participation in political and public life, and accessibility are established in the Strategy as strategic objectives to overcome barriers hindering the rights of persons with disabilities. In the Strategy, the government committed to ensuring participation of DPOs in all public activities and to enforcing current and new legislation to make ICTs, including ATs, available and accessible. According to the Spanish Government,⁴⁹ the provision of ICTs can serve as enablers that allow persons with disabilities to participate in society on an equal basis with others.

Lastly, although the access to personal AT devices by persons with disabilities is outside the scope of this study, it is noteworthy that the design and manufacture of these devices is addressed in Spain based on the Spanish standards set out in UNE-EN ISO:9999:2017

46 Plena Inclusión is an organisation that represents persons with intellectual and developmental impairments in Spain and a member of Inclusion Europe.

47 Plena Inclusión, '¿Votar Es Fácil o Difícil?' (*#MiVotoCuenta*, 2019) <<http://mivotocuenta.es/wp-content/uploads/2019/01/Cuestionario-Mi-voto-cuenta-2019-1.pdf>> accessed 23 June 2020.

48 The campaign is focused on raising awareness among citizens and public authorities about the right to vote of persons with disabilities, primarily those with intellectual or mental impairments.

49 *ibid*, Sections 1, 2 and 6.

(‘Assistive products for persons with disability’).⁵⁰ The State addresses all technical matters related to this standard through the Spanish Centre of Personal Autonomy and Assistive Technologies (the ‘Ceapat’ in Spanish).⁵¹ The Ceapat was established in 1989 and is an important governmental centre aimed at promoting universal accessibility, personal ATs, and universal design.

Following the above framework of legislation and policy, this section proceeds with an analysis of its implementation in practice, based on the experiences of the research participants in this study.

3.1.3. The experiences of research participants in using voting materials

The experiences of research participants⁵² in using voting materials are analysed in this section using Anthony Giddens’ structuration theory, as explained in the introductory chapter of this study (sub-section 4.1.3). Briefly, in Giddens’ theory, the two main components of agency are reflexivity and knowledgeable ability.⁵³ As reflective and knowledgeable actors, most research participants indicated that certain physical features of existing voting materials constituted barriers to their participation and inclusion in elections. As one of the participants said:

‘I get at home a letter confirming my registration on the Electoral Census and the assigned polling station...but the letter isn’t comprehensible for me. It is very confusing. It is a bureaucratic nightmare... I found it hard to read because it had long sentences and too much legal jargon.’⁵⁴

Another participant recounted:

‘The most difficult task for me is to find my voting table. I read in the lists [Electoral Census list displayed at the entrance of polling stations] that my assigned table is

50 International Organization for Standardization, ‘UNE EN ISO 9999:2017 Assistive Products for Persons with Disability–Classification and Terminology (ISO 9999:2016)’ <<https://www.en-standard.eu/une-en-iso-9999-2017-assistive-products-for-persons-with-disability-classification-and-terminology-iso-9999-2016/>> accessed 22 February 2021.

51 Ceapat, ‘Centro de Referencia Estatal de Autonomía Personal y Ayudas Técnicas, Orden Ministerial de 7 de Abril de 1989’ (2021) <https://ceapat.imserso.es/ceapat_01/el_ceapat/presentacion/video_ceapat_cre/index.htm> accessed 22 February 2021.

52 Quotations from the interviews include paragraph numbers preceded by the identification number of each interview as given in NVivo by the researcher.

53 See Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (1st edn, Cambridge: Polity Press 1984); Laura Ahearn, ‘Agency’ (2000) 9 *Journal of Linguistic Anthropology* 12; Anthony Giddens, ‘A Reply to My Critics’ in D Held and J. Thompson (eds), *Social Theory of Modern Societies: Anthony Giddens and his critics* (Cambridge University Press 1989).

54 Focus Group 2:17

*the X... I'm supposed to go to the X table, but wait, where is the X table? Others [non-disabled voters] don't know either, but they can look at posters hanging on the walls indicating their voting tables, I can't see these posters because the text size is too small, or posters are hung on walls behind some tables.*⁵⁵

Many focus group participants indicated that inaccessible voting materials resulted in a variety of problems for them, which served to make them feel different and of lesser value than their non-disabled counterparts. In this sense, one of the research participants explained how her previous negative experiences at the polling station made her decide to not take part in elections anymore. The participant stated:

*'You feel you are a bit different, like you don't quite fit in... you see people struggling to read the lists [Electoral Census list]. The text is so small... everyone struggles to vote, but for me it was twice as hard as it was for others ... I just thought it was better for me to avoid feeling uncomfortable... I haven't voted since 2008.'*⁵⁶

As Giddens explains,⁵⁷ individual experiences influence people's 'rules', which, in Giddens' theory, are people's understandings of how things should work (i.e., how actors should behave). These 'rules' become fixed in actors' heads in 'memory traces'.⁵⁸ Actors call upon the memory traces which they are 'knowledgeable' of to act. If 'memory traces' are the vehicle through which social actions are carried out, it is possible to understand why the research participant quoted no longer wanted to participate in elections after her previous negative voting experiences.

Other research participants also emphasised how certain physical features of voting materials served to separate them from their non-disabled counterparts. For example, a respondent with diabetes, who has upper extremity impairments related to pain, referred to what she termed the '*bit more complicated experience.*' In referring to her voting experience, she noted:

*'Everything gets a little more complicated as my hands keep losing strength, unfortunately... I can't fold the ballot paper in half as easily as others do. The ballot paper is too thin... I had to fold it more than three times to put it into the envelope... I just don't think it's a piece of cake, as others do.'*⁵⁹

55 Focus Group 2:18

56 Interview 4:12

57 Anthony Giddens, 'The Time-Space Constitution of Social Systems', *Social Theory: Roots and Branches* (Roxbury 2003).

58 *ibid.*

59 Focus Group 1:136

Indeed, inaccessible ballot papers was identified by some research participants as a particular barrier to voting on an equal basis. One participant told the researcher:

*'The ballot paper is confusing. It is small... there is a lot of text in it. There are like 20 different candidates on it.... it's like a sandwich; they put everything on it... for others it's just easy to read it; not for me.'*⁶⁰

Others agreed with this, and another participant commented:

'There are too many ballot papers in General Elections. You must pay attention to which ballot paper corresponds to the political party of your choice.' She added *'There is a ballot paper in salmon colour for elections [Senate elections] that is difficult to differentiate, I get confused... I feel I'm the only one who cannot pick it up easily.'*⁶¹

Lack of accessibility of other materials used at polling stations, which are not traditionally labelled as 'voting materials', such as a table, also created barriers for a few participants. For example, one wheelchair user told the researcher that the physical features of tables used to display ballot papers at polling stations created several difficulties, in that he found it difficult to reach ballot papers. This made him feel frustrated.⁶² Another voting material was also commented on by some participants: political party manifestos, which are generally produced by political parties to help voters decide who to vote for. According to Eder and others,⁶³ electoral manifestos provide a compendium of valid party positions and are used as campaign material. Most research participants considered manifestos as important documents to assist them to make a well-informed political decision. Yet many participants noted that most political party manifestos are inaccessible. Inaccessible features of manifestos resulted in these documents not being used in practice by certain participants. Consequently, as one election official said:

*'Millions of tons of paper are wasted in manifestos... manifestos are not intelligible for most voters, and even less for voters with disabilities. People don't read manifestos because either people get bored when doing so or people simply get lost when reading manifestos.'*⁶⁴

60 Focus Group 1:138

61 Focus Group 1:152 and 154.

62 Focus Group 2:20

63 Nikolaus Eder, Marcelo Jenny and Wolfgang Müller, 'Manifesto Functions: How Party Candidates View and Use Their Party's Central Policy Document' (2017) 45 Electoral Studies 75.

64 Interview 12:7

Noteworthy, in responding to the complexities and inaccessible features of voting materials, some of the focus group participants talked about their strengths or individual efforts.⁶⁵ For example, one participant said:

*'The ballot paper is difficult to mark... you have to mark three candidates [Senate elections], but there are four candidates on the ballot paper. At [the DPO] we were trained how to mark our ballots... I practised it many times before going to the polling station. I repeated it and rehearsed it... I was nervous. It went well, thankfully.'*⁶⁶

Different forms of strengths and individual efforts to vote were illustrated by focus group participants,⁶⁷ including going to vote with a companion, preparing ballot papers at home, asking for help from others at polling stations, and using personal assistive devices at polling stations, e.g., a magnifier. These measures serve, in part, to reinforce Giddens' notion that the synthesis of *structure-agency* influences human behaviour.⁶⁸ Giddens questions the degree to which individuals can create their own lives, and the degree to which individuals are already constrained by society and its structures when they are born. As shown above, some participants' voting experiences were influenced by both inaccessible voting materials and their awareness about this fact (structure). At the same time, inaccessible voting conditions seem to be maintained and adapted through the exercise of personal strengths and individual actions. This means that, in practice, barriers to participation were not addressed by fundamental structural changes in society promoted by law enforcement or policy developments. In most cases, it was disabled voters' strengths and individual efforts that were put in place to overcome accessibility barriers.

Furthermore, another participant told the researcher that disabling and discriminatory barriers experienced by voters with disabilities when marking their ballot paper have been known about for a very long time but that *'very little that is effective has been done about them'*.⁶⁹ This participant, however, described how she seeks to defeat discriminatory barriers at the polling stations. She said:

*'If there is no ramp, they [poll workers] must carry me upstairs; if I can't reach out to my ballot paper, they will have to do something to help me... sometimes I say something loudly, but most of the time I just look at them annoyed.'*⁷⁰

65 See for instance Interview 1:30

66 Focus Group 2:26

67 See for instance Interviews 1:25-27, 4:54, and 9:21; and Focus Group 2:79-85.

68 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 53), 376.

69 Focus Group 2:17

70 Focus Group 2:83

Most participants did not accept a passive role when facing multifaceted barriers to their participation at elections. They also sought to challenge and transform these barriers and practices. As the participant's narrative above indicates, she engaged in what James Scott calls 'practices of resistance'.⁷¹ These 'practices of resistance' refer not only to collective direct action, revolution, and insurrection, but also to the small, informal, subtle, and clandestine acts of 'everyday resistance' employed by certain marginalised people. Scott argues that subordinate groups create a 'secrete discourse' (the 'hidden transcripts') that represents a critique of power '*spoken behind the backs of the dominant*'.⁷² Notably, Michael Oliver⁷³ argues that ideologies of normality, and relatedly abnormality, underpin the '*professional approach to the issue of disability from prebirth until death*'. Oliver also highlights how this 'professional approach' is vigorously challenged by persons with disabilities in their daily life. Indeed, some research participants talked about their 'everyday resistance' in challenging the multiple barriers to participation in political and public life, as well as multiple discriminatory practices that operate to isolate, control, monitor, and 'normalise' them. In this study, one election official particularly depicted the complexity of power relations within the voting context. He told the researcher:

*'We must be vigilant at the polling stations to protect the integrity of elections... if someone says they want to use their mobile phone at the polling station to scan their ballots and magnify the ballot's font size, we can't allow them... they can certainly commit electoral fraud.'*⁷⁴

Based on theories of Michel Foucault, the disabled feminist philosopher Shelley Tremain⁷⁵ has described disability as an apparatus of power, where complex social relations take place to 'normalise', control, oppress, and exclude persons with disabilities. Tremain identifies the 'acts of resistance' deployed by persons with disabilities as crucial acts that offer the potential to disrupt narratives of powerlessness. Such 'powerlessness narratives' were also common among some participants. As one participant remarked:

71 See James Scott, 'Behind the Official Story', *Domination and the Arts of Resistance: Hidden Transcripts* (Yale University Press 1990), 1-16; James Scott, 'Normal Exploitation, Normal Resistance', *Weapons of the Weak: Everyday Forms of Peasant Resistance* (Yale University Press 1985), 28-41.

72 Scott, 'Behind the Official Story' (n 71), 10-12.

73 Michael Oliver, 'The Ideological Construction of Disability', *The Politics of Disablement* (Macmillan Publishers Limited 1990), 55.

74 Interview 6:92

75 Shelley Tremain, 'Foucault, Feminism, Disability', *Foucault and Feminist Philosophy of Disability* (University of Michigan Press 2017), 129-158.

*'At the polling stations, everything must be under control... no room for human error...there is no room for my clumsy hands... it's better not to cause trouble there. I understand it.'*⁷⁶

Exclusion of certain persons with disabilities from voting because of apparent 'body failures' was also addressed by some election officials, who elaborated on the relationship between 'disability' and voter errors. As one election official noted:

*'Ballot papers might be confusing... It is easy to vote for people who know all the acronyms for political parties, but disabled voters frequently can't remember the information ... not selecting the correct ballot paper of the voter's choice is a very common voter error by disabled voters; although, understandable for their condition.'*⁷⁷

Additionally, focus group participants provided a range of examples of how they perceived existing voting materials as old fashioned and inaccessible.⁷⁸ For a couple of participants, the polling station represents a place of traditionalism, where no access to technology is the norm.⁷⁹ Conversely, for these participants, their home represents a place of modernity, where they can use technological solutions to perform their daily activities. The division between traditionalism and modernity was interpreted by one participant as involving exclusionary and inclusionary structures, respectively. Giddens elaborates that, despite how structures are generally quite stable in social systems, they can be changed, especially through the unintended consequences of action (because of an actor's reflexive monitoring), when people start to question them, defeat them, change them, or reproduce them differently.⁸⁰ Focus group participants suggested that updating voting materials in Spain might be a plausible measure to implement in order to countering inaccessibility barriers. They suggested, for example, different measures to make the lists of the Electoral Census, ballot papers and voting envelopes accessible, such as using images and graphics to make the content easier to understand, writing in plain language, including enlarged text, and ensuring good colour contrast between the text colour and the background colour on texts.⁸¹

Overall, participants acknowledged that lack of accessibility in the voting environment is a general problem. However, they agreed that the challenges persons with disabilities face when

76 Interview 2:86

77 Interview 7:130

78 See for instance Focus Group 1:97

79 Focus Group 2: 84-86

80 Anthony Giddens, *New Rules of Sociological Method* (Basic Books 1976).

81 See for instance Interviews 1:37, and 6:19-22, and Focus Group 2:127 and 134.

using the existing voting materials also depends on the nature of their impairments.⁸² They also argued that the ability to overcome challenges presented by inaccessible voting materials depends on the social and family networks of persons with disabilities. As one participant commented:

*'Yes, it's very difficult for me to go to the polling station; the environment is overwhelming. I get nervous...it's too noisy... At [a DPO] they told us we could bring a companion to vote; someone to give us support.' She added 'My problem is that I live alone, so I can't bring someone to the polling station to help me.'*⁸³

Family and friends are part of what Giddens calls 'authoritative resources'.⁸⁴ These resources are means to achieve actions, they shift from time to time, and depend on an actor's placement inside of the social structure. Giddens argues that there are different distributions of knowledge and resources in social systems, since actors are positioned within a web of social structures, but they are not necessarily positioned in equal ways.⁸⁵ Consequently, some research participants, like their non-disabled counterparts, have greater access to resources than others, such as the ability to receive assistance from family and friends to vote. This means that, based on their positioning, these research participants draw on different resources, or from the same resources in different ways, when voting. Giddens⁸⁶ also explains that the 'set of resources' an actor can draw on to act are not deterministic, but are applied reflexively by knowledgeable actors. In drawing on these resources to produce meaningful voting experiences, participants recognised 'facilitators' that enhance their participation in elections. Some participants, for example, agreed that they found voting easier when they have relatives or friends who assist them and go with them to polling stations. In such cases, dealing with inaccessible voting materials was less challenging. Nevertheless, some participants also talked about their disappointment at being forced to reveal their political choices to others, which is framed in Giddens' theory as 'contradictions' that social practices embody.⁸⁷

In summary, numerous barriers faced by research participants in using voting materials were identified in this study. Spain has not eliminated such barriers. This is a breach of Article 29(a)

82 See for instance Focus Group 1:131-135

83 Interview 9:77

84 Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (1st edn, Cambridge: Polity Press 1984).

85 See for instance David Ogden and Randall A Rose, 'Using Giddens's Structuration Theory to Examine the Waning Participation of African Americans in Baseball' (2005) 35 *Journal of Black Studies* 225.

86 Anthony Giddens, 'Structuralism, Post-Structuralism and the Production of Culture', *Social Theory Today* (Stanford University Press 1987).

87 See Anthony Giddens, 'Classes, Capitalism and the State' in Anthony Giddens (ed), *Profiles and Critique in Social Theory* (Macmillan Press 1982); Alex Callinicos, 'Anthony Giddens: A Contemporary Critique' (1985) 14 *Theory and Society*. Springer 133.

(i) CRPD. One of the most efficient ways to identify how to prevent and eliminate barriers to participation is to consult with persons with disabilities.⁸⁸ Such consultation is an action which can promote equal voting rights for voters with disabilities, in accordance with Articles 4(3) CRPD and 29(a)(i) CRPD. The country already has experience in developing consultations with the Spanish National Organisation for the Blind (ONCE) to implement specific electoral-assistive devices to be used by persons with visual impairments, which is examined below.

3.1.4. Electoral-assistive devices used by persons with visual impairments

Organic Law 9/2007 amended Article 87(2) LOREG. Article 87(2) LOREG, as amended, states that the Government is responsible for implementing a voting procedure for blind or visually impaired voters to ensure the secrecy of their ballot. In 2007, the Government enacted Royal Decree 1612/2007 that aims to guarantee autonomy and voting secrecy to blind voters and those with low vision (Article 1). Article 3 of Royal Decree 1612/2007 provides that persons with visual impairments who know Braille and are acknowledged as having a visual impairment in a degree equal to or higher than 33 percent, or are affiliated with the ONCE, can use an accessible procedure involving Braille to vote at their request. The accessible voting procedure consists of using haptic aids (an ‘accessible voting kit’). The kit contains, on its cover, both in print and in Braille, information about the elections being held. It contains: instructions in Braille; a voting envelope like the one used by other voters to place their ballot paper in it; and ballot papers inside corresponding envelopes for each of the candidates. These envelopes indicate on their covers, both in print and in Braille, the name of each candidate. The voter chooses the ballot paper and its corresponding envelope based on their preference. Persons with visual impairments can make an individual application to the Ministry of Internal Affairs to access the kit under Article 4 of Royal Decree 1612/2007. After receiving approval, the voter may collect the ‘accessible voting kit’ at the same polling station where they are registered to vote on election day. For elections to the Senate, which use open lists, the voter receives an additional voting material: a tactile ballot guide in Braille (Article 5 Royal Decree 1612/2007). The tactile ballot guide consists of a template with punched windows that go over the standard ballot paper so that the voter can mark the paper with an ‘X’ next to the candidate of their choice.

Royal Decree 1612/2007 recognises that barriers in the context of voting faced by some voters with visual impairments result from inaccessible voting materials, and addresses such barriers by providing them with the electoral-assistive devices mentioned above. This is a concrete measure adopted by Spain to achieve *de facto* equality for some persons with visual impairments to ensure that they can, in fact, enjoy their right to vote in accordance with Article

⁸⁸ CRPD Committee, *General Comment No 2 (2014) Article 9: Accessibility*, CRPD/C/GC/2, 22 May 2014, paras. 25-29.

29(a)(i) CRPD. Research participants with visual impairments who had used the existing electoral-assistive devices elaborated on their experiences, as described below.

3.1.4.1. Using the tactile ballot guide and the ‘accessible voting kit’

Both the tactile ballot guide and the ‘accessible voting kit’ were regarded as positive devices by all research participants who had used them. These participants stated that they were able to cast a secret and independent ballot when using these devices.⁸⁹ The ‘tactile ballot guide’ was regarded as an adequate device for preserving the voter’s anonymity, which is a requirement for a secure voting system.⁹⁰ Users of the kit also referred to certain socio-cultural aspects related to the development of the kit, which made them feel comfortable and even ‘proud’ of using this device. These participants talked about, for example, the fact that the ‘accessible voting kit’ is an innovative product designed by a Spanish organisation (ONCE). They also considered that the kit reflects certain social values that are important for Spanish blind persons. These values include recognising blind persons as independent individuals and active members of society. In developing this point, one participant stated:

‘The kit helps us to vote independently, and that’s important for us [Spanish blind persons] ... here, we aren’t used to surviving from welfare for disabled people... you see people from other countries just waiting to get welfare, here we work, study... we try to be independent.’⁹¹

Ripat and Woodgate⁹² argue that socio-cultural factors influence the meaning ascribed to AT. These authors state *‘People assigned a symbolic value to AT based on socio-cultural norms [...]. Cultural norms, and the consequential impact of AT on identity, may affect whether one chooses to use a device or not.’*⁹³ In other words, if an electoral-assistive device does not fit its target user’s internalised views of self, social norms, or cultural tradition, it may not be used. In this study, certain socio-cultural values, such as beliefs, traditions, and habits have influenced participants’ experiences in using the ‘accessible voting kit’.⁹⁴

89 See for instance Interviews 2:320-327 and 6:73-77; and Focus Groups 1:89-94, and 2:320-324.

90 WebRootsDemocracy, ‘The Cratos Principles: An Essential Guide to Assessing Online Voting Systems for Use in Elections’ (2020) <<https://webrootsdemocracy.org/2020/04/02/webroots-democracy-publishes-the-cratos-principles/>>, 7-11.

91 Focus Group 1:166

92 Jacquie Ripat and Roberta Woodgate, ‘The Intersection of Culture, Disability and Assistive Technology’ (2011) 6 *Disability and Rehabilitation: Assistive Technology* 87, 90.

93 *ibid.*, 90.

94 See for instance Focus Group 1:161

Furthermore, Ripat and Woodgate⁹⁵ and Alper and Raharinirina⁹⁶ assert that using AT devices increases feelings of control and independence amongst some users of AT devices. Such feelings were expressed by participants who had used the devices.⁹⁷ This finding confirms that technology acts as an ‘allocative resource’ that actors draw on to provide meaning, exercise power, and legitimise their actions.⁹⁸ Technology, and other ‘allocative resources’, such as money, are not external or independent of human agency in Giddens’ theory. These resources exist in the form of a set of rules of behaviour and the ability to deploy these resources that emerge from people’s interactions with, for instance, the technology at hand.⁹⁹ Notably, only those target users (blind voters who know Braille) of the available electoral-assistive devices can draw on these devices as facilitators for their voting experience. Conversely, not having access to AT devices in elections, i.e., not drawing on technology as an ‘allocative resource’ to act, might constrain the right to vote of other persons with disabilities. This was the case of two research participants, particularly participants with low vision who did not know Braille. These participants could not use the existing devices to enable them to vote. Regarding the availability of other voting materials for these particular voters, one election official said:

‘No, there is nothing for voters with low vision or who don’t know the Braille system... these voters must ask someone to help them.’¹⁰⁰

Accordingly, some research participants with visual impairments reported still facing barriers to cast a secret and independent ballot. A participant with low vision said:

‘I have blurred vision. It’s difficult for me to read text on a paper... at a polling station you can’t find a hand-held magnifier... if I knew Braille, I could use the kit [the ‘accessible voting kit’] to vote, which is the only tool you can access.’¹⁰¹

Furthermore, other participants with visual impairments, who knew Braille, discussed barriers they faced to access the existing devices. These participants told the researcher that it was not feasible for them to fulfil the requirements established in Article 3 of Royal Decree 1621/2007. As explained above, Article 3 provides that persons with visual impairments who know Braille and are acknowledged as having a visual impairment in a degree equal to or higher than 33

95 Ripat and Woodgate (n 92), 91-92.

96 Sandra Alper and Sahoby Raharinirina, ‘Assistive Technology for Individuals with Disabilities: A Review and Synthesis of the Literature’ (2016) 21 *Journal of Special Education Technology* 47, 48.

