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Interpreting democratic rights: the jurisprudence of the UN treaty bodies on the right to vote and be elected

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ABSTRACT

This article analyses the jurisprudence of treaty bodies on human rights in the context of elections when addressing individual complaints on key issues: the right to vote without discrimination, to stand for election, freedom of expression, and the right to an effective remedy. It analyses some treaty body decisions to determine the extent to which they expand the interpretation of international human rights law as it relates to democratic rights. The research finds that treaty bodies' rulings can strengthen international standards for election observation and provide a framework for government agencies, national election commissions, and international organizations tasked with election observation. This can help improve the performance and efficiency of human rights monitoring during elections, overcome obstacles that may hinder the work of election management bodies and their observers, and enhance their ability to uphold international human rights standards related to elections.

Keywords: *UN Treaty Bodies, Individual Complaints, Jurisprudence, Elections. Democratic rights.*

Introduction

Treaty bodies were established under the core United Nations human rights conventions to monitor States' implementation of their obligations under those conventions, but they are neither formal international organizations nor international or regional courts. They may exercise a variety of functions, including law-making, oversight, and adjudication of individual complaints.¹ Additionally, all core UN human rights treaties have an individual petition mechanism. For example, the International Covenant on Civil and Political Rights (ICCPR), states ratify its First Optional Protocol to allow victims to submit complaints to the overseeing Human Rights Committee. After a state ratifies the Optional Protocol, any individual can file a complaint alleging that the government has violated a treaty provision. As is common in international law, complaints must be focused on violations after ratification of the Optional Protocol, when the state accepted this jurisdiction.² What distinguishes treaty bodies from regional human rights mechanisms and international organizations and bodies (non-governmental human rights advocacy organizations, the UN Human Rights Council...), is that treaty body decisions on individual petitions are unique among these organizations and combine elements found in both intergovernmental and non-governmental organizations. On the other hand, the practice of these bodies may influence the interpretation and development of treaties in the international legal order.³ Through its general comments covering a wide range of topics, from the comprehensive interpretation of substantive provisions to individual communications that give individuals and groups the ability to complain to the treaty bodies about violations of their rights, it gives real meaning to the rights contained in human rights treaties.⁴ Under

the individual complaints system, committees are required to determine whether or not an individual's rights have been violated in a particular case. Treaty bodies thus implicitly participate in developing jurisprudence on human rights treaties by addressing ambiguity and indeterminacy, resolving conflicts between their principles and rights, and working to define the meaning of its major terms. Individual communications procedures can serve the function of achieving justice in the individual case within their jurisdiction and to this extent defend the rule of law, developing jurisprudence on human rights in the context of elections, helping to clarify state obligations on rights related to the right to vote and to be elected and against discrimination in the context of elections.⁵ Thus, treaty body jurisprudence is a form of soft law that can respond more flexibly to the legal, social, political, and cultural environment and guide governmental interpretation and practice in complying with international human rights standards.⁶

2. Research Method

This article focuses on the jurisprudence of the Human Rights Committee (HRC) and Committee on the Rights of Persons with Disabilities (CRPD) regarding the rights to vote without discrimination, stand for election, free expression, and an effective remedy, including their General Comments. The hypothesis of this research is therefore based on the idea that the development of the interpretation of the rights and principles stipulated in the basic international human rights agreements during the dissemination of individual complaints by the treaty bodies related to the field of exercising the right to participate in political life through elections, is of great importance concerning introducing the legal dimension during election monitoring, especially through the jurisprudential efforts of the Human Rights

Committee, which appears to be the only human rights treaty body that has extensive jurisprudence on human rights in the context of elections (the right to vote, the right to be elected...).⁷ A collection of decisions of the Joint Committees related to electoral disputes has been compiled, which presents advanced and developed jurisprudential interpretations in the relevant field. It focused only on cases that were accepted by the treaty committees and issued a positive decision.

