

# DISFRANCHISEMENT OF NON-NATIONALS: FOR A NEW INTERPRETATION OF THE UDHR AND THE ICCPR

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## ABSTRACT

This article affirms that political rights are universal rights and that the disfranchisement of non-nationals violates human rights. Based on conventions and recommendations signed by dozens of States, it calls for a new interpretation of articles 21, of the Universal Declaration of Human Rights, and 25, of the International Covenant on Civil and Political Rights, recognizing political rights to non-nationals that are legal residents.

**KEYWORDS:** Human Rights. Political Rights. Non-nationals. Universal Declaration of Human Rights.

**SUMÁRIO:** 1. Political rights are human rights. 1.1 Disfranchisement violates human rights. 1.2 The Convention and the Recommendation on the Participation of Foreigners. 1.3 For a new interpretation of Article 21 of the UDHR and Article 25 of the ICCPR. Bibliography.

## 1. Political rights are human rights

The right to participate in the political process is *conditio sine qua non* of the democratic process. In democratic States, governed by the rule of law, the will of the people is supreme and guides States'

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politics. Its inobservance constitutes a direct violation of to the human rights charter, as affirmed in article 21 of the Universal Declaration of Human Rights (UDHR): “Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures<sup>1</sup>.”

From article 21(1), it is possible to conclude that the right to be part of State’s power, through the right to vote and the right to be voted for, is a human right. From article 21(3), it is possible to conclude that the construction of the collective will depends on the enfranchisement of everyone, and that governments are only legitimate if the entire population forms the collective will. Furthermore, it is possible to conclude that the disfranchisement of groups or individuals is a violation of human rights, which causes governments’ lack of authority. In this sense, “the anomalous situation that foreign residents, as a significant part of the population, are excluded from regular politics, poses a challenge to all European democracies which claim that policy-making should be done by people who represent the whole population<sup>2</sup>.”

The ownership of political rights represents the integration of individuals into community life, where they are able to discuss the actions of the collectivity and form the collective will. In democratic States, the respect for such rights is a must, without which there is no real democracy<sup>3</sup>. The disfranchisement of individuals or groups

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<sup>1</sup> Universal Declaration of Human Rights (UDHR).

<sup>2</sup> Rath, Jan, *apud* Layton-Henry, Zig, *The Political Rights of Migrant Workers in Western Europe*, pp. 127 - 157, in Bart van Steenbergen, (ed), *The Condition of Citizenship*, London: Sage Publications, 1994, p. 127.

<sup>3</sup> According to Iliopoulou, “la figure du citoyen constitue traditionnellement un rouage de la démocratie et un fondement de L’État de droit.” Iliopoulou, Anastasia, *Libre Circulation et Non-Discrimination, Éléments du Statut de Citoyen*

is harmful to societies as it contributes to the rise of discrimination, xenophobia, exclusion, and decreases the sense of responsibility and the awareness over local matters<sup>4</sup>, causing a democratic deficit. On the contrary, “their participation in the political decision-making process promotes their integration in general, and facilitates their harmonious co-existence which is in the interest of both citizens and non-citizens in the host society. The lack of integration can be a source of social tension and conflict<sup>5</sup>.”

Political rights are considered to be fundamental rights in domestic law, while they are considered to be human rights in international law. Despite nomenclatures, political rights are inalienable and lifelong, as they are directly related to the personality and dignity of each person. As human rights are indivisible, interdependent and not renounceable, they must be integrally respected. Hence, as political rights are at the core of human rights, they must be universally and unconditionally granted. In this sense, “*ainsi, compte tenu du fait que ces droits sont enracinés dans la dignité humaine (source de la moralité publique qui se cristallise dans les droits), ils concernent toutes les dimensions fondamentales du libre épanouissement de la personnalité. Tous sont des droits de l’homme et pas seulement du citoyen*<sup>6</sup>.”