97 Focus Group 1:167

98 Geoff Walsham, ‘Cross-Cultural Software Production and Use: A Structural Analysis’ (2002) 26 *MIS Quarterly* 359; Wanda J Orlikowski, ‘Using Technology and Constituting Structures: A Practice Lens for Studying Technology in Organizations’ (2000) 11 *Organizational Science* 404.

99 Walsham (n 98), 359-360; Orlikowski (n 98), 406-408.

100 Interview 6:109

101 Focus Group 2:54

percent or are affiliated with ONCE can use the ‘accessible voting kit’. To become affiliated with ONCE, a person must have a visual acuity in both eyes equal to or less than 0.1 obtained with the best possible optical correction or a sight field reduced to 10 degrees or less. In relation to being affiliated with ONCE, a research participant remarked:

‘I started losing my vision in 2011 because of a disease... at the beginning, I couldn’t become affiliated with ONCE because I hadn’t lost my vision entirely... then, I joined in [a charity] ... I learned Braille.’ She added ‘I got the certificate six years later in 2017 when my impairment was assessed in a degree equal to 33 percent.’¹⁰²

Another participant experienced similar issues in joining ONCE. As he recounted:

‘To become affiliated with ONCE you must be blind or with a severe visual impairment... my far vision is blurred, but I’m not totally blind; I can’t be affiliated with ONCE or receive a disability certificate.’ He added ‘At [a DPO] they taught me the Braille code... I can read by touch, but I still can’t access the kit... I can’t even get a good tax reduction to buy my glasses because I don’t have a disability certificate.’¹⁰³

As illustrated above, for some research participants with visual impairments who knew Braille, the visual acuity test result (in a degree equal to or higher than 33 percent, which is linked to being issued with a disability certificate)¹⁰⁴ or the requirement to be affiliated with ONCE did not constitute independent routes to access the existing devices. In practice, for these participants (cited above), membership in ONCE depended on having a visual impairment to a degree of sight field equal to or higher than 33 percent. Consequently, these participants could not fulfil any of the requirements established in Article 3 of Royal Decree 1612/2007 to access the ‘accessible voting kit’ or the tactile ballot guide to vote.

Furthermore, two participants with low vision talked about other AT devices (not available at polling stations) that could enable them to vote, such as a clip-on reading lamp to improve reading and lighting conditions in the polling booth¹⁰⁵ and a portable pen reader to read text out loud.¹⁰⁶ One participant further said:

102 Focus Group 1:86

103 Focus Group 1:91

104 See Ministerio de Derechos Sociales y Agenda 2030, ‘Grado de Discapacidad’ (*Instituto de Mayores y Servicios Sociales*, 2014) <https://www.imserso.es/imserso_01/autonomia_personal_dependencia/grado_discapacidad/index.htm> accessed 27 July 2021.

105 Focus Group 2:58

106 Focus Group 2:63

*'It's difficult for me to read text on a paper... I could bring many visual aids to the polling station, but these devices would be out-of-pocket costs... that's not fair.'*¹⁰⁷

As indicated above, 'individual efforts' carried out by some participants in responding to inaccessible voting materials include buying visual or reading aids to enable them to vote. These 'out-of-pocket expenses' are not imposed upon non-disabled voters, which reinforces (in part) the notion of Giddens about how, based on their positioning in society, individuals draw from the same structures in different ways when participating in interaction routines.¹⁰⁸ This 'informal' obligation imposed on certain participants relates to Tremain's¹⁰⁹ idea of unequal power which influences the participation in society of persons with disabilities. Indeed, being 'informally' obliged to buy an assistive device to remove physical barriers to voting was a common experience for the participants with low vision.¹¹⁰ Such a practice is embedded in certain structures in society, and maintains disadvantage for persons with disabilities in multiple contexts.

Participants with low vision were also critical of the 'knowledgeability' of those actors working at the Spanish Government and its partner organisations, who are responsible for designing and implementing electoral-assistive devices to be used by persons with visual impairments.¹¹¹ 'Knowledgeability', as defined by Giddens,¹¹² refers to what agents know about what they do, how they do it, and why they do it. Knowledgeability is the '*tacit and discursively available knowledge*' that actors have (or believe) about the circumstances of their action and draw upon in action. Based on Giddens's theory, Ferdoush¹¹³ asserts that three major factors determine actors' knowledgeability: their socio-political characteristics, economic conditions, and cultural background. The combination of these factors determines, for example, how actors, based on their individual reality, perceive accessibility issues in the voting environment differently. This means that, based on their 'knowledgeability', actors working in the Government have perceived only the needs of blind voters (who know Braille), without addressing properly the accessibility needs of other voters. In the interviews, it was common to hear how certain participants, and particularly those with low vision, perceived that the 'knowledgeability' that prevails at the Government is centred on developing ATs for blind persons, who know Braille, which limits opportunities for them to use electoral-assistive devices at polling stations.¹¹⁴

107 Focus Group 2:62

108 Giddens, 'Structuralism, Post-Structuralism and the Production of Culture' (n 86).

109 Tremain (n 75).

110 Interviews 3:17-19; 4:9; and Focus Group 2: 78-81.

111 Interview 3:146 and 148; and Focus Group 2:80.

112 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 84).

113 Azmeary Ferdoush, 'Seeing Borders Through the Lens of Structuration: A Theoretical Framework' (2018) 23 *Geopolitics*. Routledge Taylor & Francis Group 180.

114 See for instance Interviews 3:225 and 2:95

Borg and others¹¹⁵ argue that consultation with persons with disabilities is a fundamental measure that States Parties to the CRPD should adopt to develop suitable AT devices in, *inter alia*, elections to address individual needs and interests of people, based on the specificities of their impairments. In carrying out such consultation, national electoral authorities should not focus on specific groups of persons with disabilities, while ignoring the needs of other people with disabilities. Such a practice discriminates against certain persons with disabilities, and denies them an equal opportunity to use AT in elections. Therefore, it is important for Spain to adopt further measures to promote respect for difference and acceptance of all persons with disabilities as part of the electorate in compliance with Article 29(a)(i) read in conjunction with Articles 3 and 5 CRPD. One of these measures might be to provide persons with disabilities with new electoral-assistive devices, where appropriate, and to do this in a more systematic manner and based on the recognition of differences among voters.

Lastly, regarding election officials' experiences in making electoral-assistive devices available to persons with visual impairments, it is possible to argue that certain election officials did not have adequate information about the kit or the tactile ballot guide. Most election officials even noted that there is no particular training for them on how to use the kit, which compromised their ability to answer any potential questions from kit users. In this sense, one of the election officials interviewed said:

*'I got a letter at home. It said I had been appointed as a poll worker. A couple of weeks later, I got some written guidance at home. That's all the training I got ... I went to the polling station without even knowing the kit existed.'*¹¹⁶

Inadequate training of election officials in using the kit, and disability rights in general, was an identifiable practice in the context of elections based on the participants' narratives. Likewise, the 2013 report of the Academic Network of European Disability Experts (ANED) on citizenship and political participation in Spain¹¹⁷ indicated that election officials do not receive training in disability rights. Furthermore, training of election officials to develop practical skills for communicating with persons with disabilities is not provided by the State.¹¹⁸ This fact may reduce real opportunities for disabled voters to obtain answers to their questions on, for example, how to use the existing electoral-assistive devices.

115 Johan Borg, Stig Larsson and Per-Olof Östergren, 'The Right to Assistive Technology: For Whom, for What, and by Whom?' (2011) 26 *Disability & Society* 151, 160-161.

116 Interview 6:70

117 Academic Network of European Disability Experts (ANED), 'Country Reports on Citizenship and Political Participation' (Miguel Verdugo, Cristina Jenaro and Maribel Campo eds, *SPAIN*, 2013) <<https://www.disability-europe.net/country/spain>> accessed 24 February 2021.

118 *ibid.*, 8.

3.1.5. Concluding remarks

Spain has adopted ‘specific measures’ and ‘other (active) measures’ to prevent and eradicate accessibility and discriminatory barriers in the context of voting. Such measures include the development of a suitable legal framework to implement Article 29(a) and related CRPD articles, including Law 26/2011, Royal Decree 422/2011, Legislative Royal Decree 1/2013, and the Organic Law 2/2018 that amended the LOREG. This legislation recognises persons with disabilities as equal citizens with full voting rights. It also acknowledges the systematic disadvantage voters with disabilities face when using inaccessible voting materials and creates concrete positive obligations to respond to such disadvantage. Nevertheless, evidence from the interviews carried out for this study suggests that existing voting materials are still inaccessible.

The progressive norms above, and particularly Royal Decree 422/2011 and Legislative Royal Decree 1/2013 concerning accessibility of all products, environments, programmes, and services made available to the public, which clearly include the voting environment, have not been entirely implemented. This section has indicated that there is a breach of the time-bound benchmarks to gradually achieve accessibility of all materials made available to the public to vote by 2008, as required by Legislative Royal Decree 1/2013. Furthermore, this study has found that there is no concrete policy action aimed at implementing the provisions of Legislative Royal Decree 1/2013 regulating ‘universal accessibility’, ‘universal design’, and ‘reasonable adjustments’ in the voting environment.

This section has also noted that, since 2007, Spain has adopted concrete positive measures to address barriers to participation in elections for some persons with visual impairments, namely for those who know Braille. These people can access two electoral-assistive devices: the ‘accessible voting kit’ and tactile ballot guide as provided in Royal Decree 1612/2007. Importantly, this study has found that the existing electoral-assistive devices produce tangible outcomes which are compatible with the requirements of Article 29(a)(i) CRPD. Most research participants who have used the ‘accessible voting kit’ and the tactile ballot guide, i.e., blind voters who can read Braille, confirmed that these devices enabled them to vote secretly and independently. Structural inequalities and inaccessibility persist, however, for other participants with different impairments who also need accessible voting materials. Without access to specific electoral-assistive devices to assist them when voting, many participants were forced to put individual mechanisms in place to respond to the inaccessible features of voting materials. These individual mechanisms included asking for help and involved revealing their political choice to other people. National authorities must, therefore, recognise differential characteristics and individualised needs of persons with disabilities in voting and make new AT devices available to ensure that all persons have access to accessible voting materials in accordance with Article 29(a)(i) CRPD.

This section has also demonstrated that the availability *per se* of electoral-assistive devices at polling places is insufficient to remove barriers to participation. Other practices are also needed, including voter education centred on voters with disabilities and training programmes for election officials provided by the State, in accordance with Article 29(a)(i). As noted, most election officials who were interviewed for this study recounted not having seen the content of the ‘accessible voting kit’ nor being instructed in its use before performing their duty on election day. Poor training of poll workers in, among others, the adequate use of existing electoral-assistive devices might negatively impact on the voting experience of some persons with disabilities.

Lastly, this section has noted that the National Disability Survey on Accessibility in the 2019 elections, led by Plena Inclusión Spain, and partially funded by the Ministry of Health, Consumer Affairs, and Social Welfare, is an important initiative to adopt concrete measures to address barriers to accessibility in the voting environment. Moreover, it was indicated that ensuring the right of persons with disabilities to participate in political and public life, and achieving greater accessibility are strategic objectives in the recent Spanish Strategy on Disability 2022-2030.¹¹⁹ As noted, effective implementation of the actions listed in the Strategy, including development and implementation of ICTs, such as AT, can contribute to increase participation of persons with disabilities in elections.

3.2. Measures to ensure ballot secrecy

The analysis in this sub-section concerns Article 29(a)(ii) CRPD. This provision sets out the obligation of States Parties to ensure and protect the right of all persons with disabilities to vote by secret ballot through the adoption of positive measures, such as the provision of assistive and new technologies. Furthermore, the analysis in this sub-section applies certain CRPD indicators developed by the Bridging the Gap Project: (i) legislation and regulations enacted that ensure the right of persons with disabilities to vote through secret ballot on their own, and (ii) existence of awareness-raising measures on the right of persons with disabilities to vote secretly.

3.2.1. Ballot secrecy legislation and policy

Pursuant to Articles 5 and 86 LOREG, the State is required to ensure all voters the *de jure* right to vote secretly. This means that voters with disabilities are in the same position as their non-disabled counterparts, and should be able to vote without having to reveal their political choice to anyone else. This legislation is thus in line with Article 29(a)(ii) CRPD. The actual

¹¹⁹ Ministerio de Derechos Sociales y Agenda 2030 (n 104).

realisation of the right to cast a secret ballot is formally addressed in Article 3(2) of the amended LOREG. Article 3(2) LOREG provides:

Article 3

(...)

*Everyone may exercise their right to vote actively, consciously, freely, and voluntarily, no matter their forms of communication and the means of support people require.*¹²⁰

Article 3(2) reflects the new legal approach to disability incorporated in the Spanish legal order by certain legal reforms, including the Organic Law 2/2018. Article 3(2) of the amended LOREG recognises the existence of differences among human beings and, as such, the right to access ‘means of support’ to vote, when appropriate. This provision, however, clarifies neither the meaning nor the scope of the term ‘means of support’. In order to interpret the scope of the term ‘means of support’ as referred to in Article 3(2) LOREG, it must be noted that the Preamble of the Organic Law 2/2018 explicitly recognises the rights established by the CRPD. Moreover, the eighth additional provision of the LOREG (added by the Organic Law 2/2018) expressly refers to the incorporation of Article 29 CRPD into national electoral law. This provides guidance to interpret the term ‘means of support’ in relation to ‘specific measures’ and other (active) measures as provided in the CRPD. The terms ‘specific measures’ and other (active) measures were explained in sub-section 3.1.5 of Chapter III in this study. Further guidance on interpretation is found in the most recent legal reform of Law 8/2021. The term ‘means of support’ is well defined in the law. This term is used in several provisions of Law 8/2021 to refer to different assistive devices and systems, accessible formats, such as easy-to-read language, and ‘reasonable accommodations’ (Article 1).¹²¹ Moreover, Section I of the Preamble of Law 8/2021 also asserts: *‘The State is committed to take all appropriate measures to provide persons with disabilities the support they may require for exercising their legal capacity in all areas of participation.’*¹²² Article 1 together with Section I of the Preamble confirms that the term ‘means of support’ must be interpreted in light of the terms ‘specific measures’ and ‘other (active) measures’ as endorsed in the CRPD. The term ‘means of support’ thus relates to positive measures that the State must adopt to ensure that persons with disabilities enjoy their legal capacity on an equal basis as others in, *inter alia*, the context of voting. These measures are necessary to transform structural inequalities which have hindered the right of persons with disabilities to vote secretly.

120 Cortes Generales Ley Orgánica 5/1985 de 19 de Junio del Régimen Electoral General (BOE núm. 147 de 20 de junio de 1985 modificada en 2018) [Official translation], amended Article 3.

121 Cortes Generales Ley 8/2021, de 2 de junio, por la que se reforma la legislación civil y procesal para el apoyo a las personas con discapacidad en el ejercicio de su capacidad jurídica. BOE núm. 132, de 3 de junio de 2021, Article 1(2).

122 *ibid*, Section I of the Preamble.

Furthermore, the LOREG explicitly states that voters with long-term visual impairments have the right to a secret ballot [Article 87(2)]. As noted above in this chapter, building on LOREG, Organic Law 9/2007 and Royal Decree 1612/2007 provide specific ‘means of support’ for voters with visual impairments: the ‘accessible voting kit’ and the ‘tactile ballot guide’. Voters have also access to other legal and judicial remedies to protect the exercise of their right to vote secretly, and to protect them against discrimination and wrongful acts by third parties. For example, Article 58(bis) LOREG protects the personal data of voters. Penal provisions to protect voters against reprisals by third parties when they exercise their right to vote are found in the Spanish Criminal Code and LOREG (Articles 135-150). Moreover, every person is entitled to lodge an individual appeal for protection of their fundamental rights before the Constitutional Court under Article 53(2) of the Spanish Constitution.¹²³ Other judicial mechanisms for protecting the right to vote secretly include international complaint mechanisms available to voters with disabilities, as provided for in the Optional Protocol to the CRPD. At the time of writing, none of the pending individual communications before the CRPD Committee concerning Spain are in the field of political participation. Nevertheless, the right of persons with disabilities to vote in elections is a topic that may be subject to communications in the coming years, particularly in the context of *de facto* realisation of the right to vote after the most recent electoral legal reform (Organic Law 2/2018 and Law 8/2021). In summary, there are relevant legal and judicial mechanisms that protect the right of voters with disabilities to a secret ballot. However, many participants in this study had experienced barriers to vote secretly, as examined below.

3.2.2. Voting secretly: the experiences of research participants

In this study, many research participants highlighted several accessibility barriers they have encountered when attempting to vote secretly, including the following:

- *‘I can’t understand it [ballot paper] easily... if the place is too noisy, it’s worse for me; I get confused... my mother helps me to vote; she always knows my political choice.’*¹²⁴
- *‘Ballot papers’ colours [white and salmon] are confusing... I had to ask someone to give me the right ballot paper... someone else knows always whom I am voting for.’*¹²⁵

123 The individual appeal protects against breaches of the rights and freedoms enshrined in the Spanish Constitution caused by provisions, legal acts, omissions, or actions of public authorities.

124 Focus Group 1:116

125 Focus Group 1:29

- *'I lost my vision recently... people ask me; why don't you know Braille? Well, because I didn't know I had to learn it! ... I can't use the kit; I always have to ask someone else to help me vote.'*¹²⁶
- *'I experience changes in vision, it depends on many factors, lighting conditions, for example... the text looks so small in ballot papers; someone else helps me vote. They know whom I'm going to vote for.'*¹²⁷
- *'I can't clearly read the ballot font size; it is too small.... I need help from someone else. They pick up the ballot paper for me... Ballot secrecy doesn't exist for me.'*¹²⁸

Depending on others to vote was perceived by some participants as a practice that serves to emphasise the 'difference' between them and their non-disabled counterparts. Oliver¹²⁹ and Morris¹³⁰ argue that the 'differences' between disabled and non-disabled people in Western society are based on the ideology of 'normality', implying that disabled people are 'abnormal'. In this sense, Morris states that *'disabled people are not normal in the eyes of non-disabled people.'*¹³¹ The feeling of being seen as 'different' was a common experience for some participants, when what they really wanted was to diminish the 'difference' by participating actively in the political life of their country.¹³² As one of the focus group participants noted:

*'Other people don't need to ask for help of anyone because they walk, see, and grab their ballot papers... when asking for help is mandatory only for you, it reminds you that you're different.'*¹³³

Various participants with disabilities considered that none of the materials used to vote enabled them to vote secretly. The opposite experience was shared by those participants who have used the 'accessible voting kit' and the tactile ballot guide to vote. Indeed, evidence from their experiences indicates that existing devices are useful for blind voters who know the Braille system and enable them to vote secretly. For example, one interviewee stated:

*'I take my kit to the ballot booth, nobody follows me. I can take the time I need to prepare my ballot... it's just me with the kit... at the end, I put my ballot in a regular envelope. It's secret; nobody knows that's my ballot.'*¹³⁴

126 Focus Group 2:46

127 Interview 3:90

128 Interview 3:320

129 Michael Oliver, *Understanding Disability: From Theory to Practice* (2nd edn, Palgrave Macmillan 2009), 46-59.

130 Jenny Morris, 'Prejudice', *Pride Against Prejudice: Transforming Attitudes to Disability* (The Women's Press Ltd 1991).

131 *ibid.*, 16.

132 Focus Group 1:23-27; Focus Group 2: 23-25

133 Focus Group 2:28

134 Interview 10:133

The empirical evidence from this study confirms that knowledge about the needs of blind persons has guided the design of effective electoral-assistive devices, which is recognised by the specific target population as a positive measure. Nevertheless, it is clear that such knowledge needs to be expanded to develop further group-based measures. In this regard, one election official stated:

‘They [electoral national authorities] keep thinking there is one size fits all solution. The reality is that not all voters read Braille or are totally blind... this tool [the ‘accessible voting kit’] has been used for over one decade only by a few people and no changes have been incorporated to develop a more suitable solution for more people.’¹³⁵

Giddens¹³⁶ elaborates on the ability of actors to reflect on their behaviour and everyone else’s behaviour. This is the ‘reflexive monitoring’ ability of social actors. In this study, a few participants reflected on how using technological aids has assisted them by making certain daily activities easier to do, e.g., working and communicating with family and friends.¹³⁷ These participants highlighted the potential advantages of using technological aids in elections. Two participants, for example, discussed the potential benefits of providing persons with disabilities with voter education guides in audio formats and large print, as well as through QR codes on voter education flyers.¹³⁸ QR codes could include different types of information, including voting instructions and lists of candidates for elections. Making this type of technology available can allow voters, including persons with disabilities, to access information instantly and at their convenience to vote independently (see sub-section 4.5 of Chapter II).¹³⁹

In summary, this study has found that structural barriers to vote secretly are related to ‘able-bodied values’ (e.g., one mode and cognitive mechanism for comprehension of ballot papers) that prevail in the voting environment which, according to some research participants, creates a hostile environment.¹⁴⁰ ‘Able-bodied values’ refer to the basic perception of ‘normal’ and reinforce the idea that everyone can do the same things, i.e., everyone has the same opportunities, abilities, and access. Morris¹⁴¹ argues that disabled people do not have the same ease of access, but that is sometimes forgotten by the rest of society. Indeed, some participants considered that the national electoral authorities wrongly presumed that everyone has the same

135 Interview 8:38

136 Anthony Giddens, *Central Problems in Social Theory* (Macmillan Publishers Limited 1979).

137 See for instance Interviews 5:32; 3:380-389; and Focus Group 1:145-152.

138 See for instance Interview 3:388-389

139 See for instance Focus Group 1:148-150

140 Focus Groups 1:32-36 and 2:47-50

141 Jenny Morris, ‘Citizenship and Disabled People: A Scoping Paper Prepared for the Disability Rights Commission’ (2005), 10-12.

opportunities and abilities to read and cast their ballot papers secretly. This is clearly not the case for all persons with disabilities interviewed for this study.

3.2.3 Concluding remarks

The secrecy of the ballot is a well-established legal principle in Spanish electoral law. Articles 5 and 86 LOREG protect the secrecy and independence of the right to vote of all voters in Spain, including persons with disabilities. Legislation also addresses political and civil rights violations, including voter intimidation, coercion, and other tactics by third parties to suppress a voter's ability to vote secretly and freely. Moreover, Article 3(2) of the amended LOREG recognises the existence of differences among human beings and, as such, the right of persons with disabilities to access 'means of support', including assistive devices and reasonable accommodations, when appropriate, to ensure their ballot is secret. In practice, however, evidence from the interviews carried out for this study suggests that not all participants with disabilities could maintain confidentiality concerning their choice of how to vote.