The question then arises as to how the opinions of UN treaty bodies on individual complaints can help develop and expand the standards used for election observation. In an attempt to answer this question, this article will focus on four categories of rights and their treatment by treaty bodies (freedom from discrimination, freedom of expression, the right to vote and be elected, and the right to access an independent and impartial electoral complaints mechanism and judicial proceedings in the context of elections). The reason for choosing these categories of rights was that it's the most significant issues in individual complaints that treaty bodies declared admissible and proceeded to examine, and on which they issued important opinions in their favor. To answer the research problem, the inductive approach will be relied upon by collecting data and information related to the jurisprudential interpretations of the treaty bodies and then analyzing them to reach jurisprudential results that enhance respect for and protection of human rights in the context of elections. The article focus on the Human Rights Committee (HRC), which oversees the International Covenant on Civil and Political Rights. As the centrepiece of United Nations activities for protecting and promoting human rights (United Nations Human Rights Committee), the HRC has the largest participation in states that allow individual petitions and petitions filed.

3. Results and Discussion

Voting Rights for Persons with Disabilities and Prisoners in Elections from the perspective of the human rights treaty bodies:

The right to political participation must be enjoyed equally by all and without distinction or discrimination of any kind (e.g., based on race, color, sex, gender identity, language, religion, political or other opinion, national or social origin, birth or other status). An environment in which discrimination is tolerated facilitates intimidation and manipulation of the electorate, which cannot be permitted if elections are to be free and fair.

Discrimination based on intellectual disability in the context of elections:

The Convention on the Rights of Persons with Disabilities (CRPD) enshrines the right to political participation for persons with disabilities. The Convention clarifies that persons with disabilities have the right to participate in civil, political, economic, social, and cultural life and stipulates what public and private authorities must do to ensure and promote the full enjoyment of these rights by all persons with disabilities.⁸

Bujdosó et al. v. Hungary adopted in September 2013, the Committee held that article 29 of the Convention requires States parties to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, including by guaranteeing their right to vote. Article 29 does not provide for any reasonable restriction or exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote based on a perceived or actual psychosocial or intellectual disability, including a restriction under an individualized assessment,

constitutes discrimination based on disability, within the meaning of Article 2 of the Convention. The Committee adds that under article 12, paragraph 2, of the Convention, States parties must recognize and uphold the legal capacity of persons with disabilities “on an equal basis with others in all aspects of life”, including political life, which encompasses the right to vote. The Committee recalled that, under Article 29 of the Convention, the State party is under an obligation to update the voting procedures to make it more “appropriate, accessible and easy to understand and use”.⁹

In this case, the remedy includes the obligation to remedy the deletion of the authors’ names from the electoral registers, including by providing them with adequate compensation for moral damages incurred as a result of being deprived of their right to vote in the 2010 elections. To avoid such violations in the future, the state party was required to Considering repealing related law to the case, Enacting laws that recognize, without any “capacity assessment”, the right to vote for all persons with disabilities, and Upholding, and guaranteeing in practice, the right to vote for persons with disabilities, on an equal basis with others.

The Committee continued to underline the positive obligations for States under Article 29 of the Convention, and these are interpreted as including the creation and promotion of accessible and non-discriminatory voting and electoral procedures, as well as providing support for the choices of people with disabilities in voting by secret ballot. The Committee further recommended that ‘States parties guarantee the right of persons with disabilities to stand for elections, to hold office effectively and to perform all public functions at all levels of government, with reasonable accommodation and support,

where desired, in the exercise of their legal capacity’.¹⁰

Discussion: no derogation to the right to vote based on intellectual disabilities

It has been established above, as far as legal barriers are concerned, that what is crucial is the change in attitude towards persons with intellectual disabilities or mental health problems who are covered by protective measures, yet who are being deprived of voting rights. The decision of the committee provides a clear indication that all countries whose legal systems automatically remove voting rights from persons who are deprived of legal capacity because of their actual psychosocial or intellectual disability should align their systems with international obligations. The position of the Committee confirms that no deprivation of voting rights is acceptable in the framework of the United Nations Convention on the Rights of Persons with Disabilities.

In the general comment No. 1, the Committee confirmed that legal capacity and mental capacity are distinct concepts. Legal capacity is the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency). It is the key to accessing meaningful participation in society. Mental capacity refers to the decision-making skills of a person, which naturally vary from one person to another and may be different for a given person depending on many factors, including environmental and social factors. Legal instruments such as the Universal Declaration of Human Rights (art. 6), the International Covenant on Civil and Political Rights (art. 16) and the Convention on the Elimination of All Forms of Discrimination Against Women (art. 15) do not specify the distinction between mental and legal capacity. Article 12 of the Convention on the Rights of Persons with Disabilities, however, makes it clear that “unsoundness of mind” and other discriminatory labels are not

legitimate reasons for the denial of legal capacity (both legal standing and legal agency). Under Article 12 of the Convention, perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.¹¹ The concept of mental capacity is highly controversial in and of itself. Mental capacity is not, as is commonly presented, an objective, scientific, and naturally occurring phenomenon. Mental capacity is contingent on social and political contexts, as are the disciplines, professions, and practices that play a dominant role in assessing mental capacity. A person's disability and/or decision-making skills are taken as legitimate grounds for denying his or her legal capacity and lowering his or her status as a person before the law. Article 12 does not permit such discriminatory denial of legal capacity, but rather requires that support be provided in the exercise of legal capacity.¹²