The respect for political rights is a basilar condition for the existence, exercise and protection of all other human rights, as it ensures that State’s decisions will not be taken arbitrarily, but as a result of society’s desires. The exclusion of groups results in an undesirable democratic deficit, *i.e.*, the contrast between the enfranchised and the actual adult population that should have suffrage rights and lacks representation<sup>7</sup>. The deficit is undesirable, as the legitimacy of

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*de l’Union Européenne*. Bruxelles: Bruylant, 2007, p. 18.

<sup>4</sup> In this sense: “restrictive criteria may prevent legally resident non-citizens from acquiring the citizenship of the host country, depriving them of full participation in the life of the community and, in the worst case, pushing them to the margins of society.” CoE, *RPIFRPL*, 2001.

<sup>5</sup> *Ibidem*.

<sup>6</sup> Martínez, 2003, p. 391.

<sup>7</sup> Cf. Magnette, 1999, p. 129.

democracy and governments is achieved through the participation of the people in the political process. The disfranchisement generates submission, as individuals cannot be considered to be free when subject to the will of others. Thus, the lack of representation violates individuals' liberties, which are among the main objectives of societies committed to human rights<sup>8</sup>.

The recognition that political rights are inalienable and intrinsic to the human being is based on domestic laws, usually in the constitutions of democratic States, and on international laws, in conventions as the UDHR, International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Historically, the basilar function of political rights was already recognized in the French declaration of the Rights of the Man and the Citizen, which is considered to be one of the most important human rights documents, having inspired the legal provision of basic rights in the modern States. Nonetheless, the declaration failed as it discriminated the rights of men from the rights of the citizen, as “the rights of man are those which belong to the individual independently of his or her status and are natural and inherent to human nature. Rights of citizens are those created by the state. This difference subsists until today and that is exactly what allows for the exclusion of aliens from the enjoyment of political rights<sup>9</sup>.” In the context of the French Revolution, due to the strength of the nation over the State, the concepts of citizenship and nationality were mixed, as the right to political participation naturally belonged to nationals<sup>10</sup>. The rights of the citizens were the rights of

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<sup>8</sup> According to Hayduk “Noncitizens are at risk of bias in majoritarian electoral systems because they lack voting rights and politicians can ignore their interests. Discriminatory public policy and private practices—in employment, housing, education, healthcare, welfare, and criminal justice—are the inevitable byproducts of immigrant political exclusion, not to mention xenophobic political campaigning and racial profiling.” Hayduk, 2004, p. 510.

<sup>9</sup> Tiburcio, 2001, p. xvi.

<sup>10</sup> In this sense: “*La philosophie des droits de l’homme énonce ici une série de réserves et de précautions, sans justification rationnelle, même si elles sont fondées sans aucun doute sur la raison d’État.*” Martínez, 2003, p. 392.

the nationals, and non-nationals would be legally discriminated and have less rights. Therefore, foreigners would have those rights that supposedly belonged to human beings in general, but not those of the citizens<sup>11</sup>.

Discrimination on the basis of nationality has negatively impacted on the protection of non-nationals' rights for centuries. Even so, the protection of non-nationals' rights has constantly improved in recent years, even if the influences of the nation-State still reflexes in their disfranchisement in most States. In fact, there are no reasons to strongly justify the disfranchisement of non-nationals. The discrimination they suffer is the same that previous excluded groups suffered. Through history, certain groups were always marginalised and seen as unimportant. In the past, women were disfranchised because their will should be expressed through men, who were responsible for them, as they were not considered apt to take public decisions. The same happened to the poor, to the uneducated, to coloured people. The discrimination on the basis of nationality does not hold. In the past, the right to vote was considered to be a 'privilege' of wealth male nationals. After, it was considered to be a 'privilege' of white persons, or of educated persons, always with the objective of preventing certain groups from achieving equal rights, allowing their marginalisation and exploitation. As Martin Luther King affirmed his wish to see the people not discriminated by the colour of the skin, it is a dream not to have people discriminated by their origin. A humanitarian view upon the individual must be at the centre of the human rights exegesis, considering that everyone's dignity and liberties should be respected, due to the sole fact that, in essence, all human beings are equal<sup>12</sup>.