This section has illustrated that some participants with disabilities were forced to disclose for whom they wanted to vote due to the inaccessibility of voting materials and their consequent need to ask others for assistance. This is a breach of Article 25(b) ICCPR, Article 3 of the Additional Protocol No. 1 to the ECHR, and Articles 5(4) and 29(a)(ii) CRPD. Furthermore, this section has shown that not all participants who needed access to electoral-assistive devices to support them in voting secretly received the necessary support. Spain has provided only voters with visual impairments (who know Braille) with the 'accessible voting kit' and the tactile ballot guide (Organic Law 9/2007 and Royal Decree 1612/2007). These devices were positively assessed by target users who participated in this study. These participants considered that the devices allowed them to vote secretly. The Government, therefore, has effectively provided AT in elections as a measure for breaking down barriers faced by some persons with visual impairments, which is in line with the CRPD guiding tenets of 'equality of opportunity' [Article 3(e) CRPD] and 'accessibility' [Article 3(f) CRPD].

Based on the analysis provided in this section, other individuals with different impairments require concrete 'means of support' to equalise opportunities and outcomes in the context of voting on account of their individual needs and circumstances. Without such means of support, the exercise of the right to vote secretly might be hindered for those persons. The ultimate responsibility for tackling the disadvantages emerging from the interaction of impairment with barriers in the context of voting falls on the Spanish Government under Article 29(a)(ii) CRPD. Therefore, Spain needs to adopt additional measures to overcome the disadvantage accruing to all persons with disabilities. In this regard, the existence of the Spanish Centre of Personal Autonomy and Assistive Technologies ('Ceapat') is highly important. The Ceapat, as a government advisory body, could share its knowledge and experience with national

electoral authorities to explore new electoral-assistive devices which can be used to support voters with disabilities throughout the electoral cycle. Such a collaborative effort would need to also include DPOs, which can offer insights into what kinds of electoral-assistive devices are required for persons with disabilities, depending on their needs and preferences, in accordance with Articles 4(3) and 29(a)(ii) CRPD. Such an endeavour should be part of the actions adopted by the Government in the context of the Spanish Strategy on Disability 2022-2030.

3.3. Measures to ensure the free expression of voters

The analysis in this sub-section concerns the implementation of Article 29(a)(iii) CRPD, which sets out the legal obligation to guarantee that persons with disabilities can express their free will as voters. The legal interpretation of Article 29(a)(iii) in conjunction with Articles 4, 9, 12, and 21 CRPD presented in Chapter III of this study concluded that the right of persons with disabilities to freely express their political choices on an equal basis with others is three-fold. First, this right is inextricably linked to the recognition of the legal capacity of persons with disabilities (see sub-section 3.3.1. below). Second, persons with disabilities have the right to access accessible electoral information on which they can make their informed political choice (see sub-section 3.3.2. below). Third, persons with disabilities have the right to be assisted when voting, where necessary (see sub-section 3.3.3. below). This last right covers the entirety of the electoral processes, and includes live and technological voting assistance.

The analysis in this part of the chapter also applies certain CRPD indicators developed by the Bridging the Gap project: (i) absence of provisions in the constitution, legislation, or regulations restricting the right of persons with disabilities to vote; (ii) legislation and regulations that ensure the right of persons with disabilities to be assisted by a person of their choice, and with full respect of their free expression of will; and (iii) number and proportion of public servants, poll workers, election observers, and citizens carrying out election duties who are trained in the exercise of the right to vote of persons with disabilities, and who have been provided with voting related information, notably on accessibility, the right to assistance from a person of the voter's choice, and the duty to provide reasonable accommodation.

3.3.1. Discrimination in elections

The incorporation of Articles 12 (on the right to equal recognition before the law) and 29(a) CRPD into domestic electoral law is found in the amended Article 3 LOREG. Article 3 LOREG, in its previous version, allowed for a judicial declaration of legal incapacity and placement of a person in a psychiatric hospital by court order, and both such actions justified a revocation of voting rights. Consequently, under the previous version of Article 3 LOREG, many persons with disabilities were excluded from the Electoral Census, and particularly

persons with intellectual and mental impairments. This means they were disenfranchised and prevented from voting in elections.

Garrote¹⁴² argues that the most common judicial practice regarding guardianship orders before the amendment of Article 3 LOREG involved an almost ‘automatic’ declaration of inability to exercise suffrage once the court found an inability to function in other areas. According to Campoy Cervera,¹⁴³ such a judicial practice changed slightly after Judgment 282/2009 of 29 April 2009 of the Spanish Supreme Court.¹⁴⁴ In this judgment, the Supreme Court addressed the question of the compatibility between traditional views on incapacitation and guardianship and the mandate of the CRPD that all persons with disabilities are entitled to legal capacity on an equal basis with others. The final ruling found that domestic law was compatible with the CRPD. However, incapacitation and denial of the right to vote was still allowed.

Later judgments concerning the legal capacity of persons with disabilities duly referred to Judgment 282/2009, and thus acknowledged that incapacitation was still valid. Nevertheless, Campoy Cervera¹⁴⁵ and Garrote¹⁴⁶ agreed that, after Judgment 282/2009, there was a gradual move towards the social model paradigm of disability envisaged by the CRPD, which is mentioned in some judgments of Spanish courts. Different courts began to apply more rigorous safeguards when considering the deprivation of the right to vote. It became common practice among judges to order forensic examinations of persons with disabilities to determine their level of knowledge about political affairs and their ability to make a rational decision regarding voting.¹⁴⁷ Other citizens were clearly not subject to similar assessments; thus, a new discriminatory practice arose against persons with disabilities. A complaint against such a discriminatory practice was filed before the Spanish Constitutional Court by the parents of María del Mar Caamaño Valle through an individual appeal in 2015.¹⁴⁸ The plaintiffs requested that their daughter (María), who was a Spanish citizen with an intellectual impairment, be able to vote without having to take an exam to test her knowledge of political parties. Despite the strong merits of the case, the Court rejected the appeal. It held that there was no violation of María’s fundamental human right to vote. In 2021, in its decision on *María del Mar Caamaño*

142 María Garrote de Marcos, ‘Suffrage and Disability: What Has Been Done, What Remains to Be Done’ (*Minsait*, 2019) <<https://www.minsait.com/ideasfordemocracy/es/node/285>> accessed 19 June 2020.

143 Campoy Cervera (n 22).

144 Tribunal Supremo -Sala de lo Civil-, Sentencia 282/2009 de 29 de abril de 2009.

145 Campoy Cervera (n 22).

146 Garrote de Marcos (n 142).

147 Campoy Cervera (n 22), 403.

148 Tribunal Constitucional Español, Auto 196/2016 de 28 de noviembre de 2016, ECLI:ES:T-C:2016:196A.

Valle v. Spain,¹⁴⁹ the ECtHR found no breach of relevant provisions of the ECHR because there had been an individualised judicial assessment to determine María's ability to make a rational vote (see sub-section 2.1 of Chapter IV of this study).¹⁵⁰

10 years after of having incorporated the CRPD into the Spanish legal order, the legislature approved Organic Law 2/2018. This new electoral law abolished all distinctions and restrictions based on long-term impairments that hinder the exercise by persons with disabilities of their right to vote on an equal basis with others. Following this legal reform, the Central Electoral Commission issued certain administrative acts to ensure the right to vote of persons with disabilities: Acts 5/2019 and 7/2019.¹⁵¹ The wording of the Act 5/2019 was vigorously contested by disability advocates because it discriminated against persons with disabilities.¹⁵² This was particularly the case for the Second Section of Act 5/2019, which provided:

Second Section

*'Poll workers must accept the vote of any person with **visible disabilities** who is registered on the electoral census (...). [Emphasis added]*

*If any poll worker at the polling station considers that the vote **of a person with a disability** is not exercised consciously, freely, and voluntarily, they must write down a statement on that in the minute's session. Such a statement, however, will not prevent the voter from casting their ballot. '¹⁵³ [Emphasis added]*

The Second Section of Act 5/2019 allowed for scrutiny by election officials over the exercise of voting rights of persons with disabilities. This specific group of voters was subject to the risk of needless and arbitrary scrutiny. Such a measure was not extended to cover other citizens, but only those with 'visible disabilities'. Other citizens were clearly not subjected to similar scrutiny; thus, a new discriminatory practice arose against persons with disabilities. Campaigns by disability advocacy groups influenced the Commission's view regarding this provision, to a certain extent at least.¹⁵⁴ As a result, the Commission amended the Second Section of Act

149 ECHR, *María del Mar Caamaño Valle v Spain*, application no 43564/17, Judgment 11 May 2021, para. 67.

150 *ibid.*

151 Junta Electoral Central, Instrucción 5/2019 sobre aplicación de la Ley Orgánica del Régimen Electoral Central por la Ley Orgánica 2/2018. BOE núm. 62, 13 de marzo de 2019; Junta Electoral Central, Instrucción 7/2019 Nueva redacción a la Instrucción 5/2019 sobre aplicación de la LOREG modificada por Ley Orgánica 2/2018. BOE núm. 69, 21 de marzo de 2019.

152 See Plena Inclusión, '¿Por Qué No Nos Gusta Lo Que Dice La Junta Electoral Central?' (*Mi Voto Cuenta*, 2019) <<http://mivotocuenta.es/2019/04/15/por-que-no-nos-gusta-lo-que-dice-la-junta-electoral-central/>> accessed 22 June 2020.

153 Junta Electoral Central Instrucción 5/2019 sobre aplicación de la Ley Orgánica del Régimen Electoral Central por la Ley Orgánica 2/2018. BOE núm. 62, de 13 de marzo de 2019 (n 151), Second Section.

154 Plena Inclusión, '¿Por Qué No Nos Gusta Lo Que Dice La Junta Electoral Central?' (n 152).

5/2019 and adopted a new act: Act 7/2019. This new act removes the reference to persons with disabilities and the use of the phrase ‘visible disabilities.’ The amended Second Section states simply that election officials must accept the vote of ‘*any person who is registered on the Electoral Census corresponding to the polling station*’.¹⁵⁵ The new Second Section also avoids referring to a person with a disability as potentially unable to vote consciously, freely, or voluntarily. It states simply that election officials must ensure that there cannot be a ‘suspicion’ concerning ballots independently cast by voters. The monitoring task is, therefore, reframed as a rule of general application for all citizens, which contributes to abolishing discriminatory institutional practices against voters with disabilities. Act 7/2019 also declares that persons with disabilities have the right to use any ‘means of support’ to vote (Second Section), as required by the amended Article 3(2) LOREG and Article 29(a)(iii) CRPD.

Next, this sub-section briefly elaborates on the implementation of the above relevant legislation and policy based on the experiences of this study’s research participants.

3.3.1.1. Experiences of discriminatory practices in the electoral process

Most participants in this study regarded the new Organic Law 2/2018 as promising new legislation to abolish and remove discriminatory barriers that persons with disabilities faced when voting. As one of the research participants with an intellectual impairment, who voted for the first time in the 2019 General Elections, stated:

*‘My brother, he votes... Why can’t I vote? That’s not fair... Yes, I can vote now. I voted [in 2019 General Elections], they [a DPO] said it was easy... I practiced many times.’*¹⁵⁶

This participant exercised her fundamental right to vote in the context of the ‘new’ Spanish Electoral System that seeks to guarantee an egalitarian and democratic vote in the country, in compliance with Organic Law 2/2018. Discriminatory practices in the voting environment against voters with disabilities, however, persist. Many participants related to such practices, and throughout the electoral cycle. They, for example, told the researcher that political parties do not adapt their manifestos so that information is understandable for them, and particularly for persons with intellectual impairments.¹⁵⁷ This is a discriminatory barrier faced by various participants at an early stage of the electoral process. As a result, innate abilities (or the agency) of the participants to participate in elections is minimised. As one participant noted:

¹⁵⁵ Junta Electoral Central Instrucción 7/2019 Nueva redacción a la Instrucción 5/2019 sobre aplicación de la LOREG modificada por la Ley Orgánica 2/2018. BOE núm. 69, de 21 de marzo de 2019 (n 151), Second Section.

¹⁵⁶ Interview 2:78

¹⁵⁷ Focus Group 2:24-28; 111 and Interview 7:132

*'Electoral campaigns are designed and implemented by people who do not seem to consider voters with disabilities as a meaningful audience...political parties don't even give us the opportunity to use our own potential to vote.'*¹⁵⁸

Other participants told the researcher that electoral authorities do not focus on structural inequalities and inaccessibility in the voting environment, but on people's impairment.¹⁵⁹ This is the reason for the absence of accessible electoral information and additional electoral-assistive devices to be used by voters with different impairments, according to one participant.¹⁶⁰ Moreover, participants with disabilities stated that meaningful consultation with persons with disabilities and their representative organisations varies, depending on people's place of residency (rural-urban) in Spain. Opportunities for persons with disabilities in political life, including voter education, also varies from region to region in the country, according to some participants.¹⁶¹ As one of the focus group participants remarked:

*'Political parties organise meetings in big cities where they can provide attendants with sign language interpretation services... this is not the case in rural areas. It is very likely that deaf people from these other places don't get the information they need to vote.'*¹⁶²

Others agreed with this, and another participant commented that there was an uneven inclusion of DPOs in the development and implementation of the Spanish Strategy on Disability 2022-2030. According to the participant, not living in a big city reduced the opportunity of some persons with disabilities to actively participate in the consultations to inform the Strategy.¹⁶³ This finding is important, considering that the Government committed itself to narrowing the political participation gap between urban and rural areas in the Strategy. Implementation of the actions listed in the Strategy must rely on consultations with DPOs. Such consultations must ensure active involvement of persons with disabilities living in different areas of the country, as required by Article 4(3) CRPD. This consultation initiative can align the implementation of the new Strategy's actions with the different needs of populations in urban and rural areas.

Lastly, two participants with disabilities addressed the topic of 'Internet discrimination' as they call it.¹⁶⁴ They reflected on the 'digital divide' in Spain as a discriminatory barrier to enjoying their right to obtain information and participate in public debates concerning their

158 Focus Group 1:145

159 Focus Group 2:94-101 and Interview 2:117.

160 Interview 2:104.

161 Focus Group 1:55-57 and 63.

162 Focus Group 1:59

163 Focus Group 2:92

164 Focus Group 1: 156-160 and Interview 7:98.

fundamental rights.¹⁶⁵ These participants elaborated on how people in Spain, and particular disadvantaged groups, such as persons with disabilities, often face barriers to accessing a stable Internet connection or to buying a computer. Indeed, in Spain, 33% of the country's population had never used the Internet by 2021.¹⁶⁶ Moreover, 19% of citizens did not own a computer by 2020.¹⁶⁷ The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, defines the term 'digital divide' as *'the gap between people with effective access to digital and information technologies, in particular the Internet, and those with very limited or no access at all'*.¹⁶⁸ The UN Special Rapporteur argues that without Internet access *'marginalized groups and developing States remain trapped in a disadvantaged situation'*.¹⁶⁹ Based on evidence gathered in this study, this is the case of two research participants. Under Article 29(a)(iii) CRPD, Spain has a legal obligation to ensure the right to freedom of expression of persons with disabilities as voters. Implementation of such a right involves making the means necessary to exercise the right to freedom of expression available, including the Internet [Article 29(a)(iii) read in conjunction with Articles 9(2)(g) and 21(c) CRPD]. Nevertheless, in practice, the right of some participants to freedom of expression was hindered, including their freedom to seek, receive and impart electoral information on an equal basis with others, as examined in detail below.

3.3.2. Guaranteeing access to accessible electoral information

Relevant legislation to guarantee access to accessible electoral information by persons with disabilities include Law 27/2007.¹⁷⁰ Law 27/2007 regulates the means of support for oral communication of deaf people, those with other hearing impairments, and deaf-blind people. It recognises sign language as a means to convey information and knowledge. Articles 13 and 22 of Law 27/2007 explicitly refer to political participation of persons with hearing impairments. These provisions state that electoral authorities, political parties, and social partners (e.g., media providers) must facilitate the access of persons with hearing impairments to accessible information in election campaigns. In addition, Royal Decree 1612/2007 provides for the

165 Focus Group 2:31

166 Instituto Nacional de Estadística (INE), 'Población Que Usa Internet (En Los Últimos Tres Meses). Tipo de Actividades Realizadas Por Internet' (*Productos y Servicios*, 2021) <https://www.ine.es/ss/Satellite?L=es_ES&c=INESeccion_C&cid=1259925528782&p=1254735110672&pagina-me=ProductosYServicios%2FPYSLayout> accessed 13 February 2022.

167 World Wide Web Foundation, 'It's Time to Recognise Internet Access as a Human Right' (*"Ideas for a new world" dialogue, Sir Tim Berners-Lee*, 2020) <<https://webfoundation.org/2020/10/its-time-to-recognise-internet-access-as-a-human-right/>> accessed 12 February 2022.

168 Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/17/27 Frank La Rue, para. 61.

169 *ibid*, para 62.

170 Cortes Generales, Ley 27/2007 Por la que se reconocen las lenguas de signos españolas y se regulan los medios de apoyo a la comunicación oral de las personas sordas, con discapacidad auditiva y sordociegas, del 23 de octubre de 2007. BOE núm. 255, de 24/10/2007.

presence of sign language interpreters for poll workers (but not voters) at polling stations (Sections IV and IX); the access of voters to institutional electoral information (Sections IV and X); accessible public campaigning events organised by political parties (Section V); and accessible electoral information published by political parties (Section VI).

In the context of ICT, Royal Decree 1494/2007 establishes basic criteria and conditions to ensure access by persons with disabilities to the technologies (software), products (hardware), and services related to the information society and means of social communication, in accordance with the principles of equality of opportunities, non-discrimination, and universal accessibility.¹⁷¹ Minimum accessibility criteria must be observed by all public administrations, telecommunication operators, and media providers (Article 2). Spain also has the legal duty to provide training on accessibility requirements to political parties and mass media providers (Article 6). Such training aims to make electoral information and communication accessible to persons with disabilities. Royal Decree 1494/2007 sets out deadlines for compliance: incorporation of basic accessibility criteria in all new products and services was due by 4 December 2009; existing products and services had to be accessible by 4 December 2013; existing and new websites had to be accessible by 31 December 2008; public authorities had to adjust their existing websites within six months from the entry into force of the Royal Decree (i.e., by May 2008); and new websites had to be accessible since the entry into force of the Royal Decree (i.e., 22 November 2007).¹⁷²

Legislative Royal Decree 1/2013 mentioned above is another piece of relevant legislation in the context of access to accessible electoral information. The adoption of Legislative Royal Decree 1/2013 was prompted by the CRPD. As such, Legislative Royal Decree 1/2013 extends the legal protection granted by preceding law, and particularly Royal Decree 1494/2007. It seeks to guarantee the right to equal opportunities, and the actual and effective ability to exercise rights for persons with disabilities, under the same conditions as other citizens. The third additional provision (d) of Legislative Royal Decree 1/2013 sets out accessibility criteria and non-discrimination requirements applicable to the context of voting: all new and existing voting materials, including voter education guides and political party manifestos, had to be accessible to voters with disabilities by 2008. By 2017, all rules, administrative measures, and practices within the Spanish electoral system had to be in conformity with Article 29(a) CRPD.

171 Real Decreto 1494/2007 Reglamento sobre las condiciones básicas para el acceso de las personas con discapacidad a las tecnologías, productos y servicios relacionados con la sociedad de la información y medios de comunicación BOE núm 279.

172 *ibid*, single transitional provision ('*Disposición transitoria única*' in Spanish).

Building on Legislative Royal Decree 1/2013, Royal Decree 1112/2018 provides for concrete opportunities to access accessible digital electoral information by voters with disabilities.¹⁷³ Royal Decree 1112/2018 is in line with Directive (EU) 2016/2102 of the European Parliament and the Council on accessibility of websites and mobile applications of public sector bodies.¹⁷⁴ It explicitly declares that the websites and mobile applications of the public sector must be accessible to users, and particularly to persons with disabilities (Article 5 of Royal Decree 1112/2018).

In compliance with Royal Decree 1112/2018, the Ministry of Internal Affairs updated its website (<http://www.interior.gob.es/informacion-electoral>) for the 2019 General Elections. On this website, users, including persons with disabilities, can find general information about elections, political parties, and elections results. There is a specific homepage on accessibility and electoral processes <http://www.infoelectoral.mir.es/accesibilidad-y-procesos-electorales>. On this website, citizens can access information on national electoral law and on the ‘accessible voting kit’ for persons with visual impairments. The accessibility policy of the website indicates that the website is ‘partially’ in line with Royal Decree 1112/2018.

Other recent measures implemented by Spain to guarantee access to accessible electoral information by persons with disabilities include making new electoral-assistive devices available in the form of publications in easy-to-read format. These publications were designed by Plena Inclusión Spain within the *#MyVoteCounts* campaign and some of them were funded partially by the Ministry of Internal Affairs, the Ministry of Health, Consumer Affairs, and Social Welfare, or the Central Electoral Commission.¹⁷⁵ For example, the campaign provided for the publication of the ‘*Easy-to-read Leaflet on accessibility guidelines for voters in the 2019 elections*’,¹⁷⁶ which contains information about the right of persons with disabilities to access accessible electoral information and voting materials. The ‘*Easy-to-read Election Guidelines for election officials at polling stations in the General Elections 2019*’¹⁷⁷ is another example

173 Ministerio de la Presidencia, Real Decreto 1112/2018, de 7 de septiembre, sobre accesibilidad de los sitios web y aplicaciones para dispositivos móviles del sector público. BOE-A-2018-12699. [Official translation]

174 The European Parliament & The Council of the European Union, Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October on the accessibility of the websites and mobile applications of public sector bodies 2016.

175 The publications listed here are available at <https://www.plenainclusion.org/informate/publicaciones>

176 Plena Inclusión & Ministerio del Interior, ‘Guía de Accesibilidad. Elecciones Generales 10 de Noviembre de 2019’ (*#MiVotoCuenta*, 2019) <http://www.elecciones.mir.es/generales10N2019/almacen/pdfs/1-TripticolecturafacilEG2019_es.pdf> accessed 24 June 2020.

177 Plena Inclusión Ministerio del Interior & Ministerio de Sanidad Consumo y Bienestar Social, ‘Manual Para Participar En Una Mesa Electoral. Elecciones Generales Noviembre de 2019.’ (*#MiVotoCuenta*, 2019) <<https://plenainclusionceuta.org/2019/10/01/manual-participar-una-mesa-electoral/>> accessed 24 June 2020.

of a publication provided for in the campaign. It provides election officials with disabilities and other officials with information about the voting procedure.

In summary, Spain has adopted relevant legislation and policy initiatives protecting the right of persons with disabilities to access accessible electoral information and communication. Nevertheless, evidence gathered in this study reveals that inaccessible electoral information is often central to the disadvantage experienced by many research participants and hampers them from making an informed political choice as elaborated below.

3.3.2.1. The experiences of research participants in accessing electoral information

Structuration theory embraces the idea that human beings make society even as society makes them, owing to the fact that actors use information and knowledge to engage in practical action.¹⁷⁸ In election campaigns, obtaining access to accessible electoral information to enable voters with disabilities to make informed political decisions was described by most research participants as being ‘of major importance’. One election official also highlighted the impact on voter errors of voters being misinformed about candidates before an election day. She stated:

‘Fully informed vote choices are scarce among both non-disabled and disabled voters... the probability of making a voter error on election day varies depending on social and demographic characteristics of voters, as well as on being fully informed about the voting procedure and party proposals.’¹⁷⁹

In this study, it was clear that inaccessible electoral information, including voter education guidelines and political party manifestos, made making a political choice more difficult for some participants.¹⁸⁰ Similar findings were reported in the National Disability Survey on Accessibility in 2019 Elections mentioned above,¹⁸¹ and the ANED report 2013 on citizenship and political participation in Spain.¹⁸² In the present study, many participants told the researcher that inaccessibility of electoral information sent the message that persons with disabilities were not expected to participate in elections. In their view, the lack of accessible electoral information reflects the notion of persons with disabilities as ‘passive citizens’. Such a notion is

178 See George Ritzer, *Sociological Theory* (4th edn, McGraw-Hill 1996); Laura Ahearn, ‘Agency’ (2000) 9 *Journal of Linguistic Anthropology* 12.