Concerning the perspectives of the case **Bujdosó et al. v. Hungary**, it indicates that having an intellectual disability implies a higher risk of being deprived of one's political rights, even when the law does not systematically prescribe such a restriction. Of course, the use of voting rights should neither be an imperative nor a new normative condition for citizens with intellectual disability, whose reasons not to vote are very similar to those of the general population. However, some conditions they face do seem more limiting. The fact of being aware of both barriers and supportive variables can serve as a lever to take up more quickly and more deeply the challenge generated by ratification of the CRPD, especially the implementation of Article 29 on political rights.¹³

Voting Rights of Prisoners and Disenfranchisement:

In **Arthur William Taylor et al, V New Zealand**¹⁴ adopted in July 2023, the Human Rights Committee held that the information on file does not indicate that automatic disenfranchisement of prisoners who have committed serious offenses is effective in deterring further offending at either a specific or general level, thus raising questions as to whether it is proportionate to that objective. Furthermore, the Committee noted that disenfranchisement is not among the unavoidable restrictions inherent in a closed environment. The Committee added that imprisonment and the corollary deprivations that inevitably accompany it (for example, restrictions on visitation, movement, and contact with the outside world; and an obligation to abide by other prison rules and regulations) constitute a constellation of severe punishments for criminal offending, and that disenfranchisement represents an additional and separate punishment.¹⁵

The Committee observed that absent certain circumstances - such as, for example, sentencing for voter or ballot fraud, voter suppression, election tampering, and related civil rights violations, crimes related to campaign finance, bribery, corruption, treason, sedition, mail fraud, identity theft, or other offenses that may target elections, democratic order, processes or institutions, or the State itself - deprivation of the right to vote is unrelated to the specific nature of the offense. The Committee also considered that prisoners who are resident citizens of a state party remain subject to the laws of that State and thus should - absent compelling reasons - have an opportunity, on an equal footing with others, to participate in democratic electoral processes. In that regard, the Committee notes that, without the ability to vote, those prisoners are excluded from the political processes and decisions that affect their interests and how they are governed by

elected representatives. In this Case, the Committee found that automatic disenfranchisement resulting from a criminal conviction or sentence violates Article 25 (b) of the Covenant in the absence of a reasonable connection between the nature of the offense and the act of disenfranchisement. Therefore, because the 2010 Act did not require such a connection, it did not meet the required standards of reasonableness and objectivity and was incompatible with Article 25 (b) of the Covenant.¹⁶ Therefore, the State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its legislation on voting restrictions for prisoners and its implementation thereof, to align it with the State party's obligations under article 25 (b) of the Covenant.¹⁷

Discussion: disenfranchisement, nature of the offense, and democratic electoral processes

The jurisprudence in this case is adequate to the trend of the committee confirmed in General Comment No. 21, which mentions that Persons deprived of their liberty enjoy all the rights outlined in the Covenant, subject to the restrictions that are unavoidable in a closed environment. Which means a sentence of imprisonment does not strip a person of all his or her rights. One loses the right to liberty—which is why incarceration is such a severe punishment—but retains all other rights subject only to those reasonable restrictions that there is no plausible argument, however, that permitting inmates to vote, e.g., by absentee ballot, would interfere with prison operations or administration.¹⁸

The jurisprudence of the Committee determines that the scope of certain crimes could consist of appropriate restrictions on

the right to vote for prisoners, through the following sentencing:

- Voter or ballot fraud;
- Voter suppression,
- Election tampering and related civil rights violations,
- Crimes related to campaign finance,
- Bribery,
- Corruption,
- Treason,
- Sedition,
- Mail fraud,
- Identity theft, or other offenses that may target elections, democratic order, processes, or institutions, or the State itself.