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<sup>11</sup> In this sense: *“Le premier est l'homme naturel, transformé par le contrat social en homme social. Ses droits naturels deviennent des droits de l'homme dans la société. Ce sont les droits de tous ; ils ne sont donc pas affectés par la distinction entre national et étranger. Ainsi les droits qui assurent une fonction de participation politique sont normalement réservés aux citoyens, l'étranger serait exclu de fait de nombreux autres droits – même si le concept de participation est ambigu.” Ibidem, p. 391.*

<sup>12</sup> According to Martinez, *“Les limitations qui peuvent être liées à des concepts tels que*

## 1.1 Disfranchisement violates human rights

Under the nation-State paradigm the disfranchisement of non-nationals seemed to be natural, as States were trying to consolidate their identities and sovereignty, internally and externally. Nowadays the situation has changed, as the relation of power between individuals and States is characterized by the respect for human rights, and, externally, most States have their institutions consolidated and respected by each other. In this scenario, States are urged to recognize the existence of and grant equal rights to the heterogeneous groups living under their jurisdictions, specifically immigrants, who are often marginalised and discriminated against, by society and by public institutions. To be respectful to the human rights of these new components of society and to recognize them as citizens is one of the biggest challenges and demands for States and for the very meaning of democracy as, “*le grand problème du XXI siècle sera de faire vivre ensemble, dans la même aire géographique et sous la même souveraineté, des sociétés multiethniques composées de gens de différentes races, de différentes cultures, de différents religions. Le XXI siècle sera l’âge critique des idéologies et l’âge d’or de l’ethnicité*<sup>13</sup>.”

Consequently, due to the fact that over three percent of the world population lives in a State they are not nationals and, therefore have limited or no access to citizenship rights, the legislation, both domestic and international, and its exegesis, has to evolve in order to fill this gap. The disfranchisement of any individual, based on discriminatory grounds, such as nationality, constitutes a major violation “to the universal and indivisible nature of human rights and fundamental freedoms based on the dignity of all human beings<sup>14</sup>.”

In this regard, globalisation has enhanced capital and labour flow among States, but has not done the same with regard to the

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*ceux de souveraineté ou de représentation, sont des obstacles pratiques, des survivances d’une culture juridique et politique révolue.” Ibidem.*

<sup>13</sup> Schelesinger, Arthur *apud* Pierré-Caps, 1995, p. 283.

<sup>14</sup> CoE, CPFPL, 1992.

political and social rights of immigrants involved in the process<sup>15</sup>. As a consequence, in order to achieve democratic legitimacy and participation, the requirements for citizenship rights must be redefined<sup>16</sup>. Therefore, more evidently in cosmopolitanised societies, the discrimination and disfranchisement of non-nationals is neither reasonable nor justified, as human dignity does not tolerate any kind of mitigation<sup>17</sup>.

Naturalization is often considered to be the solution to the continuous human rights violations non-nationals are subjected to. The supporters of this thesis affirm that individuals who want to live permanently in a given State should become nationals in order to be granted equal rights. Nonetheless, several requirements are demanded for an individual to be able to acquire a new nationality through a naturalization process. Each State has diverse requirements, but they usually include residency for several years, knowledge of the language, history and laws, clear justice and police records, and, sometimes, even good health is a condition for naturalization. Such

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<sup>15</sup> In this sense: “the unification of national economies into a global market system at the end of this century undermines the salience of national identity and increases the historical importance of defining a citizenship of place and locality” Earnest, 2003, p. 22.

<sup>16</sup> In this sense: “Such a radical redefinition of basic concepts like citizenship and the body politic may result from the deterritorializing impact of modern global trading relationships, in which labor and capital migrate unhindered across national borders but political and social rights do not. The “straitjacket of nation-state citizenship” is incapable, Raskin argues, of accommodating the fundamental political rights of those who participate in and sustain these widening transnational processes. In this respect, emerging global norms of community-based democracy encourage municipalities and localities to enfranchise resident aliens.” Earnest, 2003, p. 22.