179 Interview 12:21 and 25

180 Focus Groups 1:25; 27-29 and 2:32; 49; 54-56.

181 Plena Inclusión & Ministerio de Sanidad, Consumo y Bienestar (n 177).

182 Academic Network of European Disability Experts (ANED) (n 117).

based on 'individual models' of disability.¹⁸³ Disability scholars¹⁸⁴ argue that, under 'individual models' of disability, disability is commonly associated with dependency and powerlessness. Indeed, various research participants related to experiences of powerlessness and 'invisibility' in the political life of their country, which were exacerbated by inaccessible voter information throughout the electoral cycle.¹⁸⁵ This fact limited the opportunity of a few participants to understand the voting procedure and make informed voting choices. Notably, if persons with disabilities are considered to be 'passive citizens', there is no need to inform them about their voting rights. Furthermore, by perpetuating a paternalistic power dynamic, the notion of 'passive citizen' is embedded in the structures and social systems that still formally or informally prohibit/limit persons with disabilities from participating in political life. As one participant noted:

*'It's pointless to access the most suitable and accessible ballot paper or polling station if I don't know whom to vote for... I don't win anything with an accessible ballot paper, if I don't know anything about political parties.'*¹⁸⁶

In gathering information and relevant documents on elections, most participants in this study relied on ICTs to access and understand electoral material. They generally navigated the website of the Ministry of Internal Affairs. Some of these participants told the researcher that the Ministry's web content was not fully accessible to them.¹⁸⁷ In order to provide voters with disabilities with equal access and equal opportunity to vote, the website of the Ministry of Internal Affairs must be accessible. Focus group participants discussed measures to make official websites accessible for them, including providing information in alternative formats, such as information in easy-to-read language or aural version.¹⁸⁸ Furthermore, one participant told the researcher that certain information, e.g., voting instructions, must be available in a clear and concise format, and be broken down into short paragraphs. Another participant with visual impairments said that the website must use 'alt tags',¹⁸⁹ which allow people who use a screen reader to hear descriptions of images. This participant also said that for most of the

183 Dan Goodley, 'Locating Self-Advocacy in Models of Disability: Understanding Disability in Support of Self-Advocates with Learning Difficulties' (1997) 12 *Disability & Society* 367; Meekosha and Dowse (n 16); Helen Meekosha and Russell Shuttleworth, 'What's so "critical" about Critical Disability Studies?' (2009) 15 *Australian Journal of Human Rights* 47.

184 See Len Barton and Mike Oliver (eds), *Disability Studies: Past, Present and Future* (The Disability Press 1997).

185 Focus Group 1:14; 22; and 31; Focus Group 2:53 and 63; and Interview 6:114.

186 Interview 1:36

187 Focus Groups 1:35-37; 42-45 and 2:34; 61-64.

188 See for instance Focus Groups 1:225; 229 and 2:118-123.

189 'Alt tags' are written descriptions of images that can be read aloud by a screen reader (a software program that reads text on a website out loud). See Interview 2:118.

abbreviations used on the website, such as ‘LOREG’, a good practice is to include periods between each letter, which allows screen readers to recognise the abbreviation and read them out correctly.¹⁹⁰ Additionally, the embedded links must be described rather than named with the indication ‘click here’, as suggested by one participant.¹⁹¹ These participants also remarked that most information on the Ministry’s website is targeted at persons with visual impairments who know Braille and use the ‘accessible voting kit’. People with different impairments do not have access to information about their right to voting assistance or to reasonable accommodation. In summary, the current accessibility issues of the Ministry’s website create several barriers to accessing electoral information when navigating the web. The Ministry’s website must comply with web accessibility criteria to make information clear, direct, and easy to understand for voters with disabilities.

Information and communication barriers throughout the electoral cycle were also addressed by those participants with hearing impairments in this study. For example, participants explained that they have access to Spanish sign language interpretation services or subtitles on television only in political campaign debates (and only for candidates of the biggest political parties), but not in other election-related events, such as the dissemination of election results.¹⁹² Another barrier to participation in elections experienced by deaf participants who know sign language was the lack of access to sign language interpretation services in person or remotely at polling stations. As explained above in this section, the right to access free Spanish sign language interpretation on an election day is guaranteed to poll workers with hearing impairments under Article 4 Royal Decree 422/2011. A corresponding right is not recognised under domestic law for deaf voters or voters with hearing impairments who know sign language. In this regard, one participant stated:

‘You can’t ask anyone a question... even if you don’t know where to vote or which is your assigned voting table, you can’t communicate with them [poll workers].’¹⁹³

The participant’s narrative as reported above indicates that being able to communicate with election officials at polling stations, where necessary, was difficult in practice for her as a deaf voter. Moreover, other participants reflected on how making ICTs available, such as video remote sign language interpreting services, to voters with hearing impairments at polling stations could improve their voting experience.¹⁹⁴ Overall, the idea of using ICTs, including AT, to overcoming information and communication barriers was highly appreciated by many

190 Interview 2:119.

191 Focus Group 1:229.

192 Focus Group 1:57.

193 Focus Group 2:39.

194 See for instance Focus Group 2:40-49.

research participants.¹⁹⁵ They regarded ICTs as an ‘allocative resource’ which voters with disabilities can draw on to obtain information about election campaigns and voting. In this regard, a few participants of the focus groups elaborated further on the potential benefits of using mobile applications and other electronic systems with integrated accessibility features to be informed about elections.¹⁹⁶ For them, any technological solution put in place cannot be used to exclude persons with disabilities from the regular voting process. Therefore, alternatives to current voting procedures or implementing new technologies to ensure, for example, the right to participate in political debates must be available for persons with disabilities and their non-disabled counterparts on an equal basis, in accordance with Articles 4, 5, and 29(a) CRPD. As one participant remarked:

‘If it [a mobile voting application] is put in place not only for us, but for everyone else, then it’s okay... it’s not that they will hide us by giving us a remote voting system.’¹⁹⁷

Conversely, during the interviews with election officials it was common for them to complain about new voting technologies and their hypothetical application in Spain. Indeed, some election officials’ narratives revealed individual fears or anxieties regarding their engagement with technologised voting. As one election official said:

‘We’re in charge of everything on election day...can you imagine what would it happen if a voting machine fails? It’d be a disaster, it’s too much responsibility for a poll worker... I barely know how to manage my mobile phone.’¹⁹⁸

In this sense, another election official said:

‘People who are called to serve as poll workers do not have time to understand how technology works... if there is a security breach, everyone will blame poll workers.’¹⁹⁹

Making electronic voting systems available, e.g., electronic voting machines integrating AT, for voters in elections was notably an issue of concern for most election officials. Some of these participants indicated that, in a technologised voting context, higher skills and enhanced technology-related knowledge is likely to be necessary for them to perform their functions at polling stations. This was perceived by many election officials in this study as an overwhelming demand on them.²⁰⁰

195 Focus Group 1:17-22; Interviews 8:52-54; 10:77; and 6:18.

196 Focus Group 1:24; 27; and Interviews 9:20-23; and 8:22.

197 Interview 10:165.

198 Interview 6:91.

199 Interview 12:14.

200 Interviews 6:25-27; 12:14-45; and 15:21.

Some election officials' narratives were also indicative of their own refusal to use new technologies. In practice, 'resistance' to providing voting electronic systems in elections seems to be related not only to the requirement that election officials become knowledgeable about technology but also to 'rules' of individuals (i.e., in Giddens' terms, actors' understandings of how things should work in elections) and attitudes, such as fear, anxiety, or dislike towards technology.²⁰¹ Such 'rules' and attitudes guide the action of election officials at polling stations. In other contexts, particularly at the Ministry of Internal Affairs level, similar individual 'rules' and attitudes, e.g., fear or dislike towards technology, are likely to impact negatively on processes of development and implementation of new electoral-assistive devices, and particularly medium- or high-tech devices. Therefore, it is important to identify and address properly certain individuals' views on technology, some of which can be in covert forms. The complexity of this issue indicates that election officials require additional training materials and programmes, besides those already in place (i.e., written guidelines). The '*reflexive monitoring*' of actors, which is the agent's ability to monitor their behaviour and attitudes to change their actions, is prompted by, *inter alia*, discursive reflections.²⁰² Accordingly, discussion forums in person or remotely between election officials and other key stakeholders, such as DPOs, could be a good training experience for election officials to reflect on their beliefs and attitudes towards technology. This mainly concerns those government officials who are responsible for making decisions regarding budget allocation to develop AT devices to be used by voters with disabilities. Training of these officials must address not only people's knowledge of assistive and new technologies, but also personal attitudes towards innovation and technology. This is an important measure in the process of equalisation of opportunities in elections, which also impacts on how effectively election officials assist persons with disabilities in voting. The right to voting assistance is examined in more depth below.

3.3.3. Provision of voting assistance

Article 87(1) LOREG establishes the right to voting assistance (personal support) for illiterate voters and voters with disabilities at polling stations. No further legal provision addresses the right to voting assistance when voting by post or at other electoral periods of the electoral cycle, e.g., during voter registration. Article 87(1) LOREG refers to the right to be assisted, specifically in performing certain tasks at polling stations: choosing the ballot paper, inserting it into the voting envelope, and passing the voting envelope to the President of the Electoral Board. Notably, the nature of these tasks is mainly manual and requires reading and writing skills. Article 87(1) LOREG recognises that in performing such tasks, some voters, including persons with disabilities, might face barriers. This provision seeks to address those barriers

201 Giddens, 'The Time-Space Constitution of Social Systems' (n 57).

202 Giddens, *Central Problems in Social Theory* (n 136).

that maintain or perpetuate disadvantage for voters with disabilities by explicitly facilitating personal support.

Article 87(1) LOREG provides that voting assistance should be provided by a voter's companion (personal support), which raises at least three key issues. First, the norm seeks to address inequalities in the context of voting by assisting those voters who are more likely to need personal support to participate in elections. To that extent, Article 87(1) LOREG endeavours to target specific structures of exclusion, and mainly those related to the voting procedure. Second, since voting assistance can only be provided in live form and by a voter's companion, some voters will be obliged to reveal their political choice to the person accompanying them, who will usually be a close relative or a personal assistant. Third, voters cannot always be assisted by the '*person of their own choice*' as required by Article 29(a) (iii) CRPD, because election officials are not legally obliged to provide assistance to voters with disabilities, even if the voter wishes to receive such assistance. Certainly, election officials can refuse to assist the potential voters and direct them to obtain assistance from their 'companions'.

The realisation of the right to voting assistance is also addressed in Article 3(2) of the amended LOREG. As explained above in this chapter, Article 3(2) as amended by Organic Law 2/2018 declares that persons with disabilities must be provided with 'means of support' to enable them to vote. The legal interpretation of LOREG in conjunction with the recent legal reform of Law 8/2021 presented above in this chapter led to the conclusion that the term 'means of support' relates to 'specific measures' (as endorsed in the CRPD). Providing technological (voting) aids are common 'specific measures' and 'other (active) measures' that Spain can adopt to help voters with disabilities vote (where appropriate). Indeed, Spain already provides voters with visual impairments who know Braille with two specific technological aids: the 'accessible voting kit' and the tactile ballot guide. Other voters with different impairments could also access additional electoral-assistive devices to assist them to vote, as required by amended Article 3(2) LOREG and Article 29(a)(iii) CRPD. The experiences of research participants in exercising their right to voting assistance are discussed below.

3.3.3.1. The experiences of research participants in being assisted when voting

In this study, some participants provided evidence which suggests that voter education centred on voters with disabilities regarding their right to be assisted when voting is scarce in Spain. For example, based on participants' narratives, being assisted is often perceived as being a 'favour' that a relative is willing to do and not as a human right enshrined in the CRPD and domestic law. As one participant's comment reveals:

*'My mother used to go with me to vote...now it's my husband who comes...I've always found a good Samaritan.'*²⁰³

This participant perceives receiving voting assistance as an altruistic and even 'saintly' action that someone else does for her. This 'understanding' is part of the participant's 'rules' which, as elaborated by Giddens,²⁰⁴ are learnt by the participant through her voting experiences and guide her actions in the context of voting. In other cases, being assisted when voting was experienced as a signifier of difference for some participants. Such an experience made these participants feel uncomfortable and even prevented them from voting. As one of the focus group participants said:

'I'm the only one in my family who always must ask someone else to help me to vote ... everyone goes whenever they want on election day, I can't.' He added *'sometimes I don't want to bother anyone, so I don't vote.'*²⁰⁵

Giddens²⁰⁶ argues that actors make practical and normative judgements among alternative possible trajectories of action based on their 'reflexivity' and 'knowledgeability'. Accordingly, persons with disabilities need to access voter education on their voting rights, such as the right to be assisted at polling stations, to draw upon such knowledge in practice. In addition, the fact that relatives are commonly voters' companions reinforces Frederic Mégret's²⁰⁷ notion that, in most cases, assistance needed by persons with disabilities is provided by family members or within the home. This puts persons with disabilities 'particularly at risk of their rights being obstructed in this context'.²⁰⁸ The State has, therefore, a major responsibility for preventing intrusions or negative practices that might inhibit the free expression of the will of persons with disabilities as voters, and which occur in the private sphere.

Furthermore, some research participants, who could not attend the polling station with a companion, talked about their strengths or individual efforts to obtain assistance when voting at polling stations. These participants did not accept a passive role and obtained assistance from others present at polling stations. As one participant said:

203 Interview 5:41.

204 Giddens, 'The Time-Space Constitution of Social Systems' (n 57).

205 Focus Group 2:81.

206 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 84); Giddens, *Central Problems in Social Theory* (n 136).

207 Frédéric Mégret, 'The Disabilities Convention: Towards a Holistic Concept of Rights' (2008) 12 *The International Journal of Human Rights* 261, 266.

208 *ibid*, 266.

*'I look for someone to help me, other people always help me... you don't have to feel ashamed, there is always someone else willing to help you.'*²⁰⁹

'Other people' who assist some participants with disabilities, as referred to by the participant above, are electoral observers ('*interventores*' and '*apoderados*' in Spanish). These electoral observers are citizens representing political parties at polling stations. They can be at polling stations during the entire election day, and they analyse the electoral process and provide an assessment of the elections (Article 91 LOREG). Such political party representatives, in practice, help voters with disabilities to vote on an election day. At first glance, it is important that a few research participants could obtain assistance from people other than from companions. This was useful for those voters interviewed for this study who did not attend a polling station with a companion.²¹⁰ Nevertheless, due to the relationship between these particular electoral observers and political parties, being assisted by an electoral observer implies a higher risk of voter intimidation or coercion. Moreover, being assisted to vote by an electoral observer is a potential source of 'proximity bias' in voting behaviour. 'Proximity bias' is defined as an unconscious tendency to give preferential treatment to those in people's immediate vicinity.²¹¹ In the context of voting, Noh²¹² asserts that voters can form quick temporary interpersonal relationships towards others, e.g., electoral observers (and their political parties), that are close to them simply on the basis of their physical proximity at polling stations. As a result, when being assisted to vote by an electoral observer, a voter might end up voting in favour of the candidate or political party of the observer. Experiences related to 'proximity bias' were not shared by research participants in this study. Nevertheless, the adoption of additional measures to facilitate independent and impartial voting assistance for voters with disabilities at polling stations, where appropriate, is still necessary in Spain, as required by Article 29(a)(iii) CRPD. In that regard, participants suggested that voting assistance should be provided by 'specialised' officials, meaning election officials trained to assist persons with disabilities.²¹³ Others agreed with this, and their narratives indicated that they would like to receive assistance from poll workers and not their companions or electoral observers with party affiliations.²¹⁴ These participants agreed that being assisted by poll workers requires that poll workers be properly trained in disability rights.

209 Focus Group 2:71.

210 See for instance Focus Group 2:111-113.

211 Zamira Noh, 'Bias in Voting Behaviour: Endogenous and Exogenous Factors' (University of Lincoln 2017) <http://eprints.lincoln.ac.uk/id/eprint/28661/1/28661_Noh_Zamira-Psychology-June_2017.pdf>.

212 *ibid.*, 49.

213 Focus Group 1:13-15

214 See for instance Interviews 9:27; and 1:23 and Focus Group 2:75-81.

Regarding assistance provided to voters with disabilities by poll workers, election officials who spoke to the researcher frequently agreed that providing voting assistance to persons with disabilities was very likely to be a difficult task for them. According to the participants, there are two main reasons for this. First, election officials have too many duties on an election day and have no time to assist a particular voter in voting.²¹⁵ The second reason identified by election officials participating in this study is lack of ‘know-how’ or practical knowledge about how to assist a person with a disability. This problem is closely related to what Giddens identifies as components of agency: ‘reflexivity’ and ‘knowledgeability’.²¹⁶ Actors have a ‘*reflexive monitoring*’, which is the agent’s ability to monitor their actions and those actions’ settings and contexts which change their actions. During the interviews, some election officials reflected on their lack of proper training to assist voters with disabilities.²¹⁷ By reflecting on their previous experiences when interacting with persons with disabilities at polling stations, some election officials had the opportunity to recognise mistakes they had made, which probably impacted negatively on certain voters with disabilities. For example, one election official said:

*‘I tend to talk to the companion of a disabled voter; it’s automatic... it’s like a custom ... I don’t want to be disrespectful to any disabled voter, I am just used to addressing the information to people’s companions.’*²¹⁸

Other election officials interviewed for this study indicated that their ‘resistance’ to providing voters with disabilities with assistance is often experienced less as a form of discrimination against persons with disabilities, but more through subtle individual recognition of their lack of practical skills and understanding of the needs of persons with disabilities.²¹⁹ Likewise, lack of proper training of poll workers was perceived by most participants with disabilities as contributing to patronising practices by poll workers in the context of voting. As one participant noted in relation to having felt herself over-controlled once by the President of the polling station:

*‘It was very uncomfortable for me... I had to tell the President; let me put the envelope into the ballot box by myself, he was holding my hand, like; she is not going to make it right... people are always patronising towards us, about how vulnerable we are... this is because people don’t know anything about us.’*²²⁰

215 Interview 11:5.

216 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 84).

217 See for instance Interviews 10:62; 66 and 12:54; 56-58.

218 Interview 12:58.

219 Interview 12:9.

220 Focus Group 1:57.

As stated above in this section, ‘knowledgeability’, in Giddens’ theory,²²¹ refers to an actor’s ability to engage in actions, for example, assisting a person with a disability to vote. The notion of ‘knowledgeability’ yields useful results for understanding practices of multiple actors involved in elections. It allowed the researcher to interpret the ways in which, for example, a poll worker may patronise voters with disabilities or jeopardise the secrecy and autonomy of their votes. Not providing suitable assistance to a voter with a disability is connected, in part, with not having the knowledge, ability or practical skills to do it. Indeed, as illustrated in this section, discursive reflections by some election officials interviewed for this study confirm this fact.²²² Proper training of election officials is a necessary measure to ensure voters with disabilities can freely express their political choice on an equal basis with others under Article 29(a)(iii) CRPD. Such training involves the process of communication, relationships, and challenges faced by poll workers, as well as their legal duties related to voters with disabilities. This is a legal obligation of Spain that has not been fully implemented.

3.3.4. Concluding remarks

In Spain, the right of persons with disabilities to freely express their will as voters is formally recognised in electoral law in compliance with the ICCPR,²²³ ECHR,²²⁴ and CRPD. Articles 12 and 29(a)(iii) CRPD have been recently incorporated into national electoral law through the amended Article 3 LOREG. Under this provision persons with disabilities cannot be disenfranchised or prevented from making an informed political choice and expressing their free will as voters. The legislature has also adopted additional laws, including Legislative Royal Decree 1/2013, regulating, *inter alia*, basic requirements for accessibility and non-discrimination that must be met by the environments, products, and services required for the participation of persons with disabilities in political life. Furthermore, this legislation addresses discriminatory information and communication barriers faced by persons with disabilities and establishes accessibility standards applicable to, among others, electoral information and mass media. Nevertheless, based on the interviews carried out for this study, it was concluded that the Government has not fully complied with the legally binding time-bound benchmarks established in law, and particularly in Legislative Royal Decree 1/2013. The progressive modification of inaccessible electoral information and ICTs used by research participants to make an informed political choice has not been achieved effectively.

This section has revealed that the *de facto* realisation of the right of certain research participants to freely express their political opinions and choice, on an equal basis with others, has been

221 Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (n 84).

222 See for instance Interview 12:56-58.

223 Articles 2(1) and 26 ICCPR read in conjunction with Article 25(b) ICCPR.

224 Articles 10 and 14 ECHR read in conjunction with Article 3 of the Additional Protocol No. 1 to the ECHR.

curtailed. The lack of access to electoral information on an equal basis with others has negatively impacted the ability of certain participants to make informed decisions, which breaches Article 29(a)(iii) CRPD. Moreover, not all participants have had opportunities to seek and receive accessible electoral information through all forms of communication of their choice, such as the Internet, as required under Article 21 CRPD.

As noted, Spain sought to address some barriers that maintain or perpetuate disadvantage for voters with disabilities by facilitating personal support [Article 87(1) LOREG], mainly at polling stations. Under the LOREG, support is to be provided to voters by their companions, but not by election officials who are present at polling stations. This breaches the duty to provide voting assistance to voters with disabilities by ‘a person of their own choice’, as required by Article 29(a)(iii) CRPD. Accordingly, further legal and policy changes are necessary in Spain to ensure that persons with disabilities can exercise their right to access ‘means of support’ to vote throughout the electoral cycle. This right includes, but is not limited to, personal voting assistance. Indeed, Spain can adopt new electoral-assistive devices to assist voters with disabilities when voting in the context of the relevant actions listed in the new Spanish Strategy on Disability 2022-2030.

Lastly, as noted, Spain has recently funded some projects led by Plena Inclusión Spain to develop new electoral-assistive devices in the form of easy-to-read publications for voters with disabilities.²²⁵ This is an important measure adopted by Spain to equalise opportunities for voters with disabilities to be informed and make political decisions. These are certainly positive steps towards developing more inclusive voting structures that enhance participation of persons with disabilities in elections.

4. Conclusion

This chapter has explored Spain’s compliance with Article 29(a) CRPD by adopting certain legislative and policy measures. The CRPD is incorporated directly into the Spanish legal order. Accordingly, the norms contained in the CRPD must be implemented in accordance with the treaty as a whole, including the CRPD’s Preamble, Articles 1 (purpose), 3 (general principles), and 4 CRPD (general obligations). Moreover, the CRPD is part of the set of rules of law known as ‘block of constitutionality’. This means that the Spanish Constitution, European Union law, and the CRPD are theoretically at the same level in the hierarchy of norms (i.e., at the constitutional level). Therefore, interpreters and enforcers of domestic electoral law are required to interpret and apply voting rights of persons with disabilities, as enshrined in the Spanish legal order, in accordance with Article 29(a) CRPD.