The retributive justification of disenfranchisement presented in the jurisprudence of the committee is more than just the problematic notion of retaliation, and might start to look morally necessary, at least if we can make sense of the notion of dissociative actions. To specifically political offenses such as electoral fraud to the removal of voting rights is appropriate, not because the crime itself is necessarily a political one but instead because the crime is a wrong that damages the political relationship (the relationship between citizens qua citizens, or the relationship between citizen and state)—in the sense that those involved in the political relationship with the offender cannot decently continue with the relationship as though nothing had happened. In other words, the sanction is a suspension of political status, not because the offense is a political one but rather because it

is by their membership of the political relationship that the state has an interest in its citizens' actions, or at any rate the kind of interest which is such that it must dissociate itself from those actions when they are wrongful. The guiding thought is that there should be a suspension of civic status that is proportionate to the gravity of the offense.¹⁹

On the other hand, the Jurisprudence of the Committee upholds the discourse of human rights, which is founded on human dignity. This discourse has pushed imprisonment towards the narrower proposition of a measure which does not involve the regulation of all aspects of a prisoners' life, 'creating a climate for the realization of prisoners' autonomy' and with the 'aims to transform as much as possible these power relations' found in prison 'into juridical relations' (70-1). The impact of the human rights discourse is true even if there is a great divide between current prison institutions and an ideal model. It is correct to say that, consequently, imprisonment can be portrayed as a historical institutional practice that is on track to be adapted to a democratic framework. In sum, prisons can be organized in such a way as to respect certain key aspects of prisoners' civil liberties, generating spaces for meaningful political participation. Enfranchisement completes the recognition of prisoners as citizens whose voice and interest must count equally.²⁰

The right to freedom of expression in the context of elections and to a fair process for election disputes:

The election management body is the primary actor responsible for preparing, organizing, and conducting the election following the electoral calendar, exercising the authority provided for in national laws. This is in addition to the fact that this body is also responsible for supervising the work of all levels of the election administration, ranging

from polling station boards and regional bodies up to decision-making and overall coordination.

Call for a boycott of elections:

In **Leonid Svetik, V Bularus** adopted in July 2004, the Human Rights Committee held

that States parties to the Covenant should prohibit intimidation or coercion of voters by penal laws, and those laws should be strictly enforced. The application of such laws constitutes, in principle, a lawful limitation of the freedom of expression, necessary for respect of the rights of others. However, intimidation and coercion must be distinguished from encouraging voters to boycott an election. The Committee noted that voting was not compulsory. In the State party concerned, the declaration signed by the author to boycott elections did not affect the possibility of voters to freely decide whether or not to participate in the particular election. The Committee concluded that in the circumstances of the present case, the limitation of the liberty of expression did not legitimately serve one of the reasons enumerated in Article 19, paragraph 3, of the Covenant and that the author's rights under Article 19, paragraph 2, of the Covenant have been violated. The committee required the state party to provide the author with an effective remedy, including compensation in the amount of a sum not less than the present value of the fine and any legal costs incurred by the author, and to prevent similar violations in the future.²¹

Another case regarding the freedom of expression in the context of the presidential elections in Belarus is **Jan Derzhavtsev v Bularus**²², adopted on 29 October 2015. The complaint was apprehended by police officers while he was standing on Lenin Street in the town of Vitebsk, holding a banner reading "Just boycott". He aimed to express his

opinion on the presidential elections in Belarus to be held on 19 December 2010. The Committee found that the refusal to permit the author, along with others, to peacefully express his opinion by holding a picket aimed at drawing public attention to his political position in favour of boycotting the presidential elections amounted to a restriction on the exercise by the author of the right to impart information and of the freedom of assembly. The committee added that the author was apprehended while expressing his opinion on a political topic and fined because prior authorization for the alleged picket had not been obtained from the local authorities. The Committee considers that the authorities have thus restricted the author's right to hold and impart his political views regarding boycotting the presidential elections, as well as his right to engage in peaceful assembly, together with others, at a location of his choice. The Committee notes from the materials on file that the State party's authorities and courts have not explained how exactly, in practice, the restrictions imposed on the author's rights to freedom of expression and of peaceful assembly were justified under article 19 (3) and the second sentence of article 21 of the Covenant. the Committee reiterated that the State party should review its legislation, in particular the Law on Mass Events of 30 December 1997, as it has been applied in the present case, to ensure that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

Outcome of the Cases: The right to hold and impart political views regarding boycotting the elections

The jurisprudence in these cases adds that the boycott is primarily a means of expressing a protest. Therefore, a call for a boycott, which is aimed at communicating protest opinions and expressing a political position that constitutes a very specific mode of

exercise of freedom of expression while calling for the boycott of the presidential elections, is in principle covered by the protection set out in Article 19 of the Covenant.