<sup>17</sup> In this sense: “*cependant, il ne semble pas raisonnable, ni même justifié, que l'on puisse élaborer un fondement des droits qui ne s'inscrive pas dans une vision cosmopolite, excluant les étrangers, comme si leur dignité eût été limitée par le fait que l'on entre dans le domaine de l'organisation d'un pouvoir politique. Plus le concept de souveraineté dans la culture politique perdra de son importance (c'est déjà ce qui arrive, de fait, avec l'existence d'organisations politiques supranationales et en particulier avec l'Union Européenne), plus la distinction entre national et étranger tendra à s'atténuer.*” Martínez, 2003, p. 391.

requirements not only restrict the exercise of human rights, but also demand non-nationals to fit the national stereotype, in a clear violation of personality rights. Naturalization also implies the loss of the previous nationality, decreasing individual's rights, as naturalized persons usually have fewer rights than those who have original nationality. As a consequence, it also reduces the freedom individuals have to eventually return to their State of origin.

Progressive States have granted citizenship rights to non-nationals, recognizing that the rights to political participation and to demand positive actions from public entities are inherent to the human being<sup>18</sup>. Nonetheless, the right is very often conditioned to requirements such as long-term residency, which is justified as the necessary time for the individual to adapt to the new environment and culture. The imposition of such requirements prevents the exercise of human rights, and is extremely discriminatory as it presupposes that the enjoyment of inalienable rights could be conditioned to acculturation. The creation of conditions to the exercise of rights, such as naturalization and citizenship, is offensive to human rights, which are directly related to human dignity and shall not be susceptible to any conditions. In fact, any attempt to restrain heterogeneity already violates human rights<sup>19</sup>. On the contrary, democratic societies shall

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<sup>18</sup> In this sense: "In the Social Contract, Rousseau wrote, "Man is born free, and everywhere he is in chains", as a way to explain that man was born with natural rights, which autocratic governments then stripped away" Lansford, 2008, p. 33.

<sup>19</sup> According to Jacobs, in the debates in favor or against the enfranchisement of non-nationals, several discourses have sustained each viewpoint. In this sense "In the assimilationist exclusionary discourse, the fact that non-nationals are disenfranchised is not seen as a democratic deficit. The fact that non-nationals are not enfranchised is regarded to be self-evident in the system of nation-states and those foreign residents who wish voting rights, should opt for naturalisation. However, naturalisation is in this discourse only possible after sufficient assimilation. In its most radical form, the newcomer is only allowed to adopt state citizenship if this equals 'melting' into the receiving nation (postulated to be a community of common culture) to the point of indistinction" In opposition, "the pluralist inclusionary discourse, the fact that (large) parts of the population do not have voting rights is also regarded to be a democratic deficit. In addition, it is believed that no specific demands are required from foreign

be based on the respect and protection of diversity and minorities, which shall be treated equally, integrated and heard, despite of their differences.

Nonetheless, some States are opposed to the conception that enforces the protection of the individual's rights and the exegesis of human rights as a unity. In this sense, the German Supreme Court, based on nation-State dogmas, justifies the discriminatory treatment given to non-nationals, evoking the necessity to protect the German 'nation' and its supremacy over individuals' rights. In this sense, "the courts in Germany have historically viewed the right to vote as a collective, rather than individual, right. This right is historically tied, furthermore, to a historical conception of German nationality as an ethnic construct; the right to vote is not only a collective right of the nation, it collective right of the German nation<sup>20</sup>."

Moreover, it is a principle of law that every right implies a corresponding duty and *vice versa*. Rights and duties are like the faces of a coin, which cannot be separated. The attribution of duties to non-nationals, as the duty to pay taxes, to comply with the law, to respect the rights of other individuals, to respect public goods, *etc.*, must imply the attribution of equivalent rights. Therefore, to attribute duties without attributing the correlated rights is against the basilar principles of law.