225 Plena Inclusión & Ministerio del Interior (n 202).

As illustrated in this chapter, certain legal reforms have been put in place in Spain to expressly achieve conformity with the CRPD, including Law 26/2011, Legislative Royal Decree 1/2013, Organic Law 2/2018, and Law 8/2021. The most recent electoral legal reforms, Organic Law 2/2018, guarantees equal voting rights to all persons with disabilities and restores the right to vote of persons with disabilities who were under guardianship, and, consequently deprived of the right to vote. Organic Law 2/2018 is, therefore, a significant domestic law for ensuring the *de jure* right of persons with disabilities to vote on an equal basis with others in compliance with Articles 12 and 29(a) CRPD. Moreover, the secrecy of the ballot is a well-established legal principle in Spanish electoral law (Articles 5 and 86 LOREG), as required by Article 25(b) ICCPR, Article 3 of Protocol No. 1 to the ECHR, and Article 29(a) CRPD.

In order to ensure *de facto* realisation of the right of persons with disabilities to vote, the duty to provide accessibility in the voting environment is incorporated in domestic law, as required by Articles 5(4), 9, and 29(a) CRPD. In this regard, Royal Decree 422/2011 and Legislative Royal Decree 1/2013 provide for the accessibility of all products, environments, programmes, and services made available to the public, which clearly covers the voting environment. Organic Law 2/2018 and Law 8/2021 (that abolished all forms of guardianship) established the duty to provide persons with disabilities with all ‘means of support’ they require to enjoy their right to legal capacity in, *inter alia*, the context of voting. Article 3(2) of the amended LOREG recognises the existence of differences among voters. It explicitly set outs the right of persons with disabilities to access ‘means of support’, such as electoral-assistive devices, to ensure their right to a secret ballot and to freely express their will as voters. Accordingly, this chapter has concluded that relevant domestic legislation, mainly the LOREG (as amended), is in accordance with Article 29(a) CRPD. Evidence from the interviews carried out in this study, however, suggests that this legislation has not been implemented in full. Existing voting materials and electoral information are still inaccessible. This is a breach of the voting rights of persons with disabilities under Article 29(a) CRPD. Furthermore, there is no concrete policy action aimed at implementing different positive measures to ensure persons with disabilities can vote on an equal basis with others, including developing and implementing concrete standards of accessibility applicable to voting materials and providing reasonable accommodations in the context of voting.

As noted, domestic law provides for making AT available in elections to assist some voters with disabilities. In this regard, under Organic Law 9/2007 and Royal Decree 1612/2007, voters with visual impairments, who know Braille, have the right to access two specific electoral-assistive devices: the ‘accessible voting kit’ and the tactile ballot guide. Target users participating in this study regarded these devices as adequate tools for ensuring the secrecy and independence of their ballot [Article 29(a)(ii) CRPD]. In addition, the State has partially funded some projects led by Plena Inclusión Spain to develop new electoral-assistive devices in the form of easy-to-read publications for voters with disabilities. These are mainly directed

at voters with intellectual or mental impairments. Participants who used these easy-to-read documents also regarded these devices as positive electoral-assistive devices to enable them to make an informed political choice [Article 29(a)(iii) CRPD]. This is a significant research finding, and confirms the idea that making electoral-assistive devices available for use by voters with disabilities is an effective measure for breaking down barriers faced by some of them when attempting to vote. Certainly, this is a measure in line with the CRPD's guiding tenets of 'equality of opportunity' [Article 3(e) CRPD] and 'accessibility' [Article 3(f) CRPD]. Nevertheless, this study also found that structural inequalities and inaccessibility of voting materials persist for other participants with different impairments, who also need accessible voting materials. As noted, without access to electoral-assistive devices, and other positive measures, to assist persons with disabilities in voting, many research participants were forced to put individual mechanisms in place to respond to the inaccessible features of voting materials. These individual mechanisms typically included asking for help and involved revealing their political choice to other people. As a result, not all participants could vote secretly. This fact even discouraged some participants from voting.

Lastly, this chapter has demonstrated that the availability *per se* of electoral-assistive devices at polling stations is insufficient to remove barriers to voting secretly on an equal basis with others. Other measures are also necessary, including voter education of voters with disabilities in, *inter alia*, their right to use accessible voting materials, as well as training of election officials in disability rights under Articles 4, 8 and Article 29(a) CRPD. Moreover, consultation with persons with disabilities from both rural and urban areas, and their organisations (DPOs), is a necessary measure to bring about change in the voting environment from a transformative equality perspective. In this regard, the implementation of the actions outlined in the Spanish Strategy on Disability 2022-2030 is an important opportunity to work with DPOs and consult with them on practices on inclusive democracy.



Chapter VIII

Findings, conclusions, and
recommendations

1. Introduction

This chapter presents the main findings, conclusions, and recommendations derived from the research carried out for this study. To that end, this chapter is divided into three main parts. Section 1 provides a summary of the research objectives and approach. Section 2 describes the main findings and conclusions of this study. Lastly, Section 3 contains some recommendations.

1.1. Summary of research objectives

Following the adoption of the CRPD, research by several disability scholars and human rights defenders has focused on States Parties' compliance with the obligation to guarantee the *de jure* realisation of the right to vote of persons with disabilities.¹ Researchers have interpreted Article 29(a) CRPD as requiring States Parties to enact constitutional or legislative provisions which recognise the right of persons with disabilities to vote on an equal basis with others. However, research has elaborated less on States Parties' legal obligation to ensure the *de facto* realisation of the right to vote by persons with disabilities, or the 'opportunity' to enjoy this right, on an equal basis with others. This study partially bridges this research gap.

This study provided a comprehensive interpretation of international human rights instruments to identify the positive obligations of States Parties to facilitate the exercise of the right to vote of persons with disabilities, with a particular focus on Article 29(a) CRPD. Such legal obligations can be summarised as requiring the provision of accessible voting materials under Article 29(a)(i) CRPD, ensuring ballot secrecy under Article 29(a)(ii) CRPD, and ensuring the free expression of the will of persons with disabilities as voters under Article 29(a)(iii) CRPD. The focus of this study was on exploring the link between these obligations and the provision and use of electoral-assistive devices by voters with disabilities. In doing so, this study has contributed to research in the field of political participation of persons with disabilities.

Firstly, this study has demonstrated that the use of assistive technology (AT) in elections is one measure for achieving greater accessibility in the voting environment. Examples of relevant AT devices and systems include easy-to-read voter education guides, tactile ballot guides, and electronic voting machines which use screen enlargement applications. This study involved pioneering academic research to identify available and emerging electoral-assistive devices that can be used to assist voters with disabilities when voting throughout the electoral cycle.

1 See for instance János Fiala-Butora, Ashely Stein and Janet Lord, 'The Democratic Life of the Union: Toward Equal Voting Participation for Europeans with Disabilities' (2014) 55 Harvard International Law Review 71; Krzysztof Pater, *Real Rights of Persons with Disabilities to Vote in European Parliament Elections. Information Report. SOC/554* (European Economic and Social Committee 2019).

Secondly, the legal interpretation of Article 25(b) ICCPR, Article 3 of the Additional Protocol No. 1 to the ECHR, and primarily Article 29(a) CRPD presented in this study has found that anti-discrimination prohibitions related to voting are only effective when linked with measures to achieve equality, such as providing electoral-assistive devices, that remove inaccessible realities from within the voting environment. This approach is grounded on the paradigm of equality endorsed by the CRPD. As such, this study confirms that the CRPD adopts a progressive and empowering rights-based approach to disability, which recognises that voters with disabilities are subjects of human (voting) rights.

Thirdly, in addition to interpreting Article 29(a) and related CRPD norms comprehensively, this study has also investigated *law in action* (or the '*CRPD in action*'). The research has analysed how Article 29(a) CRPD has been implemented through both law and policy, and in practice, in England and Spain. The analysis of compliance with Article 29(a) CRPD was conducted through an innovative mixed research design that combined doctrinal analysis with insights derived from social sciences to gain an understanding of how Article 29(a) CRPD has been implemented in practice. In doing so, this study has provided a precedent to advance a constructive relationship between research in law and in the social sciences when investigating States Parties' compliance with the CRPD. Additionally, based on the experiences of research participants, this study has demonstrated that implementation of Article 29(a) CRPD can be enhanced or constrained not only by domestic legislation and policy instruments, but also by *practices* of relevant actors. These *practices* include voter education of voters with disabilities, training of election officials in disability rights, and, most importantly, voters and election officials' understanding of disability itself. This study has concluded that addressing the legal and policy lacunae as well as the *practices* within national electoral systems identified in this study would have a substantive impact on the effective implementation of Article 29(a) CRPD in England and Spain. Therefore, this study contributes to achieving a greater understanding of how Article 29(a) CRPD has been implemented in practice in England and Spain.

1.2. Summary of the research approach

This study adopted an evidence-based approach and mixed research design to explore the provision and use of electoral-assistive devices by voters with disabilities. The research methods used in this study were based on an innovative theoretical framework described in the introductory chapter (Sections 4 and 5). Briefly, this study drew on a dynamic conception of law (i.e., a 'realist concept of law') that emerges from seeing the law as the product of society that is in a permanently evolving process of change. This 'realist concept of law' inspired the theoretical approach used in this study: New Legal Realism (NLR). NLR underpinned the analysis of the '*law in action*', namely the analysis of how Article 29(a) CRPD has been

implemented in practice. Based on this theoretical framework, a mixed method design was used in this study to answer the following two overarching research questions:

Under international law, what legal obligations do States Parties have to make electoral-assistive devices available for use by persons with disabilities? How do practices within electoral systems in England and Spain support or constrain the use of electoral-assistive devices?

These overarching questions encompassed the following sub-questions:

- a. What are the available and emerging electoral-assistive devices that can be used to assist persons with disabilities to vote secretly and independently?
- b. What is the legal duty of States Parties under the CRPD and other relevant international human rights instruments regarding the provision of electoral-assistive devices to be used by persons with disabilities?
- c. To what extent do England and Spain comply with relevant obligations set out in international law, and primarily the CRPD to ensure access to electoral-assistive devices by persons with disabilities?
- d. What are the experiences of voters with disabilities and other key stakeholders from England and Spain in using electoral-assistive devices? To what extent do those experiences influence the decision to vote by persons with disabilities?

These research sub-questions were addressed using various research methods. Chapter II of this study provided a conceptual framework and illustrative examples of electoral-assistive devices that can be used to assist persons with disabilities when voting. Findings were based on a scoping review protocol to carry out a comprehensive inventory and analysis of existing and emerging devices. The novelty of the area of electoral-assistive devices, the diverse disciplinary location of the existing literature, and the need for a comprehensive and systematic overview of prior research and any remaining gaps made a scoping review an appropriate methodology to answer sub-question (a).

Chapters III and IV of this study interpreted the legal basis for the provision and use of electoral-assistive devices by persons with disabilities. This legal framework is the foundation for the analysis of compliance with Article 29(a) CRPD by England and Spain. The analysis of the legal basis was divided into three main parts. First, Chapter III of this study provided a substantive interpretation of international human rights law provisions, and primarily Article 29(a) CRPD to identify the obligations of States Parties regarding the provision of electoral-assistive devices. Second, Chapter IV of this study discussed how the standards set by Article 29(a) and related CRPD provisions interact with the relevant provisions of the ECHR. Third, the last part of Chapter IV briefly discussed the CRPD as an instrument of European

Union (EU) law, and the European Commission's commitment to support Member States to improve the conditions for political participation of persons with disabilities, including through accessibility of the voting environment. This study applied treaty interpretation as a primary research method to identify this legal framework and answer sub-question (b). In doing so, the study followed the rules set forth by Articles 31 and 32 of the Vienna Convention on the Law of Treaties (or 'VCLT'), as well as the principles of treaty interpretation.

Chapters VI and VII of this study assessed the extent to which England and Spain comply with Article 29(a) CRPD, respectively. Findings were derived from the qualitative research methods employed to answer sub-questions (c) and (d). A comprehensive explanation of these research methods can be found in Chapter V of this study.² Relevant national legislation and policy were analysed by means of doctrinal legal research. Information on the actual implementation of the national law and policy, as well as on *practices* taking place within national electoral systems, was gathered through (online) semi-structured interviews with voters with disabilities and election officials from England and Spain. Accordingly, the analysis of the qualitative data was essentially descriptive because of the nature of the data collected (interview transcripts) and the limited sample size (n=42) of research participants. Consequently, no conclusions as to the overall experiences of persons with disabilities and election officials in using electoral-assistive devices in elections can be drawn from this study. Nevertheless, due to the interpretative rigour in data analysis, issues raised might be relevant for other persons with disabilities and election officials who did not participate in this study, as well as in other countries.

2. Main findings and conclusions

In this section the research questions indicated in sub-section 1.2 above and pertinent findings and conclusions are elaborated upon.

2.1. Available and emerging electoral-assistive devices

The first set of findings arising from this study relate to a non-exhaustive inventory of available and emerging electoral-assistive devices used in elections to assist persons with disabilities in performing electoral-related activities, such as registering to vote and casting ballots. For clarification purposes, this study used the term 'electoral-assistive devices' to refer to AT

2 The analysis of compliance with Article 29(a) CRPD by England and Spain was also partially guided by the 2021 Bridging the Gap Project's indicators on Article 29(a) CRPD developed by the UN Office of the High Commissioner for Human Rights (OHCHR). As explained in Chapter V, these indicators were used by the researcher as a reference resource for analysing compliance with Article 29(a) CRPD by England and Spain.

devices provided to persons with disabilities in the context of voting by national electoral authorities, including those already in place and prototypes. It was noted that voters with disabilities sometimes require only the same voting materials as everyone else. Nevertheless, this is often not the case. Some voters with disabilities require support to equalise opportunities and outcomes throughout the electoral cycle on account of their individual needs and impairments. Without such support, the exercise of the right to vote might be hindered for those persons. In that regard, this study noted that electoral-assistive devices already exist to assist voters with disabilities when voting. Based on the research carried out for this study, available devices were divided into six main groups: (i) haptic aids, (ii) reading aids, (iii) writing aids, (iv) visual aids, (v) electronic voting aids, and (vi) other communication aids. Emerging electoral-assistive devices were broadly divided into two groups: (i) haptic technology and (ii) other electronic technology.

Devices were included in the inventory prepared for this study based on a specific conceptual framework that included four analytical concepts: the electoral-cycle perspective, target population, technological perspective (i.e., low-tech or high-tech devices), and application (i.e., how the devices are used). Four main findings were drawn from the inventory. Firstly, States can provide voters with disabilities with diverse devices to assist them throughout the electoral process. Overall, however, based on examples from different countries identified in this study, the application of the devices (i.e., how the devices can be used) showed a common trend towards assisting an individual to cast a ballot at a polling station over other activities. This was even more evident in the case of emerging technologies. This finding indicates that voters with disabilities are more likely to access AT if they vote in person at polling stations than if they vote through other methods, such as voting by post. Moreover, other electoral-related activities, such as making an informed political choice or knowing election results, are less supported through available and new electoral-assistive devices. It was therefore noted that further AT application and development by States and manufacturers of AT devices is needed to cover the whole electoral cycle, and to ensure the equal and effective participation of persons with disabilities in elections.

Secondly, electoral-assistive devices can be used by multiple groups of voters, including persons with disabilities and language learners. This indicates that, despite the traditional application of AT to enable persons with disabilities to perform activities, manufacturers and national electoral authorities are changing their perspective on product development and application. This new perspective leads to moving away from providing products exclusively for persons with disabilities, to providing products which meet people's preferences and needs more generally. This approach benefits a larger group of voters, including persons with disabilities. Nevertheless, there are instances where the classification of electoral-assistive devices based on impairments continues to be applied. In this respect, it was noted that AT application tends to be focused on two groups of voters: voters with visual impairments,

and particularly blind voters who know Braille, and voters with physical impairments, and particularly voters with limited use of their upper extremities. Persons with different impairments who also may need to use assistive devices to vote are less likely to be a target audience of these devices. Accordingly, it was concluded that consideration of human diversity and voters' demographics is a further perspective that must be adopted by AT designers and national authorities to fill the existing gap in the supply of electoral-assistive devices.

Thirdly, available electoral-assistive devices range from low-tech to high-tech devices or systems. This means that States can make mechanical (i.e., manually operated) and affordable devices available, as well as power-dependent (i.e., electrically operated) and expensive devices to be used by voters with disabilities. This is an important finding, given that assistive voting technology might be inaccurately considered to always be costly. Nevertheless, this study demonstrated that many available devices are reasonably priced. By way of contrast, in the field of emerging technologies, the focus is on developing high-tech devices rather than other sorts of devices. It was therefore argued that additional government and private funding for research on AT, as well as user-centred research, is needed to develop new low-tech solutions to assist voters with disabilities. This study argued that a more balanced technological perspective in the production of new low- and high-tech devices is needed to ensure the development of context-appropriate voting materials.

Fourthly, the use of electoral-assistive devices by persons with disabilities involves procurement, security, and socio-cultural challenges for States. These aspects were not fully addressed in this study, in strict accordance with its sub-questions. Nevertheless, it was noted that States must address relevant requirements of any device, including accessibility of the device *per se* at an early stage of its development. This includes government procurement plans or AT policy programmes to advance the availability of AT in elections.

2.2. Legal obligations of States Parties

The second set of findings arising from this study involved a comprehensive legal interpretation of the obligations of States Parties pertaining to the provision of electoral-assistive devices to be used by persons with disabilities to vote under international human rights law, and primarily Article 29(a) CRPD. As noted, the legal elements of the right to vote, as established in Article 25(b) ICCPR and Article 3 of the Additional Protocol No. 1 to the ECHR, were tailored to the particular needs and requirements of persons with disabilities by the CRPD. The CRPD endorses a very progressive understanding of disability. Under Article 29(a) CRPD, voters with disabilities are viewed as equal citizens, capable of making choices and playing an active part in political life, to the same extent as non-disabled citizens. This provision goes beyond a formal recognition of equality, to address barriers to participation encountered

by voters with disabilities, by endorsing the principle of *equality of opportunity*. Pursuant to Article 29(a) CRPD, States Parties must address historical and persistent discriminatory barriers which hinder *de facto* equality of voters with disabilities. This reflects the substantive equality approach. States Parties also have the legal duty to adopt positive (active) measures to prevent and eliminate discriminatory practices and all systematic structural inequalities which hinder the participation and inclusion of voters with disabilities in elections. This reflects the transformative equality approach. Article 29(a) CRPD provides, therefore, that anti-discrimination provisions regarding voting are only effective when linked with measures to achieve *de facto* equality, including the removal of inaccessible realities within the voting environment.

The research carried out for this study has demonstrated that making electoral-assistive devices available to voters with disabilities throughout the electoral cycle is a measure related to the principle of *equality of opportunity*. Making such devices available is a positive measure which contributes to achieving greater accessibility in the voting environment [Article 29(a) (i) CRPD], protects the right of persons with disabilities to vote secretly and independently [Article 29(a)(ii) CRPD], and guarantees the free expression of the will of persons with disabilities as voters [Article 29(a)(iii) CRPD]. Each of these provisions of the CRPD are examined in more depth below.

Firstly, Article 29(a)(i) CRPD sets out the obligation of States Parties to ensure that, *inter alia*, voting materials are accessible. This is a progressively realisable obligation which aims to guarantee the opportunity to enjoy the right to vote by persons with disabilities on an equal basis with others. As such, Article 29(a)(i) CRPD reflects the evolving understanding of the relationship between immediately and progressively realisable obligations. Under Article 29(a)(i) CRPD, the immediately realisable (or negative) obligation to respect and ensure the right to vote is reinforced by the progressively realisable (or positive) obligation to provide accessible voting materials. Such a positive obligation includes both a quantitative and a time element. States Parties must, therefore, allocate adequate resources and establish definite timeframes for the removal of barriers caused by inaccessible voting materials. In this regard, the CRPD Committee has provided guidance to States Parties about their obligation to achieve accessibility throughout the electoral process, including through the use of AT and new technologies.³ The Committee has also declared that States Parties must adopt national accessibility standards regarding, among others, voting materials.⁴ Underlying the need to

3 CRPD Committee, Concluding observations on the initial report of Kuwait, CRPD/C/KWT/CO/1, 18 October 2019, para. 57(a); CRPD Committee, Concluding observations on the initial report of Canada, CRPD/C/CAN/CO/1, 8 May 2017, para. 52; CRPD Committee, Concluding observations on the initial report of Norway, CRPD/C/NOR/CO/1, 7 May 2019, para. 46(a).

4 CRPD Committee, General Comment No 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, paras 27-28.

adopt accessibility standards is the *ratio legis* of the proactive duty to provide accessibility: the duty is related to groups of people and is an *ex ante* duty.⁵ It is also an unconditional duty.⁶ Accordingly, States Parties are not allowed to use austerity measures to justify a failure to not comply with their obligation to ensure gradual accessibility of voting materials. Moreover, States Parties must provide accessibility before receiving an individual request. Indeed, States Parties are obliged to immediately take some steps to progressively realise the rights codified in Article 29(a)(i) CRPD. Any steps adopted by States Parties in this regard must produce substantial results in conformity with the obligations under the CRPD.

Secondly, Article 29(a)(ii) CRPD goes beyond the formal recognition of the right to a secret ballot. It expressly provides that States Parties must protect the right of persons with disabilities to a secret ballot by facilitating the use of assistive and new technologies, where appropriate. The *ratio legis* of the terms ‘assistive and new technologies’ under Article 29(a)(ii) CRPD is to connect the duty to ensure ballot secrecy with the duty to provide accessibility in the voting environment. The removal of physical and other types of barriers hindering the exercise of the right of persons with disabilities to vote secretly falls within the broader scope of Article 29(a)(ii) CRPD read in conjunction with Article 9 (accessibility) and Article 4(1)(g)(h) (general obligations to promote development and implementation of assistive and new technologies). Furthermore, under Articles 4(1)(g)(h) and 29(a)(ii) CRPD, States Parties have the legal duty to facilitate access to technology, which itself must be accessible, and to promote the development of new technologies, with the aim of encouraging and supporting the capacity of persons with disabilities to vote on an equal basis with others. The systematic interpretation of Article 29(a)(ii) CRPD and related provisions in this study confirmed that States Parties have an obligation to provide and support investment, research, and the production of electoral-assistive devices and other new (voting) technologies to ensure that persons with disabilities can exercise the right to vote secretly. As noted, this has also been an explicit recommendation to States Parties by the CRPD Committee.⁷

Thirdly, under Article 29(a)(iii) CRPD, States Parties must guarantee the free expression of the will of persons with disabilities as voters and provide them with voting assistance where necessary and at their request. The interpretation of Article 29(a)(iii), in conjunction with Articles 4, 9, 12, and 21 CRPD, presented in this study concluded that the right of

5 CRPD Committee, General Comment No 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, para. 25.

6 *ibid.*

7 CRPD Committee, Concluding observations on the initial report of Panama, CRPD/C/PAN/CO/1, 29 September 2017, para. 57; CRPD Committee, Concluding observations on the initial report of Montenegro, CRPD/C/MNE/CO/1, 22 September 2017, para. 53(b); CRPD Committee, Concluding observations on the initial report of Malta, CRPD/C/MLT/CO/1, 17 October 2018, paras 42(b) and (c); CRPD Committee, Concluding observations on the initial report of Albania, CRPD/C/ALB/CO/1, 14 October 2019, para. 48(c).

persons with disabilities to freely express their political opinions and choices on an equal basis with others consists of three dimensions. First, this right is inextricably linked to the recognition of the legal capacity of persons with disabilities [Article 29(a) read in conjunction with Article 12 CRPD]. Second, persons with disabilities have the right to access accessible electoral information, such as political party manifestos in easy-to-read format, upon which their informed political choice can be made [Article 29(a) read in conjunction with Articles 4, 5, and 21 CRPD]. Third, persons with disabilities have the right to be assisted when voting, where necessary. This last right covers the entirety of the electoral process and includes live and technological voting assistance [Article 29(a) read in conjunction with Articles 12(3) and 21 CRPD]. Notably, Article 29(a)(iii) CRPD does not make assistance in voting mandatory. This provision thus protects the individual autonomy and capacity of persons with disabilities (*agency*) when being assisted in voting.