Fundamental rights such as the right to freedom of expression and the right to freedom of assembly are primarily rights to publicness; they guarantee that people can freely discuss matters of public concern in the public sphere as members of the public. Public

sphere theory maintains that these fundamental rights have a crucial democratic function, because it is the political efficacy of a freely constituted public opinion that makes a democracy democratic. A democratic state is a state that guarantees the free formation of public opinion and bases its exercise of power on public opinion.²³

However, the right to freedom of expression may be subject to certain limitations by article 19 (3) of the International Covenant on Civil and Political Rights. Any restrictions must be prescribed by law and necessary for a legitimate purpose, namely to protect the rights or reputation of others, national security, public order, or public health and morals. In other words, the limitations were not included in article 19 (3) to provide States with an excuse for placing restrictions on free expression. In reviewing such cases, the Human Rights Committee has held that, while it may be legitimate to restrict freedom of expression to protect the right to vote under Article 25, such restrictions must not impede political debate. For example, punishing an individual for making calls to boycott a non-compulsory vote would not constitute a permissible limitation on freedom of expression necessary for the respect of the rights of others.²⁴

When members of a political community consistently choose to employ their

sovereignty to oppress and dominate a particular group, dissenters may only have one choice; They may be obligated to step back from the social contract, rescind their implied consent by the call of boycott of elections, which consist a form of the enforcement of human rights stems from a global civil society.²⁵

The right to an independent and impartial remedy for election disputes

In **Leonid Sinitsin, V Bularus** adopted in 20 October 2006²⁶, the complaint which is a Vice-President of the Public Association "Social Technologies", was nominated as a candidate for the 2001 presidential elections in Belarus. An initiative group created to this end collected some 130,000 signatures in support of the author's nomination and submitted more than 110,000 signatures to the Electoral Commissions, whereas article 61 of the Belarus Electoral Code only requires the submission of 100,000 for the official registration of a candidate. the Central Electoral Commission on Elections and Conduct of Republican Referendums (CEC) adopted a ruling stating that the total number of signatures in support of the author's nomination was only 80,540. The CEC thus declared that the author's nomination was invalid. On 10 August 2001, the author appealed to the Supreme Court the CEC ruling of 8 August 2001 on the invalidity of his nomination. On 14 August 2001, the Supreme Court refused to institute proceedings because the applicant did not have the right to file such a suit in court.

The Committee on Human Rights holds that the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds established by law, which are objective and reasonable. The Committee recalled that article 2, paragraph 3, of the Covenant guarantees an effective remedy to any person claiming a violation of the rights

and freedoms spelled out in the Covenant. In this case, no effective remedies were available to the author to challenge the CEC ruling declaring his nomination invalid, nor could he challenge the subsequent refusal by the CEC to register him as a presidential candidate before an independent and impartial body. The Committee considers and, in the present case, (2) the CEC refusal to register his candidacy, resulted in a violation of his rights under article 25 (b) of the Covenant, read in conjunction with article 2. The committee reiterates that the State party is under an obligation to provide the author with an effective remedy, namely, compensation for damages incurred in the 2001 Presidential campaign. It is also under an obligation to take steps to prevent similar violations from occurring in the future.

Discussion: Decisions of Election Bodies must be reasonable, and can be challenged in court

The Committee's jurisprudential approach to this issue revolves around the obligation of states to ensure the availability of national mechanisms to monitor the electoral process with independence, integrity, and impartiality. This is an effective pre-judicial remedy for issues related to violations of electoral rights and the legitimacy of procedural measures related to candidacy and election, ensuring respect for fundamental rights and legal integrity by justifying its decisions.