In this sense, in recent decades, the international community has realised that the disfranchisement of non-nationals is discriminatory,

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residents in order to have a viable multicultural society in which immigrants politically participate. The responsibility of society in fighting racism and the societal (and legal) arrears of immigrants is stressed, while (possibly hidden) objectives to assimilate and deliberately 'acculturalise' immigrants are explicitly rejected. Political rights for foreign residents are seen as unconditional rights, which should be granted without any restrictive measures" There are two other viewpoints, one stating that non-nationals should not only be disfranchised, but also segregated, while the other affirms that non-nationals could be enfranchised after the demonstration of at least some cultural assimilation. Jacobs, Dirk, The Debate Over Enfranchisement of Foreign Residents in the Netherlands and Belgium. Absence of the Ethnic Minority Voice?, available at <http://www.cedem.ulg.ac.be/m/wp/13.pdf> (consulted on 22 April 2009), pp. 7 - 8.

<sup>20</sup> Neuman, *apud* Earnest, 2003, p.21. Cf. Garot, 1999, p. 306.

violates human rights and disrespects democratic principles. In this sense, Hayduk refers to a 1986 European Commission Report, which affirmed, “The cornerstone of democracy is the right of voters to elect the decision-making bodies of political assemblies at regular intervals. If the right to vote is to be truly universal, it must be granted to all residents of the territory concerned ... Universality, in the original sense of the word, would imply that all residents, irrespective of nationality, are included in the electorate<sup>21</sup>.” Furthermore, the PACE, which represents some 800 million persons in 47 Member States, adopted the Convention on the Participation of Foreigners in Public Life at Local Level (CPFPL), in 1992, and issued the Recommendation number 1500 (RPIFRPL), in 2001, about the Participation of immigrants and foreign residents in political life in the Council of Europe (CoE) Member States.

## **1.2. The Convention and the Recommendation on the Participation of Foreigners**

The CPFPL was concluded by 5 February 1992, but only came into force five years later, in May 1<sup>st</sup>, 1997, when the minimum of four ratifying Member States was reached. Seventeen years after its conclusion, the CPFPL has only been signed by thirteen and ratified by eight, from a total of forty-seven Member States. In 2001, the PACE issued the RPIFRPL urging States to grant political rights to non-nationals. Nonetheless, the low adhesion to the Convention demonstrates that the subject, despite its importance, is still controversial and demands more efforts to be pacified and implemented.

The CPFPL is divided into three parts, A, B and C, and States may present reservations regarding parts B and C. Part A refers to non-nationals’ rights to freedom of expression, assembly and association, even if these rights are, in general, already granted to non-nationals in

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<sup>21</sup> The European Commission to the European Parliament, October 1986 Report, *apud* Hayduk, 2004, p. 499.

most democracies. An innovation is noticed in article 4, which declares, “each Party shall endeavour to ensure that reasonable efforts are made to involve foreign residents in public inquiries, planning procedures and other processes of consultation on local matters<sup>22</sup>.” Hence, even if only part A of the Convention is adopted, at least some political rights would be granted to non-nationals, as it calls upon State’s duties to take efforts in order to involve them in public inquiries and other local level decisions.

Part B of the CPFPL, in article 5, refers to the creation of consultative bodies to represent foreign residents at the local level, stipulating that States should “ensure that there are no legal or other obstacles to prevent local authorities in whose area there is a significant number of foreign residents from setting up consultative bodies or making other appropriate institutional arrangements<sup>23</sup>,” aiming to integrate nationals and non-nationals, to provide a forum where non-nationals can express their opinions, concerns and wishes related to public life, and related to local authorities. In order to achieve these objectives, States should take the necessary legislative changes, if needed. Article 5, 2, affirms that States should ensure that non-nationals are able to elect representatives to participate in the consultative bodies.