The legal obligations set out in Article 29(a) CRPD involve concrete positive obligations for States Parties to change discriminatory practices and laws and to promote respect for differences among voters. The research carried out for this study probed the link between implementing these obligations and providing electoral-assistive devices to be used by voters with disabilities. As noted, States Parties are also required to adopt other substantive positive measures to ensure the *de facto* realisation of the right to vote by persons with disabilities, including by establishing an obligation to provide reasonable accommodations to individual voters (Article 5 CRPD) and to apply universal design in the voting environment (Article 4 CRPD). All these positive measures must be consistent with the fundamental norms of non-discrimination and equality under the CRPD.

Furthermore, this study has noted that at the Council of Europe level, the CRPD is part of the *context* of the ECHR. Under Article 31(3) VCLT, the *context* of a treaty includes, among others, any relevant applicable rule of international law. Accordingly, the ECtHR has recognised the importance of the CRPD as a global human rights instrument on disability rights, and its relevance for interpreting substantive rights under the ECHR in the context of disability. Nevertheless, the ECtHR has not been consistent in using the CRPD as an interpretative aid when interpreting and applying the ECHR in the context of voting and persons with disabilities. This was particularly the case in the recent Chamber judgment of *Toplak and Mrak v. Slovenia*.⁸ This is an important case in which the ECtHR ruled on positive obligations of Contracting States pertaining to the right to vote of persons with disabilities, and particularly on the obligation of Contracting States to provide accessibility in the voting environment. Nevertheless, the Court did not engage substantively with the CRPD or use it as an interpretative aid. Consequently, the Court has not provided Contracting States with

⁸ ECHR, *Toplak and Mrak v. Slovenia*, applications no. 34591/19 and 42545/19, Judgment 26 October 2021.

clear guidance on how to fulfil their positive obligations regarding the right of persons with disabilities to vote under Article 3 of Protocol No. 1 to the ECHR (addressing voting rights), and particularly their obligation to provide accessibility in the voting environment (which is not explicitly recognised in the ECHR). This means that applicants have fewer opportunities to call Contracting States to account for their actions concerning Article 3 of the Additional Protocol No.1 to the ECHR, in light of the CRPD in future cases.

Finally, this study also considered the implications of the CRPD for the EU. Given that the CRPD has acquired the status of EU law, the CJEU is obliged to interpret relevant EU secondary law in line with the CRPD, where possible. It was also noted that the EU Parliament has adopted a legislative resolution on the proposal for a Council Regulation on the election of the members of the EU Parliament.⁹ This legislative resolution aims to, *inter alia*, ensure the right of persons with disabilities to vote in EU Parliamentary elections. If adopted, this would be an important new Council Regulation in line with the principles of ‘non-discrimination’ and ‘equality of opportunity’ of the CRPD (Article 3 CRPD). The European Commission has also adopted actions to support Member States to improve the conditions for political participation of persons with disabilities. The Commission’s commitment to support Member States to achieve greater accessibility in elections is also reflected in the ‘*Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030*’. The policy guidelines set out in the Strategy play an important role in helping the EU and its Member States to comply with Article 29(a) CRPD.

2.3. Implementation of Article 29(a) CRPD at the national level

The third set of findings arising from this study are based on a comprehensive analysis of compliance with Article 29(a) CRPD by England (Chapter VI) and Spain (Chapter VII). The analysis covers compliance through law and policy, as well as in practice, with the latter research based on the voting experiences of research participants.

2.3.1. Compliance with Article 29(a) CRPD by England

The CRPD has not been incorporated into the legal order of the UK. This means that voters with disabilities cannot rely on Article 29(a) CRPD directly, or a domestic law incorporating the CRPD, to assert their right to vote. Instead, domestic law determines the right of voters with disabilities to vote. In Chapter VI of this study, the compliance by England with Article

⁹ Legislative Observatory European Parliament 2020/2220 (INL) Proposal for Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that decision.

29(a) CRPD was primarily assessed through a comprehensive analysis of the consistency between relevant legislation and policy and the CRPD. As mentioned above, this study also explored experiences with using electoral-assistive devices of 13 voters with disabilities and seven election officials from England, to ascertain how relevant national legal and policy instruments are implemented in practice.

Briefly, in the English legal system, all persons with disabilities who are entitled to vote have the right to be listed on the electoral register, and there is no specific requirement applicable to them under the Representation of the People Act 1983 (RPA). Voters with disabilities are, therefore, subject to the same limitations as all other voters. Furthermore, Section 5(2) of RPA 1983 provides for the right of voters to vote in a parliamentary or local government election in person at a polling station designated to them, unless they are entitled as voters to an absent vote (i.e., vote by post or by proxy) at the election. In this study, most research participants had voted in person at polling stations. Most participants indicated that their decision to vote was prompted by a better understanding of their voting rights after taking part in group meetings and voter education initiatives led by local DPOs. This is an important finding which illustrates how being part of a DPO might provide an opportunity for some persons with disabilities to develop new interpretations (or *rules*) of their right to participate in political life.

The following part of this section elaborates on the main findings and conclusions of this study concerning the *de facto* realisation of the right to vote of persons with disabilities in England. This section is divided as follows: compliance with the obligation to provide voters with disabilities with accessible voting materials (sub-section 2.3.1.1); implementation of the duty to ensure voting secrecy (sub-section 2.3.1.2); and compliance with the obligation to guarantee the free expression of the will of persons with disabilities as voters (sub-section 2.3.1.3).

2.3.1.1. Providing accessible voting materials

Voting materials used in elections in the UK include poll cards, ballot papers, polling booths, pens/pencils, ballot boxes, postal voting statements, and voting envelopes. Regarding postal voting, under Rule 24(2) of Schedule 1 to the RPA 1983, returning officers must issue information to those entitled to vote by post about how to obtain any directions or guidance on elections in languages other than English and in alternative formats. There is no additional provision in the RPA 1983 which addresses how to achieve accessibility of voting materials. The term ‘accessible’ is included in electoral law in Section 18B(4) of the RPA 1983 in the context of physical accessibility of polling stations. However, Section 18B(4) does not define the term ‘accessible’. In that regard, relevant legal criteria for interpreting the term ‘accessible’ is provided by the amended Building Regulations 2010 and the Equality Act 2010 (EA).

Firstly, in this study the interpretation of Part M of the Building Regulations 2010 led to the conclusion that the law sets out minimum requirements to ensure that a broad range of persons

can access and use facilities within domestic dwellings and non-domestic buildings. It was argued that, because accessibility is one of the core principles of the human rights-based approach to disability (Article 3 CRPD), as well as an explicit obligation of States Parties (Article 9 CRPD), the Building Regulations must be amended to set higher standards to make non-dwelling buildings, including schools which are used as polling stations on election day, fully accessible to voters with disabilities. Secondly, the EA 2010 sets out two relevant obligations of returning officers and poll clerks in the context of disability equality: the duty to make reasonable adjustments (Section 20) and the Public Sector Equality Duty (PSED) (Section 149). The duty to make reasonable adjustments is owed to voters with disabilities generally, and is an anticipatory duty. Pursuant to Section 20 of the EA 2010, election officials must continuously anticipate what barriers their actions, decisions, practices, policies, and premises might create for voters with disabilities and take steps to ensure those barriers do not arise. Election officials must also take such steps as are reasonable to ensure that voters with disabilities are not actually disadvantaged in exercising their right to vote. Moreover, electoral authorities have the duty to take reasonable steps to provide auxiliary aids for voters with disabilities who might otherwise be put at a substantial disadvantage under Section 20(5) of the EA 2010. The interpretation of Section 20(5) concluded that ‘auxiliary aids’ include electoral-assistive devices. Furthermore, the PSED set out in Section 149 of the EA 2010 requires that national authorities, e.g., election officials, have due regard to removing or minimising disadvantages experienced by voters due to environmental factors; take steps to meet the needs of voters with disabilities where these are different from the needs of their non-disabled counterparts; and encourage voters with disabilities to participate in elections. As noted, the PSED is a duty of electoral authorities that involves considering how their services and practices could positively contribute to the improvement of equality in elections, and taking action in that regard. These legal duties imposed on electoral authorities under the EA 2010 protect the right of voters with disabilities to vote, and particularly their right to use accessible voting materials to effectively participate in elections. Nevertheless, evidence from the interviews carried out for this study indicates that the duty to make reasonable adjustments and the PSED have not been fully and effectively implemented by England.

Chapter VI noted that in England voters with visual impairments are provided with three electoral-assistive devices on election day: an enlarged ballot paper copy (poster), a tactile voting device (TVD), and a recently implemented hand-held large ballot paper copy. Overall, research participants who used the poster and TVD to help them vote considered the legal requirement (Rule 29 of Schedule 1 of RPA 1983) to make these devices available an important ‘*authoritative resource*’ that respects their inherent dignity and worth as human beings. This is an important finding, and confirms that adopting legislation to implement Article 29(a) (i) CRPD is an appropriate step to promote respect for the inherent dignity of voters with disabilities and improve their voting experience. Nevertheless, other participants who could have used the existing devices to vote did not know anything about the obligation of England

to provide them with such devices. Accordingly, it was noted that appropriate voter education for voters with disabilities is necessary in England to foster respect for their agency. This concerns a duty which falls on the state under the transformative equality model, as endorsed in the CRPD.

This study revealed that participants who had used the electoral-assistive devices mentioned above sometimes encountered practices at polling stations which hampered them from effectively using these devices. One example of such practices is the attitude adopted by some election officials, and particularly their perceived pity towards voters with disabilities, as referred to by one participant. Another barrier is linked to improper positioning of the poster within polling stations and technical faults with the design of the TVD. As explained in Chapter VI, the display of the poster does not need to follow any technical guideline, aside from the requirement to be placed ‘in a well-lit area’, as stated in Rule 29(3A) of Schedule 1 of RPA 1983. In practice, this meant that some participants could not use the poster effectively because they had no suitable points for viewing the poster. For other participants, the secrecy of their ballot, and the actual usefulness of the poster, was compromised because it was not a hand-held device. Research participants in this study did not have experiences in using the recently implemented hand-held large ballot paper copy, which was prescribed by the UK Electoral Commission in the 2019 ‘Handbook for Polling Station Staff’. Nevertheless, the fact that the Handbook prescribes the use of a hand-held sample ballot paper as an additional electoral-assistive device is important for confirming that administrative and policy measures, alongside legislation, can be effective measures to implement the rights of persons with disabilities under Article 29(a) CRPD.

Chapter VI of this study comprehensively explained that the development and implementation of the TVD enabled some research participants to vote in 2001, when the device was first made available. Nevertheless, not being effectively able to cast a secret and independent ballot when using the TVD was a common experience among users of the TVD who participated in this study. These participants indicated several technical faults with the design of the TVD, in its current format. For example, the TVD makes no reference to candidates’ names, or the order in which they are listed on the official ballot paper. As noted, the technical faults linked to the TVD created additional barriers to voting for some participants with visual impairments that discouraged them from using the TVD and, ultimately, in some cases, from voting. In addition, most of these participants required in-person assistance to vote, which compromised the secrecy and independence of their ballot. This means that, in practice, some participants who used the TVD to help them vote were at a substantial disadvantage compared to non-disabled voters, despite using the device. This is a breach of Article 29(a) CRPD. Accordingly, it was concluded that the availability of electoral-assistive devices is not *per se* an effective measure to implement Article 29(a) CRPD. England must ensure electoral-assistive devices enable voters with disabilities to effectively mark their ballot papers. These

devices must also be properly maintained. Failure to ensure that the poster and the TVD are working effectively constitutes a failure to make reasonable adjustments under the EA 2010. This finding is underlined by the fact that England has not developed accessibility standards to follow when issuing voting materials and setting out the layout of polling stations, as well as when providing electoral-assistive devices.

Establishing accessibility standards, and complying with such standards, is important for ensuring that any means of support or technological aid actually enables users to vote in conformity with the requirements of the CRPD [Articles 9(2)(a) and 29(a) CRPD]. Nevertheless, it is clear that the development and implementation of accessibility standards *per se* will not always result in *de facto* realisation of the right to vote for every person with a disability.¹⁰ In such cases, England has a suitable legal framework to ensure that individualised substantive equality measures, such as the duty to make reasonable adjustments, are imposed on electoral authorities to ensure that the right of persons with disabilities to vote can be exercised on an equal basis with others. However, some election officials who were interviewed for this study provided evidence that suggests that not all of them have complied with their legal duty to make reasonable adjustments in the voting environment, as required by the EA 2010. This represents a breach of the EA 2010, and Articles 4, 5, 9, and 29(a)(i) CRPD. Consequently, the right to vote of some participants was denied.

Overall, the examination of the experiences of the users of the poster and the TVD, who took part in this study, demonstrated that these devices are not effectively addressing accessibility barriers to participate in elections by voters with visual impairments, as required by Article 29(a)(i) CRPD. Moreover, England has not provided proper training for election officials in, *inter alia*, the rights and needs of persons with disabilities, as well as training them in practical skills to assist voters with disabilities when using the existing electoral-assistive devices. These measures are fundamental to fully complying with Article 29(a) CRPD.

The research carried out for this study also demonstrated that some research participants, with a variety of impairments, continue to face barriers when voting because electoral-assistive devices are not provided to them. Furthermore, many participants elaborated on how the dominant ‘able-bodied approach’ to voting is an obstacle for them to participate in the electoral process. They suggested that the provision of voting technological solutions, including electoral-assistive devices to assist voters with disabilities in voting, is a positive measure to ensure their right to vote on an equal basis with others. This measure, in the participants’ view, would contribute to alter (at least to some extent) inaccessible structures within polling stations. In this regard, the duty to provide voters with disabilities with the

10 Andrea Broderick, ‘The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities’ (Intersentia 2015), 243.

necessary ‘(assistive) equipment’ to enable them to vote under Section 9 of the recent Elections Act 2022 is an important new rule to achieve greater accessibility of the voting environment through the provision of AT devices.

Finally, Chapter VI concluded that some policy measures have the potential to improve accessibility of voting materials. Notably, the new National Disability Strategy will be an opportunity for the UK Government to set out immediate actions to remove historic barriers to participation in elections encountered by voters with disabilities, including accessibility barriers. These are also guidelines, and particularly easy-to-read materials, published by the UK Electoral Commission in collaboration with DPOs, as well as the report published in 2018 by the UK Government to improve the accessibility of the voting environment, which was informed by the 2017 Call for Evidence. The report was written in partnership with the Government-chaired Accessibility of Elections Working Group, which includes representatives from DPOs and from bodies that oversee and conduct elections and referendums. This is a promising initiative, and it implements the legal duty of the state to closely consult with persons with disabilities when developing and implementing accessible voting materials, including new electoral-assistive devices, as provided by Articles 4(3) and 29(a)(i) CRPD.

2.3.1.2. Ensuring ballot secrecy

Section 66 and Schedule 1 to the RPA 1983 protect the right to a secret ballot of all voters, including persons with disabilities. The Elections Act 2022 includes measures for extending secrecy provisions to postal and proxy voting (Section 7). The interpretation of the current legal rules in this study revealed that the secrecy of the ballot is a legal element of the right to vote of citizens, including for persons with disabilities, in the UK in compliance with Article 25(b) ICCPR, Article 3 of the Additional Protocol No. 1 to the ECHR, and Article 29(a)(ii) CRPD. The actual realisation of the right to vote secretly was, however, compromised in the case of many research participants. These participants indicated that not having access to accessible voting materials is a barrier to marking their ballots secretly and independently. They acknowledged that, in order to vote effectively, they had to be assisted by a companion or a poll worker. Most of these participants talked about how revealing their political choice to others made them feel different and powerless. This is an important finding which demonstrates that inaccessible voting materials disrespect the inherent dignity, individual autonomy, and independence of persons with disabilities. Not providing accessible voting materials to be used by persons with disabilities to vote secretly is a breach of several legal duties under the CRPD. This includes the responsibility of England to ensure that the dignity of voters with disabilities is respected and to prevent the marginalisation and exclusion of such voters from the electoral process, as required by Articles 3 and 29(a)(i) CRPD. Furthermore, this study revealed that the legal duty to make reasonable adjustments for voters with disabilities to enable them to vote secretly was not implemented in some cases. This is a breach of the EA 2010 and the CRPD. In this regard, some election officials who were interviewed for this study provided evidence

of not being properly trained in implementing their duty to make reasonable adjustments. An examination of the narratives of these election officials led to the conclusion that they were not knowledgeable about the importance of making a reasonable adjustment, e.g., allowing an individual with a disability to use a personal assistive device, to secure a secret ballot.

This study also documented the experiences of participants who were not able to vote secretly, in spite of using the existing electoral-assistive devices to vote. As indicated above in this section, technical problems exist with the design and implementation of the poster and the TVD. These problems meant that most research participants who had used these devices had to ask for help and reveal their political choice to others in order to mark their ballots. Not all of these participants felt comfortable asking for help from others to vote. In such situations, the participants could not exercise their right to ballot secrecy as provided by Article 29(a)(ii) CRPD. This is an important finding that confirms that providing electoral-assistive devices without establishing any mechanism to examine their application (i.e., evaluating how devices are used and what substantial results they produce), is not an effective means to ensure the enjoyment of the right to ballot secrecy by voters with disabilities. Compliance with Article 29(a)(ii) CRPD requires regular monitoring and assessment of the progress made in ensuring ballot secrecy and independence through the implementation of electoral-assistive devices. England is also required to closely consult with DPOs under Articles 4, 9, and 29(a)(ii) CRPD in the monitoring of existing and new electoral-assistive devices. Such consultation might provide guidance to the UK Government on how to provide new electoral-assistive devices that are compatible with the requirements of Article 29(a)(ii) CRPD.

2.3.1.3. Ensuring the free expression of the will of persons with disabilities as voters

Domestic law in England to prohibit discrimination against persons with disabilities in, *inter alia*, the electoral process, includes the RPA 1983, the Mental Capacity Act 2005 ('MCA 2005'), the Electoral Administration Act 2006, and the EA 2010. This domestic law is in compliance with the ICCPR,¹¹ ECHR,¹² and Article 29(a)(iii) CRPD read in conjunction with Article 12 CRPD. The interpretation of these norms revealed that domestic legislation protects persons with disabilities against discrimination in elections and prohibits denying citizens the right to vote on grounds of mental status.

As a result, all persons with disabilities who are eligible to vote are entitled to freely express their will as voters in elections. Nevertheless, this study has revealed that implementation of several of the substantive rights, as well as positive (active) measures established in domestic legislation, has not taken place in its entirety. Many research participants with disabilities

¹¹ Articles 2(1) and 26 ICCPR read in conjunction with Article 25(b) ICCPR.

¹² Article 14 ECHR and Article 3 of the Additional Protocol No. 1 to the ECHR.

talked about multiple discriminatory practices taking place in the context of voting. This was particularly the case for one research participant who was strongly recommended by an election registration officer to vote by post, and not at the polling station, to avoid difficulties arising from the participant's impairment (in the official's view). As noted, this type of practice stigmatises persons with disabilities and makes it less likely that structural inequalities in the voting environment will be addressed. Further actions are, therefore, needed from England to respect the participant's inherent dignity, as required by Articles 3, 5(3), and 29(a) CRPD. This is likely to be important for ensuring the right to vote of other voters with disabilities who did not participate in this study, as well.

Pursuant to Section 20(6) of the EA 2010, where discriminatory barriers that prevent or hamper persons with disabilities from voting concern the provision of (electoral) information, national authorities are required to take action to ensure that the information is provided in an accessible format. Furthermore, Section 21 of the EA 2010 provides that a failure to comply with a duty to make reasonable adjustments constitutes unlawful discrimination. Based on the narratives of numerous participants interviewed for this study, it is apparent that compliance with these norms is not fully achieved by electoral authorities. Research participants revealed that not having access to accessible electoral information throughout the electoral process, including when navigating official websites, was a common discriminatory experience. In this regard, it is noteworthy that, when issuing poll cards, returning officers are not required to follow an official standardised format (Rule 28 of Schedule 1 to the RPA 1983). This explains why some research participants had access to 'better' *resources* to draw on to vote than others, e.g., poll cards with information about wheelchair accessibility at polling stations. Other participants, however, did not have access to similar information on their poll cards. Accordingly, this study noted that adopting accessibility standards applicable to poll cards throughout England, as well as other voting materials, is needed to remove barriers to access to electoral information. This is required by Articles 9 and 29(a)(iii) CRPD.

Personal support is also provided to persons with disabilities when expressing their will as voters in elections. Under the RPA 1983, personal support can be provided by a voters' companion or an election official. Allowing such support is a concrete positive measure taken by England to ensure *de facto* equality and non-discrimination in the voting environment. Furthermore, the recent Elections Act 2022 is an important legislation to protect the right of persons with disabilities to voting assistance 'by a person of their own choice' as required by Article 29(a)(iii) CRPD. The Elections Act 2022 also provides that voters with disabilities can use '(assistive) equipment' to be assisted when voting. This means that the new legislation seeks to ensure that different forms of voting assistance, including personal support and ATs, can be used by voters with disabilities to vote on an equal basis with others, as is provided in Article 29(a)(iii) CRPD.

2.3.1.4. Summary of the analysis of compliance with Article 29(a) by England

This study has concluded that in England the *de jure* right of persons with disabilities to vote is guaranteed by domestic legislation.¹³ Domestic law also aims to ensure the *de facto* realisation of the right to vote by persons with disabilities. Nevertheless, such legislation must be implemented effectively to achieve its goals. As noted, full compliance by officials and public bodies with the duty to make reasonable adjustments and the PSED under the EA 2010 is necessary to enable persons with disabilities to vote on an equal basis with others.

In the context of the progressive realisation of the obligation to provide an accessible voting environment, England has provided voters with visual impairments with access to specific electoral-assistive devices: an enlarged ballot paper copy (poster), a tactile voting device (TVD), and a recently implemented hand-held large ballot paper copy. In this study, the analysis of the experiences of participants who had used the poster and the TVD indicated that these devices did not enable many participants to vote secretly and independently. In practice, problems with the design and implementation of these devices hampered some participants from using them to exercise their right to vote. This is an important research finding, given that under Articles 4, 9, and 29(a) CRPD, England is required to identify, monitor, and address gaps in implementation of electoral-assistive devices. As noted, a mechanism for regularly monitoring and assessing the progress made in ensuring ballot secrecy through the implementation of electoral-assistive devices is necessary in England. The country must evaluate real outcomes achieved by persons with disabilities when using assistive devices to perform electoral-related activities.