Establishing a permanent and independent electoral body represents a big step forward towards institutional progress, as it can strengthen a nation's electoral system. Just like an independent tribunal or a professional, politically-neutral police force, citizens and politicians often take their functions for granted. And like them, their absence or failure can open the doors to chaos and dictatorship.²⁷

Similarly, when deciding whether an electoral body imposes restrictions on a person's right to stand for election, the body should consider the justification and reasonableness of such restrictions in light of voting rights. For example, it may be unreasonable to disqualify a candidate for a minor campaign violation or for exceeding campaign spending limits by a small amount. Invalidation of results may be justified at various levels in cases of serious violations.²⁸ Reasoning of decisions on electoral complaints or appeals is a necessity to guarantee the verifiability of the decision and the recourse to a remedy against the decision, if applicable.²⁹ But the committee has not specified the meaning of the term 'reasonable'. The problem with the reasonable criteria test is that its terms are so vague that they give little guidance in deciding actual cases.³⁰

The Commission's jurisprudence demonstrates that the Central Election Commission's practice constitutes a form of arbitrary judicial review of candidate nominations by adhering to elements of legal reasoning that are not based on transparency, with anti-democratic implications.³¹

On other hand, the committee mentioned that the absence of an independent and impartial remedy to challenge the CEC ruling on the invalidity of the author's nomination resulted in a violation of his rights under article 25 (b) of the Covenant, which means that the confidence in the electoral process is upheld when challenges to election results are handled by an independent body, openly and transparently, within reasonable deadlines. The process should be regulated by law and be subject to judicial review by the highest court, or if a lower court, with appeal to the highest court, or the equivalent. To ensure confidence in the results, voters

should be informed of possibilities for redress.³²

Candidate registration or deregistration is a sensitive matter since denying registration to prospective candidates or deregistering them prevents them from running. It is therefore worrying and in contradiction with international standards that some countries do not include any court in the complaint process (be it that there is no appeal before a court or that a non-judicial body decides as a single instance), including when the competent body dealing with candidate registration (in first instance or on appeal) is the political elected body concerned.³³ All presidential democracies in Africa and Asia

delegate the task of resolving post-electoral disputes to regular courts. In the Americas, the United States, Venezuela, and Argentina delegate this task to the Supreme Court, while in Colombia the Consejo de Estado (an administrative court) has this power. Courts represent a good alternative for adjudicating electoral controversies because of their expertise in resolving conflicts and because of their theoretical impartiality. Judges are expected to make decisions by evaluating the merits of a case and interpreting the plain text of judicial precedents, the law, and the Constitution³⁴.

The HRC's jurisprudence has progressively—though still modestly—evolved in a similar direction. It began by formulating general requests for States to undertake steps to provide victims with an effective remedy. It soon added a requirement to provide compensation, and subsequently, it has also incorporated measures of restitution and a general suggestion of guarantees of non-repetition.³⁵

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4. Conclusion:

This article has examined the jurisprudence of the CRC & CRPD Committee, including both its General Comments and a significant body of decisions under OPIC. This conclusion summarizes the contribution that, in our view, this jurisprudence makes to the guidance offered to States Parties.

The jurisprudence of the CRPD Committee from its General Comment n° 1 sets valuable guidance that an exclusion of the right to vote based on a perceived or actual psychosocial or intellectual disability, including a restriction under an individualized assessment, constitutes discrimination based on disability, within the meaning of Article 2 of the Convention. While exploring the Views of the CRC Committee adopted under the Optional Protocol on a Communications Procedure, the article found many cases about the violations of a wide range of democratic rights, including the right to vote without discrimination, to stand for election, to free expression, and an effective remedy for election disputes. This has helped states parties to be more aware of their obligations and of specific rights related to elections, including the scope of certain crimes could consist of appropriate restrictions on the right to vote for prisoners, making calls to

boycott a non-compulsory vote would not constitute a permissible limitation on freedom of expression necessary for the respect of the rights of others, reasoning of decisions on electoral complaints or appeals is a necessity to guarantee the verifiability of the decision and the recourse to a remedy against the decision, and the right to access to an effective judicial review in election disputes.

Analysing the jurisprudence of treaty bodies and their general comments on the electoral process reveals a trend toward expanding electoral rights. This expansion is based on a broad interpretation of international human rights instruments, allowing treaty bodies to address contemporary issues that arise during elections. By doing so, treaty bodies create a normative framework for conducting democratic elections that aligns with international human rights law obligations, which states have voluntarily committed to.

The issue of the jurisprudential interpretations of treaty bodies in the context of elections requires further statistical and comparative studies on the extent to which citizens of northern countries have access to litigation before treaty bodies regarding their right to vote and run for election compared with citizens of southern countries.