Part C, article 6, refers to non-nationals’ political participation in local elections, affirming that States should “grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the 5 years preceding the elections<sup>24</sup>.” Despite referring to equal requirements, article 6 allows States to impose conditions to the exercise of political rights, such as being resident for at least five years. Nonetheless, article 7 stipulates that States may unilaterally reduce the length of residency required. Article 6, 2, allows

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<sup>22</sup> CoE, CPFPL, 1992.

<sup>23</sup> *Ibidem*.

<sup>24</sup> *Ibidem*.

States to have reservations in the concession of suffrage rights, not granting non-nationals the right to stand as candidates.

More concerned about the consequences of the deprivation of non-nationals' political rights, and recognizing that it must be diminished, the RPIFRPL, 11, IV, stipulates that the rights to vote should be granted to those legally established for more than three years. Unfortunately, the article only refers to the right to vote, and not to the right to be voted for<sup>25</sup>.

The Recommendation of the Council does not have binding force, and the Convention has not been ratified by most Member States. Yet, their existence has demonstrated, through an important institution, that political rights should be granted to non-nationals, as all human rights are essential, inseparable and directly related to human dignity. Thus, States should take measures to implement these rights, as the Recommendation calls them to “reappraise the desirable minimum standards for the treatment of non-citizens residing in a country, in particular concerning their political participation at all levels, with a view to granting the right to vote and stand in local elections to all legally established migrants irrespective of their origin, and invite member governments to take all appropriate action to ensure their implementation<sup>26</sup>.”

The promotion of democracy and human rights are among the main objectives of the CoE. The disfranchisement of non-nationals opposes its directives and objectives, as the PACE has urged Member States to grant political rights to non-nationals through the RPIFRPL. The use of the verb “to urge”, in article 11, IV, is not fortuitous and highlights the importance of the matter<sup>27</sup>. It should be also important to observe the whole of the International Court of Human Rights on the matter, as every Member State is signatory to the Convention for the

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<sup>25</sup> CoE, *RPIFRPL*, 2001.

<sup>26</sup> *Ibidem*.

<sup>27</sup> “Article 11, IV, urge the governments of member states: to grant the right to vote and stand in local elections to all migrants legally established for at least three years irrespective of their origin;” *Ibidem*.

protection of Human Rights and Fundamental Freedoms (CPHRFF), which is adopted by the Council.

### **1.3. For a new interpretation of Article 21 of the UDHR and Article 25 of the ICCPR**

Before the Convention and the Recommendation from CoE, the UDHR had already referred to the inalienable right to political participation. Article 21, 1, affirms: “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives<sup>28</sup>.” Therefore, everyone has the right to participate in the government of ‘his country.’ Nonetheless, even if some scholars affirmed that the meaning of the expression is clear, defining what is to be considered ‘his country’ is not easy<sup>29</sup>. In this regard, it might be considered the place of birth, even if it does not attribute nationality by the *ius soli* criterion, or it might be the one that has attributed nationality by blood. It might be both at the same time, or even more than two. Finally, it might be the place an individual has chosen to live. It is possible to consider that, after being admitted to and settled in the new State, becoming a resident and tax-payer, the place of residency becomes one’s own. Therefore, the definition of ‘his country’ might be much more personal or emotional than juridical.

The expression “his country” is vague and scholars must fill its content. The ordinary understanding must be updated as laws are not immutable and have to reflect reality. In an attempt to avoid responsibilities regarding non-nationals’ political rights, the expression has been interpreted as if it refers only to the nationals of a given State. However, through an inclusive and humanitarian interpretation, the expression shall consider also the place of residence. In this sense,

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<sup>28</sup> UDHR

<sup>29</sup> In this sense: “L’article 21 de la Déclaration universelle des droits de l’homme sert de toile de fond à la réflexion en ce domaine. « Toute personne a le droit de participer au gouvernement de son pays. » « Son pays... » L’expression est significative à souhait. Elle ne désigne pas, faut-il le souligner?, le pays d’autrui. Dans la plupart des Etats contemporains, l’étranger est donc dépourvu du moindre droit politique.” Delpérée, 1995, pp. 4 - 5.