In summary, equalisation of opportunities for many research participants with disabilities has not been achieved in England. The research carried out for this study conclusively finds that the link between progressively realising the right of persons with disabilities to an accessible voting environment, and equality in elections, has not been made by national authorities. This is an important consideration when implementing further measures to achieve the full realisation of the right to vote of persons with disabilities in compliance with Article 29(a) CRPD, and particularly in the context of the new UK National Disability Strategy.

2.3.3. Compliance with Article 29(a) CRPD by Spain

In Chapter VII of this study, the compliance by Spain with Article 29(a) CRPD was primarily assessed through a comprehensive analysis of national legislation and policy. This study also explored experiences with using electoral-assistive devices of 15 voters with disabilities

¹³ Under the Mental Capacity Act 2005, the Electoral Administration Act in 2006 that amended the RPA 1983, and the Equality Act 2010.

and seven election officials from Spain to ascertain how relevant national legal and policy instruments are implemented in practice.

Briefly, the CRPD is a treaty incorporated into the Spanish legal system. The integration of the CRPD into domestic law following ratification by Spain has facilitated the application of Article 29(a) CRPD by the legislature and judicial powers.¹⁴ The legislature has adopted legal reforms to achieve conformity with the CRPD including Organic Law 2/2018 (*that guarantees the right to vote of all persons with disabilities*) and the recent Law 8/2021 (*that abolished all forms of guardianship*). Organic Law 2/2018 amended Article 2 of the Organic Law of General Electoral Regime (abbreviated as ‘LOREG’ in Spanish). Pursuant to Article 2 LOREG (as amended), all citizens, including persons with disabilities, are entitled to voting rights, as required by Articles 12 and 29(a) CRPD.

The following sub-section elaborates on the main findings and conclusions of this study concerning the *de facto* realisation of the right to vote of persons with disabilities. This sub-section is structured as follows: compliance with the obligation to provide voters with disabilities with accessible voting materials (sub-section 2.3.3.1); implementation of the duty to ensure voting secrecy (sub-section 2.3.3.2); and compliance with the obligation to guarantee the free expression of the will of persons with disabilities as voters (sub-section 2.3.3.3).

2.3.3.1. Providing accessible voting materials

Voting materials used in elections include ballot papers, voting envelopes, booths, ballot boxes, and pens (for Senate elections) under Articles 70, 81, and 172 LOREG. In practice, voters are also provided with other materials, including information sheets and letters, Electoral Census lists displayed at polling stations, voter education guidelines, and political party manifestos. The term ‘accessible’ is included in electoral law in Article 91(2) LOREG in the context of physical accessibility of polling stations. However, Article 91(2) does not define the term ‘accessible’. In that regard, relevant legal criteria for interpreting the term ‘accessible’ are provided by additional legislation, including Organic Law 9/2007, Royal Decree 1612/2007, Royal Decree 422/2011, and Legislative Royal Decree 1/2013. This domestic law is examined in more depth below.

Organic Law 9/2007 and Royal Decree 1612/2007, which preceded the entry into force of the CRPD, regulate the right of some persons with visual impairments to use electoral-assistive devices when voting. The devices available correspond to haptic aids formatted in Braille: ‘the accessible voting kit’ and a tactile ballot guide. Pursuant to Articles 4-7 Royal Decree

¹⁴ Ignacio Campoy Cervera, ‘Spain’ in Lisa Waddington and Anna Lawson (eds), *The UN Convention on the Rights of Persons with Disabilities in Practice: A Comparative Analysis of the Role of Courts* (Oxford: Oxford University Press 2018).

1612/2007, the ‘accessible voting kit’ contains instructions in Braille, a voting envelope like that used by other voters to place their ballot paper in it, and ballot papers inside corresponding envelopes for each of the candidates. These envelopes indicate on their covers, both in print and in Braille, the name of each candidate. Under Article 5 Royal Decree 1612/2007, voters can also use a tactile ballot guide in Braille to vote in elections to the Senate. Users of these devices must know Braille and be acknowledged as having a visual impairment in a degree equal to or higher than 33 percent or be affiliated with the Spanish National Organisation for the Blind (ONCE) under Article 3 of Royal Decree 1612/2007.

This study has noted that making the electoral-assistive devices mentioned above available is a concrete measure adopted by Spain to achieve *de facto* equality for some persons with visual impairments who fulfil the requirements established in the law. The research participants who had used these devices reported positive voting experiences. They talked about how using the devices has enabled them to vote secretly and independently. This is an important finding, and confirms that electoral-assistive devices are an effective means of support to ensure the enjoyment of the right to vote by persons with disabilities on an equal basis with others. Furthermore, this study has revealed that certain socio-cultural factors have influenced the positive meaning ascribed to the existing devices by some participants. For example, users of the devices talked about how the ‘accessible voting kit’ reflects social values that are important for Spanish blind persons, and namely recognising blind persons as independent individuals and active members of society. Other participants also regarded positively the fact that the accessible voting kit and the tactile ballot guide were developed by a Spanish organisation (ONCE), which works in favour of the social inclusion of persons with visual impairments. This is an important consideration when making new accessible voting materials available, including electoral-assistive devices, given that under Articles 4(3) and 29(a)(i) CRPD, Spain is required to closely consult with persons with disabilities and their representative organisations on all aspects of the development and implementation of such materials.

Additional legislation interpreted in this study includes Royal Decree 422/2011 and Legislative Royal Decree 1/2013. Royal Decree 422/2011 aims to determine the basic conditions of accessibility and non-discrimination that must be met by environments, products, and services for the participation of persons with disabilities in, *inter alia*, the electoral process (Article 1). Legislative Royal Decree 1/2013 seeks to enhance participation and accommodate the needs of persons with disabilities. Articles 2 and 5 of Legislative Royal Decree 1/2013 provide that positive measures to ensure equality of opportunities, non-discrimination and universal accessibility apply to, *inter alia*, all products, environments, programmes, and services made available to the public, which clearly covers voting and elections. Furthermore, Article 23 of Legislative Royal Decree 1/2013 provides for the gradual implementation of accessibility. In that regard, Legislative Royal Decree 1/2013 establishes specific time-bound benchmarks under the third additional provision (d). The interpretation of Royal Decree 422/2011 and Legislative

Royal Decree 1/2013 led to the conclusion that, in Spain, national electoral authorities are required to ensure that voters with disabilities have access to, among others, accessible voting materials that accommodate them based on their individual needs and preferences, while protecting their personal autonomy. As noted, Spain has adopted relevant domestic laws to ensure (at least formally) that voters with disabilities are provided with accessible voting materials. These norms constitute an important legal protection aimed at accelerating the concrete implementation of Article 29(a)(i) CRPD. Nevertheless, this study has revealed that implementation of several of the substantive rights, as well as positive (active) measures established in domestic legislation, has not taken place in its entirety.

Many research participants with disabilities reported that inaccessible voting materials are a barrier for them to vote on an equal basis with others. These participants included persons with visual impairments who did not fulfil the legal requirements under Article 3 of Royal Decree 1612/2007 to use the existing electoral-assistive devices. For example, this included participants with low vision who do not know Braille. Overall, numerous participants interviewed for this study reflected on how not using accessible voting materials made them feel different and of lesser value than their non-disabled counterparts. Moreover, barriers to vote associated with inaccessible voting materials affected not only the ability to vote of some research participants but also their decision to vote again in future elections. Consequently, this study has found that the inaccessibility of voting materials was a major barrier that hindered *de facto* equality of some research participants to participate in elections. This is likely to be the case of other persons with disabilities who did not participate in this study as well.

This study has also found that, as social actors, various research participants reflected on their individual strategies in responding to inaccessible voting materials, e.g., using easy-to-read practice ballot papers published by local DPOs before an election day. An examination of the different forms of strengths and individual efforts that some research participants used to vote led to the conclusion that, in practice, barriers to participation were not addressed by fundamental structural changes in the voting environment by national authorities. It was usually the participants themselves who took action to overcome accessibility barriers through individual efforts. This means that accessibility problems of voting materials have not been addressed by Spain to achieve compliance with Article 29(a)(i) CRPD.

The research carried out for this study has also demonstrated that certain attitudes and practices of election officials revealed the complexity of power relations within the voting context. For example, one election official who was interviewed for this study considered that requests from voters to use personal assistive devices, such as a screen reader on a mobile phone, must always be denied in order to minimise security risks and avoid electoral fraud. As noted, such a practice is a breach of the duty to provide reasonable accommodations in an individual case under Article 2 of Royal Decree 1/2013 and Article 5(3) CRPD, read in conjunction with

Article 29(a)(i) CRPD. Other election officials also elaborated on their lack of training on how to use the existing electoral-assistive devices, and on disability rights in general. This finding is underlined by the fact that Spain has not developed a training programme on the duties of election officials to make reasonable accommodations for voters with disabilities. As noted, full compliance by Spain with Article 29(a)(i) and related CRPD provisions requires the adoption of further active measures to tackle discrimination against voters with disabilities, and increase equality of opportunities for them in the context of voting. These measures must include training on disability rights of election officials.

Finally, Chapter VII has concluded that one priority area of action that was established in the new Spanish Strategy on Disability 2022-2030 is participation of persons with disabilities as voters, with an emphasis on accessibility of the voting environment. The implementation of the actions listed in the Spanish Strategy will enhance opportunities for persons with disabilities living in both rural and urban areas to participate in political and in public life.

2.3.3.2. Ensuring ballot secrecy

Pursuant to Articles 5 and 86 LOREG, Spain must ensure the *de jure* right of all voters, including voters with disabilities (and irrespective of their impairment), to vote secretly in elections, as required by Article 25(b) ICCPR, Article 3 of the Additional Protocol No. 1 to the ECHR, and Article 29(a)(ii) CRPD. The actual realisation of the right to cast a secret ballot is formally addressed in Article 3(2) of the amended LOREG. This provision recognises the existence of differences among human beings, and, as such, the right to access ‘means of support’ when appropriate in the context of voting. The term ‘means of support’ is not defined in Article 3(2) LOREG. As noted, legal guidance to interpret the term ‘means of support’ in relation to ‘specific measures’ and other (active) measures, as provided by the CRPD is found in Organic Law 2/2018 (that amended the LOREG) and the recently adopted Law 8/2021 (that abolished all forms of guardianship). The interpretation of this legislation led to the conclusion that Spain has the duty to provide different positive measures to ensure that voters with disabilities can vote secretly, including providing electoral-assistive devices and making reasonable accommodations.

As noted above, national legislation provides for specific electoral-assistive devices to be used by voters with visual impairments who know Braille: the ‘accessible voting kit’ and the tactile ballot guide. Evidence from the interviews carried out for this study indicates that participants who had used these devices to vote were enabled to cast a secret ballot. This is an important finding, and confirms that making electoral-assistive devices available to be used by persons with disabilities supports them to vote secretly on an equal basis with others, as required by Article 29(a)(ii) CRPD. This study has also demonstrated that other research participants, with a variety of impairments, continue to face barriers when attempting to vote secretly. This is caused, among others, by not having access to accessible voting materials,

including electoral-assistive devices. As a result, the *de facto* realisation of the right to vote secretly of many research participants was curtailed. Furthermore, numerous participants with disabilities who were interviewed for this study reflected on how structural barriers to voting secretly were related to ‘able-bodied values’ that prevail in the voting environment (e.g., one mode and cognitive mechanism for comprehension of ballot papers). These ‘able-bodied values’ resulted in various research participants not being able to vote secretly. In such cases, the participants depended on others to vote, and consequently they were forced to reveal their political choices to others. This is a breach of Article 29(a)(ii) CRPD.

In summary, equalisation of opportunities to vote secretly for many research participants with disabilities has not been achieved by national authorities. Further positive measures to remove or minimise disadvantages experienced due to environmental factors by some participants when attempting to vote secretly are necessary in Spain. To that end, this study has highlighted the important work carried out by the Spanish Centre of Personal Autonomy and Assistive Technologies (‘Ceapat’) in creating personal AT devices to be used by persons with disabilities. A potential cooperative relationship between the Ceapat and the national electoral authorities can be important for developing new electoral-assistive devices in the context of the Spanish Strategy on Disability 2022-2030.

2.3.3.3. Ensuring the free expression of the will of persons with disabilities as voters

This study has concluded that Articles 12 and 29(a)(iii) CRPD have been incorporated into the national electoral law through the amended Article 3(2) LOREG. All persons with disabilities who are eligible to vote are entitled to freely express their will as voters in elections in accordance with the ICCPR,¹⁵ ECHR,¹⁶ and CRPD. Moreover, the recently adopted Law 8/2021 entitles persons with disabilities to access any ‘material support’, such as electoral-assistive devices, they need to exercise their legal capacity in voting.

Domestic legislation also provides for making information and ICTs accessible for persons with disabilities. Accessibility criteria for ICTs, products, and services used by persons with disabilities, including those related to political participation, such as websites of electoral authorities, are established in Royal Decree 1494/2007. Spain must also provide training on accessibility needs of persons with disabilities to political parties under Article 6 of Royal Decree 1494/2007. Moreover, after the incorporation of the CRPD into the Spanish legal order, Legislative Royal Decree 1/2013 set out basic accessibility criteria and non-discrimination requirements to gradually ensure access by persons with disabilities to ICTs, including assistive technologies (Article 24). Building on Legislative Royal Decree 1/2013, Royal

¹⁵ Articles 2(1) and 26 ICCPR read in conjunction with Article 25(b) ICCPR.

¹⁶ Article 14 ECHR and Article 3 of the Additional Protocol No. 1 to the ECHR.

Decree 1112/2018 ensures the right of persons with disabilities to access accessible digital electoral information by voters with disabilities. The interpretation of this legislation led to the conclusion that Spain has suitable domestic law to ensure that voters with disabilities can access accessible electoral information and communication throughout the electoral cycle, in compliance with Articles 5, 9, 12, and 29(a)(iii) CRPD.

Nevertheless, this study has revealed that implementation of several of the substantive rights, as well as positive measures established in the legislation mentioned above, has not taken place in Spain, at least not entirely. Evidence from the interviews carried out for this study confirmed that many participants with disabilities did not have opportunities to receive and understand accessible electoral information. This is a breach of Article 29(a)(iii) CRPD. As noted, various participants encountered barriers that maintained or perpetuated disadvantage for them when making the decision to vote (in the first place) and making an informed political choice. In that regard, Spain has recently funded some initiatives led by Plena Inclusión Spain within the #MyVoteCounts campaign to implement additional electoral-assistive devices in the form of publications in easy-to-read format. This study has found that the participants who had used these easy-to-read publications regarded such devices as sufficient to enable them to make their political choice. This is an important finding, and confirms once more that making electoral-assistive devices available throughout the electoral cycle is a necessary measure for achieving greater equality in elections.

The right to voting assistance provided by a voter's companion is guaranteed by legislation under Article 87(1) LOREG. Election officials are not legally obliged to provide assistance to voters with disabilities, even if the voter with a disability wishes to receive such assistance. This means that persons with disabilities cannot always be assisted when voting '*where necessary, at their request*' or by the '*person of their own choice*', as required by Article 29(a)(iii) CRPD. Indeed, some participants were forced to reveal their political choice to their companions, who were commonly their relatives, even when the participants did not want to receive such assistance. Moreover, there are no legal or policy instruments specifically aiming to prevent intrusions or negative practices that might inhibit the free expression of the will of persons with disabilities as voters, which occur in the private sphere. Additionally, some participants were forced to request help from 'other persons' who were at polling stations, and specifically representatives of political parties (electoral observers). This was particularly the case for two participants who lived alone and did not have a companion to go to vote with. These two participants were exposed to a higher risk of voter intimidation or coercion, as well as to a potential source of 'proximity bias' in voting behaviour,¹⁷ because they did not have access to an impartial assistant when voting. Spain must therefore adopt further effective

17 Zamira Noh, 'Bias in Voting Behaviour: Endogenous and Exogenous Factors' (University of Lincoln 2017) <http://eprints.lincoln.ac.uk/id/eprint/28661/1/28661_Noh_Zamira-Psychology-June_2017.pdf>.

measures to facilitate independent and impartial personal support, as well as other forms of technological voting assistance, to help persons with disabilities vote, as required by Article 29(a)(iii) CRPD.

Lastly, this study has explained that in order to effectively guarantee the right of persons with disabilities to voting assistance under Article 29(a)(iii) CRPD, Spain must develop voter education initiatives targeted at persons with disabilities so that they can become aware of this right and draw upon such knowledge to act. Moreover, election officials must be provided with appropriate training opportunities to develop practical skills and understanding of the needs of persons with disabilities. This is a legal obligation of Spain under Article 29(a)(iii) CRPD that has not been fully implemented.

2.3.3.4. Summary of the analysis of compliance with Article 29(a) CRPD by Spain

In Spain, national legislation provides for *de jure* and *de facto* equal voting rights for all persons with disabilities, in compliance with Article 29(a) CRPD.¹⁸ The research carried out for this study, however, revealed that the relevant legislation is not entirely implemented in practice. As noted, for some research participants who participated in this study, measures put in place to ensure their right to vote on an equal basis with others did not produce substantial outcomes compatible with the requirements of Article 29(a) CRPD. Barriers, including inaccessible voting materials, remain for many participants in enjoying their right to vote secretly and to freely express their will as voters, and, therefore, achieving equality in practice. This is a breach of Article 29(a) CRPD. Further positive (active) measures towards ensuring effective and full exercise of the right of persons with disabilities to vote are necessary in the case of these research participants. This is likely to be the case of other persons with disabilities who did not participate in this study, as well.

In the context of the progressive realisation of the obligation to provide an accessible voting environment, Spain has provided voters with visual impairments who know Braille with access to two specific electoral-assistive devices since 2007: an ‘accessible voting kit’ and a tactile ballot guide (for the Senate elections). Evidence from the interviews carried out for this study demonstrated that research participants who had used these devices were enabled to cast a secret and independent ballot. As such, this study has provided evidence that the provision of electoral-assistive devices is an effective positive measure to ensure *de facto* equality of some

18 This domestic legal framework includes Organic Law 9/2007 that provides for the use of electoral-assistive devices by some persons with visual impairments who know Braille; Legislative Royal Decree 1/2013 that establishes concrete requirements to ensure equal opportunities of persons with disabilities, non-discrimination, and universal accessibility; Organic Law 2/2018 that guarantees the right to vote of persons with disabilities on an equal basis with others and provides for the availability of ‘means of support’ to assist persons with disabilities when voting; and Law 8/2021, which is the most recent legal instrument which abolishes all forms of guardianship.

participants in voting. Implementing other positive (active) measures, including reasonable accommodations, as well as providing different electoral-assistive devices throughout the electoral cycle, is necessary to enable other participants with disabilities to vote.

Lastly, this study has concluded that in order to ensure full and effective implementation of Article 29(a) CRPD, Spain must develop voter education initiatives targeted at persons with disabilities and training of election officials responsible for complying with the obligations set out in Article 29(a) CRPD. The Spanish Strategy on Disability 2022-2030 is an opportunity to implement current and new legislation and policy in that regard.

3. Recommendations

This section provides recommendations for both England and Spain that are in line with the findings and conclusions described above. This section also includes recommendations for other key stakeholders: the Council of Europe mechanisms, and primarily the ECtHR, as well as the EU policy-makers and the CRPD Committee.

3.1. Recommendations for England

The obligation to adopt proactive measures to ensure the *de facto* realisation of the right to vote by persons with disabilities is grounded in the conceptual understanding of disability endorsed by the CRPD. The CRPD confirms a progressive and empowering rights-based approach to disability, which recognises that persons with disabilities are holders of voting rights on an equal basis with others. This approach to disability is based on the core notion of human dignity and the acknowledgement that voters with disabilities face discrimination and structural inequalities when attempting to vote in elections. England must incorporate into its legislation and disability policy the progressive conceptual understanding of disability, as endorsed by the CRPD, to expand the protection of the right to vote of persons with disabilities. Accordingly, national electoral authorities must adopt proactive measures designed to overcome a history of exclusion and discrimination against voters with disabilities. These measures include the obligation to provide accessibility in the voting environment, provide reasonable accommodations to individual voters, and apply universal design in the voting environment. All these measures aim to ensure the right of persons with disabilities to participate in elections to the same extent as non-disabled voters.

This study has elaborated on the obligation of England to provide accessibility in the voting environment. This is a progressively realisable duty and a precondition for the effective enjoyment of voting rights by persons with disabilities under Articles 9 and 29(a) CRPD.

Compliance with the duty to provide accessibility in the voting environment implies that England must adopt further suitable measures related to the physical accessibility of polling stations, as well as the accessibility of voting materials and procedures. For the present purposes, national electoral authorities must take concrete steps to prevent and eliminate the use of inaccessible voting materials throughout the electoral cycle in an efficient and effective way. Achieving greater accessibility for voting materials will help foster substantive equality for persons with disabilities. To that end, England should incorporate the electoral-cycle approach as an analytical tool or framework with which to identify and address discriminatory barriers to accessibility without delay. Moreover, national authorities must decide whether they should provide new accessible voting materials, including electoral-assistive devices and other voting technological solutions, enabling voters with disabilities to participate in elections.

A range of haptic, reading, writing, visual, and electronic voting aids, such as those illustrated in this study, already exist to render participation in elections realisable for voters with disabilities. This study has indicated that these devices can be used to assist multiple audience groups of voters, including persons with disabilities, in performing electoral tasks. Moreover, this study has shown that England can make either affordable (low-tech) or expensive (high-tech) devices available. This fact must be considered by national electoral authorities when assessing the cost implications that the provision of technological voting aids will entail. Overall, designing, implementing and monitoring electoral-assistive devices entails financial investments on the part of the country, as well as following a concrete timeline. In pursuing such endeavours, England must begin by evaluating the application of existing electoral-assistive devices. This measure involves examining whether the use of the current enlarged copy of the ballot paper (poster) and tactile voting device (TVD) produce user outcomes that are compatible with the requirements of Article 29(a) CRPD. In that regard, the role played by the Government-chaired Accessibility of Elections Working Group is crucial in complying with Article 4(3) CRPD. Pursuant to Article 4(3) CRPD, national authorities must closely consult with persons with disabilities when developing and implementing legislation and disability policy, as well as when making decisions pertaining to the rights of persons with disabilities. On the basis of meaningful consultations with users of the poster and the TVD, England must ensure that the technical faults associated with the current functioning and design of these devices are overcome. The suggestions raised by participants of this study in that regard might be useful for national electoral authorities.

Overall, decisions regarding making new technological aids available must be based on a substantive equality approach and guided by the general principles set out in Article 3 CRPD, including the principles of respect for inherent dignity and non-discrimination. Moreover, England must evaluate the application of existing and new electoral-assistive devices. Evaluation reports are necessary to assess the outcomes reached by users of AT devices and in conformity with the requirements of Articles 9 and 29(a) CRPD. To that end, the

country must consult with and secure the direct involvement of persons with disabilities and DPOs. Developing such consultations will be an important measure on the part of the UK Government, one that is taken into account by the CRPD Committee in its review of the active measures implemented by the UK to comply with Article 29(a) CRPD.