Table of the summary of the cases

Remedy ordered	Holding	Right at issue	Treaty body	Case name & number
The Committee therefore makes the following recommendations to the State party: (a) Concerning the authors: the State party is under an obligation to remedy the deletion of the	Having found the assessment of individuals' capacity to be discriminatory in nature, the Committee holds that this measure cannot be purported to be	Equal and effective legal protection against discrimination on the basis of disability; participation in political and public life	Committee on the Rights of Persons with Disabilities	Communication No. 4/2011 Bujdosó et al. v. Hungary

<p>authors' names from the electoral registers, including by providing them with adequate compensation for moral damages incurred as a result of being deprived of their right to vote in the 2010 elections, as well as for the legal costs incurred in filing this communication; (b) In general: the State party is under an obligation to take measures to prevent similar violations in the future, including by: (i) Considering repealing article XXIII, paragraph 6, of the Fundamental Law, and article 26, paragraph 2, of the Transitional Provisions of the Fundamental Law, given that they are contrary to articles 12 and 29 of the Convention; (ii) Enacting laws that recognize, without any "capacity assessment", the right to vote for all persons with disabilities, including those with more need of support, and that provide for adequate assistance and reasonable accommodation in order for persons with disabilities to be</p>	<p>legitimate. Nor is it proportional to the aim of preserving the integrity of the State party's political system. The Committee recalls that, under article 29 of the Convention, the State party is required to adapt its voting procedures, by ensuring that they are "appropriate, accessible and easy to understand and use", and, where necessary, allowing persons with disabilities, upon their request, assistance in voting. It is by so doing that the State party will ensure that persons with intellectual disabilities cast a competent vote, on an equal basis with others, while guaranteeing voting secrecy.</p>			
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able to exercise their political rights; (iii) Upholding, and guaranteeing in practice, the right to vote for persons with disabilities, on an equal basis with others, as required by article 29 of the Convention, by ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use, and where necessary, at their request, allowing assistance in voting by a person of their choice				
the State party is under an obligation to provide the authors with an effective remedy. That requires it to make full reparation to individuals whose Covenant rights have been violated. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its legislation on voting restrictions for prisoners and its implementation thereof, in order to align it with the State party's obligations under article 25 (b)	The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the authors' rights under article 25 (b) of the Covenant.	Voting rights of prisoners	Human Rights Committee	Communication No. 3666/2019 Arthur William Taylor et al, V New Zealand

of the Covenant.				
In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author ⁸ . The State party is also under an obligation to prevent similar violations in the future.	The Committee notes that voting was not compulsory in the State party concerned and that the declaration signed by the author did not affect the possibility of voters to freely decide whether or nor to participate in the particular election. The Committee concludes that in the circumstances of the present case the limitation of the liberty of expression did not legitimately serve one of the reasons enumerated in article 19, paragraph 3, of the Covenant and that the author's rights under article 19, paragraph 2, of the Covenant have been violated.	Call for a boycott of elections	Human Rights Committee	Communication no. 927/2000 Leonid Svetik, V Bularus
The State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose	The Committee notes that the author was apprehended while expressing his opinion on a political topic and fined because	Right to freedom of expression; right of peaceful assembly in the context of elections.	Human Rights Committee	Communication no. 2076/2011 Jan Derzhavtsev v Bularus

<p>Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide reimbursement of any legal costs incurred by the author, together with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. I</p>	<p>prior authorization for the alleged picket had not been obtained from the local authorities. The Committee considers that the authorities have thus restricted the author's right to hold and impart his political views regarding boycotting the presidential elections, as well as his right to engage in peaceful assembly, together with others, at a location of his choice</p>			
<p>In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, namely, compensation for damages incurred in the 2001 Presidential campaign. It is also under an obligation to take steps to prevent similar violations occurring in the future.</p>	<p>The Committee considers that the absence of an independent and impartial remedy to challenge (1) the CEC ruling on the invalidity of the author's nomination and, in the present case, (2) the CEC refusal to register his candidacy, resulted in a violation of his rights under article 25 (b) of the Covenant, read in conjunction with</p>	<p>Right to be elected without unreasonable restrictions; unavailability of an independent and impartial remedy</p>	<p>Human Rights Committee</p>	<p>Communication no. 1047/2002 Leonid Sinitsin, V Bularus</p>

	article 2.			
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