“this language creates another ambiguity, however. When it asserts the right of the individual to take part in the government of his or her “country,” it is unclear whether this refers to his or her country of citizenship, or his or her country of residence<sup>30</sup>.”

Earnest also understands that the term “everyone” is vague, and goes even further when citing Raskin, who affirms that the article is “written in such a way as to leave open the possibility that resident aliens will have the right to vote<sup>31</sup>.” According to him, the use of the term everyone, instead of every citizen, is ambiguous, and it could mean that non-nationals have the right to vote and be voted for<sup>32</sup>. Therefore, from article 21, it can be assumed that political rights are to be exercised by everyone, and not only by citizens, as “nowhere does the Declaration specify citizenship as a requirement for political rights (or any rights for that matter)<sup>33</sup>.”

Earnest considers the terms citizen and national to be equivalent, and argues that political rights should not be an attribute of citizenship. Nonetheless, his line of reasoning might be followed even if nationality and citizenship do not have the same meaning, as the declaration does not specify nationality as a requirement for political rights, or any rights for that matter. As a consequence, it is reasonable to argue that everyone should be entitled to citizenship rights, in spite of nationality, as political rights are an attribute of the first. Therefore, the interpretation of the expression “his country” as the place of residence, as well as the literal interpretation of the term everyone, as opposed to every national or every citizen, is mandatory in order to keep the cohesion of the human rights legal framework, and of the declaration itself, not allowing States to discriminate against human beings living in the same place.

Another instrument that considers political rights to be human rights is the ICCPR. However, it is slightly more restrictive

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<sup>30</sup> Earnest, 2003, p. 17.

<sup>31</sup> *Ibidem*.

<sup>32</sup> *Ibidem*.

<sup>33</sup> *Ibidem*.

than the UDHR, as it links political rights to citizenship, in article 25, while the latter links political rights to everyone, in article 21<sup>34</sup>. The differentiation between nationality and citizenship becomes even more important here, as article 25 considers political rights to be an attribute of citizenship, affirming, “every citizen shall have the right and the opportunity...” to choose and to be elected as a representative, as well as the equal right to access public service<sup>35</sup>. Nonetheless, nowhere does the Covenant affirm that citizenship rights are an attribute of nationality, *i.e.*, the Covenant does not affirm that citizenship rights may only be granted to nationals. Article 25, C, makes even more clear that citizenship shall not be confused with nationality, as it grants citizens equal rights to access public services. In fact, the access to health, education, and security, among other public services is granted to all, even to unauthorized immigrants. In this sense, it is possible to affirm that citizenship shall not be taken as a synonym to nationality. Furthermore, article 26 affirms that everyone is equal before the law and that the law shall prohibit any type of discrimination, including those based on the grounds of nationality, granting the basis to advocate the enfranchisement of non-nationals: “Article 26 - All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all

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<sup>34</sup> “...also notes that the International Covenant on Civil and Political Rights of 1966 contrasts with the Universal Declaration of Human Rights by explicitly confining the right to vote to citizens. Article 25 (a through c) uses the term “citizen” when articulating a vision of political rights (International Covenant on Civil and Political Rights 1966).” *Ibidem*.

<sup>35</sup> “Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (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;
- (c) To have access, on general terms of equality, to public service in his country.” ICCPR.

persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status<sup>36</sup>.”

The principle of non-discrimination is reaffirmed in many other international treaties and represents a strong basis to support that non-nationals should be granted citizens' rights, as a matter of respect to the democratic principles of universality and equality on political participation. A comprehensive exegesis of article 21 of the UDHR, combined with article 25 of the ICCPR, should sustain that citizenship, and, therefore, political rights should be granted to everyone in their place of residence, regardless of nationality. Therefore, a broad and contemporary understanding of both texts, of democracy, and the principles of human rights, shall guide States to the inclusion of non-nationals in the political arena. As a result, democracies would be more likely to become the government of the *demos*, and the actions of the State truly representative of people's desires.

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<sup>36</sup> ICCPR.

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