Furthermore, addressing discriminatory structures and practices within the national electoral system requires that national authorities provide education centred on persons with disabilities and training for election officials on the rights and needs of voters with disabilities. Firstly, national authorities must provide voter education to ensure that all persons with disabilities understand their voting rights and the voting procedure. England has already adopted important measures in this regard. For example, the UK Electoral Commission has worked collaboratively with DPOs, mainly Mencap and the Royal National Institute of Blind People (RNIB), to write and publish electoral information in plain language, as well as training materials for election officials. England can build on such examples of good practice and adopt new voter education initiatives to inform persons with disabilities about their voting rights. These measures include but are not limited to the dissemination of information, materials, and programmes. Secondly, the training of polling station staff must ensure the development of their practical skills in assisting voters with disabilities, making reasonable adjustments, and addressing accessibility problems encountered by voters with disabilities. For the present purposes, it is important to note that the election officials interviewed for this study suggested the use of information and communication technologies (ICTs), e.g., mobile phone applications and online training platforms, to support election officials (including persons with disabilities) in improving their work during elections to effectively address the needs of voters with disabilities.

Lastly, English policy-makers must adopt measures to raise awareness within the public and private spheres (including the family level) concerning the voting rights of persons with disabilities. Such awareness-raising measures are necessary in England to ensure respect for the *agency* of persons with disabilities and their right to vote secretly, as required by Articles 8 and 29(a) CRPD.

3.2. Recommendations for Spain

In Spain, legal protections exist to realise the *de facto* or substantive equality of voters with disabilities in the context of voting. These legal protections, particularly the most recent legal reforms in the context of disability, are consistent with the CRPD. In the effective implementation of this legislation, there are challenges for national electoral authorities. Firstly, the urban-rural divide is a societal and political challenge facing national electoral authorities in achieving non-discrimination and equality for voters with disabilities. Living in rural areas is not a problem *per se*. Problems arise when the consequences of living in rural areas impact

the exercise and enjoyment of human rights, including the right to vote.¹⁹ Evidence from the interviews carried out for this study suggests that participants with disabilities living in rural areas did not have equal opportunities for participation in electoral campaigns, as was the case for other participants living in urban sectors. Taking the principles of non-discrimination and equality of opportunity of the CRPD into account, national electoral authorities must develop a plan of action with concrete benchmarks to address barriers restricting participation in elections among persons with disabilities living in both rural and urban areas. Planning, as a tool for the overall regional and local implementation of the relevant legislation, would allow national authorities to develop a wider understanding of issues of disability equality and inclusion for persons with disabilities in elections. This is an important measure for achieving the objectives of the Spanish National Strategy 2022-2030. Moreover, planning can ensure the development of context-appropriate measures to enable the full and effective realisation of the right of all persons with disabilities to vote within a reasonable timeframe.

Secondly, national electoral authorities must undertake post-legislative evaluations to determine how well new legislation in the context of disability is being implemented. This is a good practice that would allow the Spanish Electoral Administration to identify the potential difficulties faced by relevant local authorities in implementing their new responsibilities. Publishing reports on how local authorities are complying with, *inter alia*, their duty to provide voters with disabilities with ‘means of support’ to vote, as required by the recently amended Article 3(2) LOREG, is an important measure that can be used to inform the Government’s actions. Notably, the Central Electoral Commission and the Ministry of Internal Affairs must consider issues emerging from reports on the implementation of the amended Article 3(2) LOREG, and act accordingly.

The accessibility of the voting environment is a precondition for the effective enjoyment of voting rights by persons with disabilities, as established in Legislative Royal Decree 1/2013 and in accordance with Articles 9 and 29(a) CRPD. Evidence from the interviews carried out for this study suggests that there have been delays in implementing Legislative Royal Decree 1/2013. Therefore, Spain must adopt concrete strategies and plans of action to comply with the accessibility criteria and non-discrimination requirements applicable to the context of voting established in Legislative Royal Decree 1/2013. National authorities are responsible for implementing this legislation in a timely and effective way so as to ensure that voters with disabilities can use, *inter alia*, accessible voting materials. Measures in that regard must be part of a broad policy initiative aimed at achieving structural change for voters with disabilities.

19 Council of Europe, Urban/Rural Divide: Developing Interactions between Territories (Congress of Local and Regional Authorities 2019).

Furthermore, immediate actions are necessary for the progressive realisation of the right of persons with disabilities to use accessible voting materials, including electoral-assistive devices. In that regard, there are important considerations as follows. Firstly, national electoral authorities must allocate resources and closely consult with persons with disabilities and DPOs when deciding on new accessible voting materials. Secondly, national authorities can use the electoral cycle approach to develop and implement new accessible voting materials.²⁰ This approach allows for a broad understanding of the nature of the tasks performed by and skills required on the part of voters throughout the electoral cycle. Overall, the approach adopted by Spain must be broad enough to cover various impairments and all activities that require the direct participation of voters, as well as all forms of disability-based discrimination within the national electoral system. Thirdly, Spain must establish benchmarks with which to measure progress in the implementation of the duty to provide voters with disabilities with accessible voting materials. Fourthly, it is necessary to set up mechanisms to ensure that all newly implemented voting materials are fully accessible for persons with disabilities.

Making haptic aids (the ‘accessible voting kit’ and the tactile ballot guide) available to be used by persons with visual impairments who know Braille has proven to be an appropriate and effective measure, in line with Article 29(a) CRPD. National authorities can build on this good practice to redress structural inequalities and inaccessibility that persist for other participants with various impairments, including persons with low vision who do not know Braille. All persons with disabilities have the right to use accessible voting materials. As such, policy decisions regarding the provision of accessible voting materials, including new electoral-assistive devices, must be adopted in consultation with DPOs. Such policy decisions can also be informed by the Spanish Centre of Personal Autonomy and Assistive Technologies (the ‘Ceapat’ in Spanish). Experts in the field of AT, including persons with disabilities, as direct users of this technology, can provide opinions and advice on product design, implementation, and the evaluation of technological aids. These aids, as illustrated in this study, include haptic, reading, writing, visual and electronic voting aids used to enable persons with disabilities to vote secretly, where necessary.

Lastly, there are two important measures to be adopted by Spain in the context of the recent disability legal reforms. First, voter education initiatives must contribute to eliminating the stigmatisation and stereotyping of voters with disabilities. Overall, voter education must make information about the voting rights of persons with disabilities available and accessible to all voters. These initiatives can include publicity encouraging persons with disabilities to vote and strategies for reaching out to persons with disabilities, as well as other voters. Second,

20 The electoral cycle approach recognises elections as composed of a number of ‘integrated building blocks’ or periods, with various stakeholders interacting with and influencing each other. See Project ACE. The Electoral Knowledge Network, ‘Electoral Cycle’ (*What is the Electoral Cycle?*, 2015) <<https://aceproject.org/electoral-advice/electoral-assistance/electoral-cycle>> accessed 24 September 2020.

the training of election officials to perform their duties on election day must include the dissemination of accessible information and materials on the rights of persons with disabilities. Notably, most election officials interviewed for this study suggested that the training of poll workers in disability rights can help eliminate stigmatisation regarding the capabilities of persons with disabilities to vote. The elimination of discrimination and the stigmatisation of voters with disabilities is a major challenge for Spain, which must ensure that existing discriminatory practices within the national electoral system are eliminated to allow persons with disabilities to participate in elections and society in general on an equal basis with others.

3.3. Recommendations for the Council of Europe

At the level of the Council of Europe, the ECHR is not explicit in recognising the obligation of Contracting States to provide accessibility in the voting environment and to classify failures in that regard as a form of discrimination, unlike the CRPD. Therefore, it is especially important that the ECtHR acknowledge the importance of the CRPD as a global disability-specific treaty and its relevance to interpreting substantive rights under the ECHR in the context of disability in a consistent manner. In the relevant forthcoming cases the ECtHR receives, it has an opportunity to elaborate on how the substantive rights and obligations set out by Article 29(a) CRPD interact with the relevant provisions of the ECHR in the context of disability. Such an elaboration could be useful in providing clear guidance to Contracting States to the ECHR regarding how to fulfil their positive obligations in the context of the voting rights of persons with disabilities. This would contribute to developing relevant international human rights standards that are in harmony with one another.

Furthermore, the implementation of the *'Disability Strategy 2017-2023: Human Rights - A Reality for All'* by the Council of Europe and its Contracting States is an opportunity to achieve equality and non-discrimination for persons with disabilities in Europe. In its Strategy, the Council of Europe outlined certain priority areas, including accessibility. Publishing updated reports on the progress regarding the implementation of the actions listed in the Strategy related to accessibility, e.g., the dissemination of good and affordable practices, is necessary. A key outcome of these reports, as well as of other initiatives with an evaluative or reflective perspective, will be to identify lessons learned by the Council of Europe bodies, Contracting States, and other relevant stakeholders. The new post-2023 Disability Strategy of the Council of Europe must be informed by these reports. Other actions led by the Council of Europe, including adopting regulations and disability policy, are also needed to achieve the full and effective participation and inclusion of persons with disabilities in national, regional, and local elections. Overall, these actions must provide Contracting States with practical guidance on how to implement the substantive rights and obligations contained in the ECHR and CRPD.

3.4. Recommendations for EU policy-makers

The recent EP Legislative Resolution on the proposal for a Council Regulation on the election of the members of the EP [2020/2220 (INL)]²¹ proposes changes in the EU Electoral Act 1976. In this resolution, proposals for ensuring the right of all persons with disabilities, who are EU citizens, to vote on an equal basis with others and to use, *inter alia*, accessible voting materials in EP elections have been introduced. If approved, the new Council Regulation would contribute to achieving the overall goal of equalising opportunities for persons with disabilities in the context of EP elections. The Council must approve the proposed reform of the electoral law of the EU to realise the voting rights of persons with disabilities, in line with Article 29(a) CRPD.

Lastly, the European Commission should also continue working to support Member States to ensure the participation and inclusion of persons with disabilities in European elections. Further actions aimed at increasing the awareness of voting rights for persons with disabilities and the obligations of Member States under the CRPD are necessary. The European Commission should, for example, continue funding the initiatives of EU-level disability organisations seeking to increase knowledge of voting rights, introduce innovative advocacy tools, and enhance the awareness of their member organisations and other key stakeholders. The European Commission should also publish a follow-up report to the initial report on the 2019 Elections to the EP. Such a follow-up report would be useful for Member States in preparation for the upcoming 2024 EP elections. The report could provide an account of, for example, recent measures adopted by Member States to overcome the accessibility barriers encountered by persons in public places, such as schools, which are used as polling stations on election day. Lastly, in the context of the *'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030'*, the European Cooperation Network on Elections²² plays an important role in helping Member States to achieve full electoral participation and accessibility regarding the European elections, in accordance with the CRPD.

21 Legislative Observatory European Parliament 2020/2220 (INL) Proposal for Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the Europe.

22 This Network was launched in 2019 by the European Commission to contribute to supporting the integrity of the 2019 elections to the EP.

3.5. Recommendations for the CRPD Committee

‘Nothing about us without us’ is a key principle in the field of disability rights.²³ Briefly, the principle ‘nothing about us without us’ relies on the right of persons with disabilities to participate in any decision-making process concerning issues relating to them. The negotiations of the CRPD embodied the principle ‘nothing about us without us’. During the first sessions of the Ad Hoc Committee, there was broad agreement that representatives from non-governmental organisations (NGOs) accredited to the Ad Hoc Committee could participate in meetings and make statements during the negotiations.²⁴ Delegates to the Ad Hoc Committee represented NGOs, governments, national human rights institutes (NHRIs) and international organisations. Additionally, the working group to prepare a draft text of the CRPD was composed of government and NGO representatives. As such, it was the first time that NGOs actively participated in the drafting processes of a human rights treaty.²⁵ Moreover, in its monitoring of the implementation of the CRPD by the States Parties, the CRPD Committee has relied on, among others, the information submitted by NGOs (Articles 33 and 35 CRPD).²⁶

The CRPD Committee should continue working to support persons with disabilities and their representative organisations to participate in the monitoring process of the implementation of Article 29(a) CRPD. The CRPD Committee should organise reporting workshops and publish updated guidelines for independent monitoring frameworks. Such training initiatives can be designed and implemented in partnership with other UN agencies and national organisations. Overall, training of key stakeholders in the reporting mechanism to the CRPD Committee is an important measure to enable persons with disabilities to express their opinions on government actions. Moreover, civil society plays a positive role in assessing the outcomes reached by users of any available voting material, including voting technological solutions in conformity with the requirements of Articles 9 and 29(a) CRPD.

After the consideration of the upcoming state reports by England and Spain, the resulting concluding observations issued by the CRPD Committee should identify progress in ensuring the right to vote of persons with disabilities through concrete positive measures. In its review of the State Parties’ reports, the CRPD Committee should consider whether or not existing electoral-assistive devices have enabled persons with disabilities to vote secretly and

23 Christine Bryden, *Nothing about us, without us!: 20 Years of Dementia Advocacy* (Jessica Kingsley Publishers 2016), 107.

24 UN General Assembly, Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, New York, 16-27 June 2003, Second Session A/58/118 of 3 July 2003’ <https://www.un.org/esa/socdev/enable/rights/a_58_118_e.htm> accessed 6 May 2020.

25 *ibid.*

26 Committee on the Rights of Persons with Disabilities, *States Parties Reporting*, Database of progress reports <<https://www.ohchr.org/en/treaty-bodies/crpd>> accessed 24 October 2022.

independently. Moreover, the CRPD Committee will have the opportunity to make concrete recommendations to England and Spain pertaining to the wide range of technological aids that exist to overcome accessibility barriers to participation in elections.

Finally, in the relevant forthcoming General Comments issued by the CRPD Committee, as well as the optional individual complaints that the Committee receives, it has an opportunity to elaborate on how the substantive rights and obligations set out in Article 29(a) CRPD can be implemented through the provision and use of ICTs, including assistive technologies, by voters with disabilities. Overall, the elaborations of the CRPD Committee will provide guidance to States Parties on ensuring equal access for all voters to electoral processes through the appropriate use of technology in elections.

Impact paragraphs

The study ‘Voting Matters’ offered an important argument: that only a transformative equality approach to voting rights will prove adequate to confront and overcome the structural and systemic nature of discrimination that persons with disabilities face when attempting to vote in elections. ‘Transformative equality’ means enabling voters with disabilities to develop the skills they need to effectively participate in elections. The objective of this study was to demonstrate that anti-discrimination prohibitions applicable in the context of voting rights of persons with disabilities are only effective when implemented alongside equality measures.

This study’s proposition was to afford opportunities to voters with disabilities and promote changes to the underlying social framework. Currently, this framework denies those with disabilities the chance to exercise genuine choice and generates inequitable outcomes. Our efforts began with garnering a deep understanding of the connection between the right of persons with disabilities to vote secretly and their use of electoral-assistive devices they are entitled to under human rights law, and primarily Article 29(a) CRPD. With its careful integration of legal and social scientific methods and paradigms, this study is able to offer new answers to unanswered research questions in a valid, efficient, and accessible manner.

Rather than making *a priori* claims that providing electoral-assistive devices that enable persons with disabilities to vote secretly and independently is an equality measure for abolishing discrimination in the context of voting, this study offered an epistemic (i.e., valid) reason to support these claims. These reasons emerged from the voting experiences of 42 research participants, including persons with disabilities and election officials from both England and Spain. As such, this study is a new research evidence base that recognises the experiences of participants as a legitimate source of knowledge. Moreover, the findings based on the contributions of the research participants proved valuable for the identification of a range of recommendations for lawmakers and policy-makers from England and Spain, and at the Council of Europe and EU levels, proposed in Chapter VIII.

This study will serve as a key framework, concrete blueprint, and a source of inspiration for those who want to preserve the voting rights of persons with disabilities and confront contemporary challenges to democracy. The actors who could benefit from the conclusions and recommendations that have emerged from this study include persons with disabilities, disability scholars, advocacy organisations, and human rights and disability defenders in general. Based on its findings, these actors can agree that an inclusive and accountable democratic system involves more than formal equality of all voters: it entails adopting positive measures. These measures include providing electoral-assistive devices for the use of voters with disabilities that allow for their voting experience to exist on an equal basis with others. Notably, this study

has provided a wide range of stakeholders (including civil society) with concrete examples of current and emerging electoral-assistive devices used, both within and outside of Europe, to enable persons with disabilities to vote. The goal is for this research to serve as a basis for the development of appropriate measures by States Parties to the CRPD, as well as strategic advocacy actions by persons with disabilities and their representative organisations that address existing discriminatory practices in the context of voting.

About the author

I (Adriana Caballero-Pérez) am a human and disability rights researcher and defender from Colombia. I believe the meaningful participation of persons with disabilities in political and public life to be a strategic priority to ensure democratic societies.

I earned a first bachelor of arts in occupational therapy and a second degree in law sciences (LLB). I also hold a master's degree in sociology from the Universidad Nacional de Colombia and an LLM in international human rights law from Lund University, Sweden. Moreover, I have pursued my PhD studies at one of the top universities in, *inter alia*, the field of international and European legal studies: Maastricht University in the Netherlands.

In achieving some of these academic goals, I was financially supported by three major grants: a full scholarship for master's studies in Colombia (Excellence Scholarship for bachelor students at the Universidad Nacional de Colombia), the Swedish Institute Scholarship for Global Professionals for master's studies in Sweden, and the Marie Skłodowska-Curie Actions Doctoral Network 2020 (Disability Advocacy Research in Europe programme).

Furthermore, I have professional experience in the legal and humanitarian assistance of vulnerable populations and communities. In Colombia, I worked for several civil society organisations and at the national human rights institution (Ombudsman's Office) where, among other things, I had the opportunity to work on the protection of human rights for child victims of the ongoing armed conflict and persons with disabilities through advocacy, technical assistance, and training of key stakeholders in human rights. At the Raoul Wallenberg Institute of Human Rights in Sweden, I initially worked as an intern in the Inclusive Societies Team. Afterwards, I worked as a department associate to the Research and Education Department. These experiences allowed me to develop practical skills in evidence-based human rights research while learning from qualified experts.

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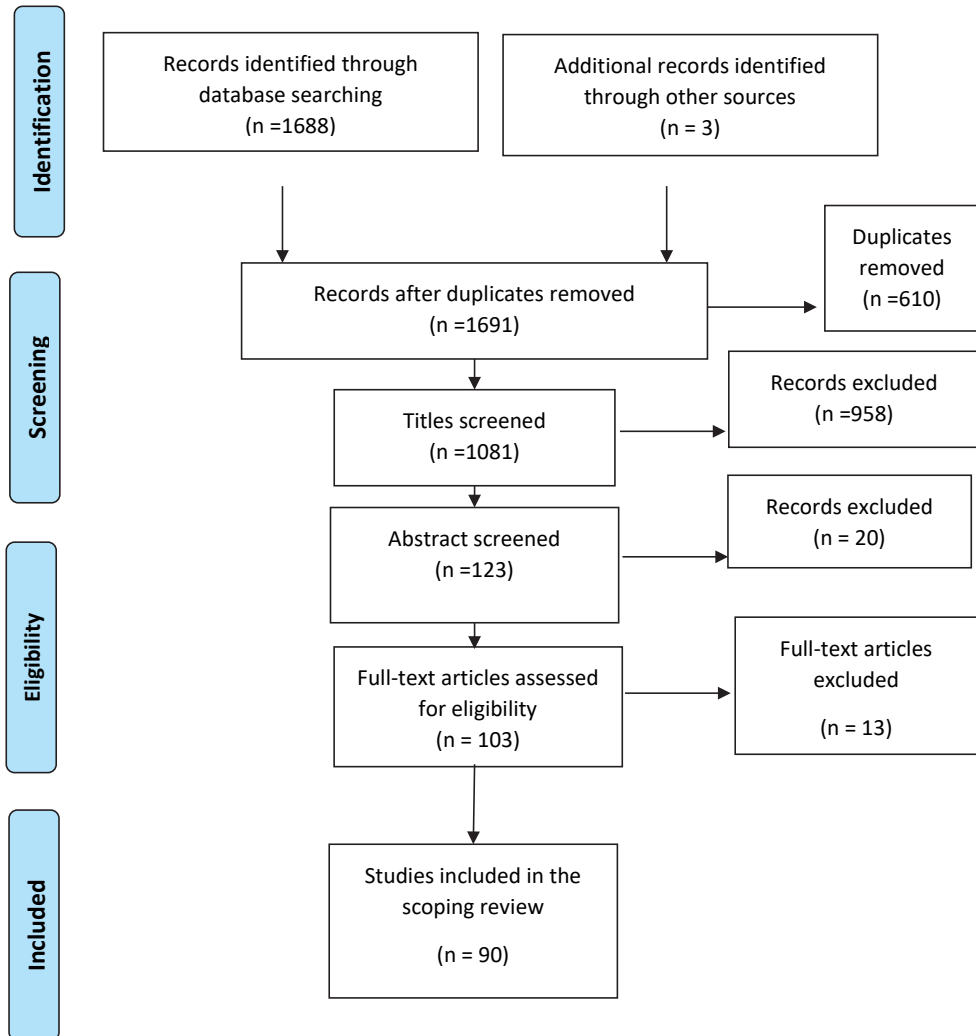
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Annex 1

Scoping review flow diagram



Annex 2

NVivo report on the thematic node structure applied in the coding process

Name	Files*	References**
Node	Total:	Total:
Information on voting rights	101	195
Voting as an easy task	10	10
Voting as a difficult task	23	51
Voting on an equal basis with others	16	30
Voting secretly and independently	18	39
Domestic electoral law	19	36
The UN CRPD	15	29
Node	Total:	Total:
Barriers to voting	43	67
Statutory barriers	12	13
Procedural barriers	19	39
Other barriers	12	15
Node	Total:	Total:
Information on voting materials	137	225
Electoral Census lists (Spain)	8	11
Information letters (Spain)	9	19
Voting envelopes (Spain)	12	25
Poll cards (England)	17	25
Political party manifestos	17	33
Voter education guides	18	31
Ballot papers	21	35
Pens	9	11
Ballot booths	11	15
Booth tables	10	15
Ballot boxes	5	5
Node	Total:	Total:
Information on electoral-assistive devices	54	91
Accessible voting kit (Spain)	10	21
Tactile ballot guide (Spain)	9	14
Easy-to-read documents (Spain)	10	14
Enlarged ballot paper copy (England)	7	8

Name	Files*	References**
Hand-held ballot paper copy (England)	0	0
Tactile voting device (England)	10	17
Easy-to-read documents (England)	8	17
Node	Total:	Total:
Ballot secrecy	40	58
Using the accessible voting kit (Spain)	13	18
Using the tactile ballot guide (Spain)	11	16
Using the enlarged ballot paper copy (England)	8	11
Using the hand-held ballot paper copy (England)	0	0
Using the tactile voting device (England)	8	13
Node	Total:	Total:
Being an informed voter	35	63
Knowing about candidates and voting procedure	20	39
Knowing about election results	15	24
Node	Total:	Total:
Information on voting assistance	57	91
Being assisted by a companion	11	17
Being assisted by an election official	16	22
Being assisted by a personal assistant	9	12
Being assisted by using voting technological solutions	21	40
Node	Total:	Total:
Training of election officials	62	86
Election officials' training materials	15	19
Rights of persons with disabilities	16	20
Voting assistance of persons with disabilities	18	26
Functioning of electoral-assistive devices	13	21
Node	Total:	Total:
Recurrent themes	92	210
Consultation with DPOs	19	40
Individual strategies in responding to accessibility barriers	21	64
Signifiers of difference	19	44
Policy experts' approach	17	36
Differences between urban and rural territories	16	26

*The files used in this study are from the project 'Analysis of Interviews: Voting Matters' created in NVIVO in 2020 by the author.

**Reference numbers correspond to the count of times a particular node was mentioned by the participants.

