



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Portugal*

I. Introduction

1. The Committee considered the initial report of Portugal (CRPD/C/PRT/1) at its 233rd and 234th meetings (CRPD/C/SR.233 and 234), on 29 and 30 March 2016. At its 251st meeting, on 11 April 2016, it adopted the following concluding observations.
2. The Committee welcomes the submission of the initial report of Portugal and wishes to express its appreciation to the State party for its written replies (CRPD/C/PRT/Q/1/Add.1) to the list of issues (CRPD/C/PRT/Q/1) and for its answers to the questions asked during the dialogue.
3. The Committee commends the State party on its delegation, which included a large number of representatives and was headed by the Secretary of State for the Inclusion of Persons with Disabilities, a woman with a disability.
4. The Committee expresses its appreciation for the cordial and constructive dialogue engaged in by the delegation with the members of the Committee.

II. Positive aspects

5. The Committee congratulates the State party on the progress made in some areas related to the rights of persons with disabilities, in particular on the ongoing review of its legislation to bring it into line with the provisions of the Convention.
6. The Committee notes with satisfaction the efforts made by the State party to implement the Convention through the adoption of laws, plans and programmes, including the following:
 - (a) The National Plan for Mental Health 2007-2016, which seeks to expand the National Network for Integrated Continuous Care;
 - (b) Act No. 21/2008 of 12 May, as a result of which in 2015, 98 per cent of students with disabilities in the State party attended regular schools;

* Adopted by the Committee at its fifteenth session (29 March-21 April 2016).



(c) The launch of the Fourth National Plan against Domestic Violence (2011-2013) and the following programmes of the Portuguese security forces to protect persons with disabilities from violence: the Investigation and Specific Victims Support Project and the Support Programme for Persons with Disabilities of the National Republican Guard; the Blue Badge Special Programme, the Júlia Centre and the “On Your Side” programme of the police; and the “SEF on the Move” programme of the Immigration and Borders Service (SEF).

(d) The Support Programme for Persons with Disabilities, designed to prevent discrimination, neglect, abuse and ill-treatment of persons with disabilities;

(e) The provision of a direct line by the National Institute for Rehabilitation to provide tailored support to persons with disabilities, their families, and organizations and services active in this area, in connection with their rights, duties and benefits, and to refer them to the available resources.

III. Areas of concern

A. General principles and obligations (arts. 1-4)

7. The Committee is concerned that disability is assessed medically and that, in the absence of legal criteria on the eligibility of persons with disabilities for the various social protection programmes, the national industrial injury and occupational illness chart serves as a substitute.

8. The Committee recommends that the State party review the criteria for the assessment of the degree of a person’s disability, in accordance with the Convention, and put appropriate regulation into place in its legislation and policies. It further recommends that the State party ensure that all persons with disabilities can obtain disability certification and that access to social protection programmes and support is available to all persons with disabilities, thereby ensuring equal treatment.

9. The Committee notes that the State party has not yet conducted a cross-cutting, comprehensive review of its legislation with a view to bringing it into line with the Convention and that in the State party laws, regulations, customs and practices that constitute discrimination against persons with disabilities still held sway.

10. The Committee recommends that the State party carry out a cross-cutting, comprehensive review of its legislation and policies to bring them within the scope of disability as expressed in article 1 of the Convention and thus ensure protection against all forms of discrimination on grounds of disability. The Committee also recommends that it actively involve representative organizations of persons with disabilities and independent human rights institutions in this process.

11. The Committee notes that the State party is working on a new strategy on disability to operate until 2020; however, it is concerned about the non-execution of the National Disability Strategy 2011-2013, which had neither sufficient funds for its implementation nor involved organizations of persons with disabilities in its design, monitoring and evaluation.

12. The Committee recommends that the State party adopt a new strategy on the implementation of the Convention in the State party that involves organizations of persons with disabilities in its design, monitoring and evaluation and that receives an earmarked budget, a fixed timetable for implementation and a specific monitoring mechanism. The Committee also recommends that the European Union structural

funds allocated to the State party until 2020 be used for the development of policies that contribute to the implementation of the Convention in the State party.

B. Specific rights (arts. 5-30)

Equality and non-discrimination (art. 5)

13. The Committee is concerned that the State party has not established in law the obligation to provide reasonable accommodation to persons with disabilities in the exercise of all their rights.

14. **The Committee recommends that the State party explicitly establish in law the obligation to provide reasonable accommodation to persons with disabilities in all areas covered by the Convention.**

15. The Committee is concerned about the ineffectiveness of the legal remedies available to persons with disabilities within the framework of the powers conferred on the National Institute for Rehabilitation for the review of cases of non-compliance with disability policies, and about the Institute's mediation of complaints filed by persons with disabilities for such non-compliance, which are often left unresolved, closed and/or result in no penalty whatsoever.

16. **The Committee recommends that the State party review its legislation and policies in order to provide persons with disabilities with an effective legal remedy in cases of discrimination.**

Women with disabilities (art. 6)

17. The Committee is concerned about the lack of specific assistance measures taken by the State party to prevent and combat the multiple and intersectional discrimination faced by women and girls with disabilities and about the lack of information in this regard. It is also concerned that women with disabilities are not consulted about the design of programmes and measures relating to women in general or to persons with disabilities.

18. **The Committee recommends that the State party incorporate the perspective of women and girls with disabilities in its policies, programmes and strategies on gender equality and that it incorporate a gender perspective in its disability strategies; it should take a dual-track approach that also includes equalization measures and affirmative action, so as to eradicate the multiple and intersectional discrimination faced by women and girls with disabilities in all spheres of life, in both urban and rural areas. It also recommends that the State party ensure that women with disabilities, through their representative organizations, are consulted about the design of programmes and measures in all matters that directly affect them.**

Children with disabilities (art. 7)

19. The Committee notes with concern the negative effects of the austerity measures taken by the State party on the availability of support services for the families of children with disabilities, as well as on the support provided for inclusive, high-quality education for such children. It also notes that the State party's strategies on disability and on children do not take the needs of children with disabilities into consideration.

20. **The Committee recommends that the State party take the necessary measures, including through the use of European structural and investment funds and other appropriate funds, to minimize the impact of austerity measures on children with disabilities, enhancing the support provided to their families and taking the steps necessary to ensure that they receive a high-quality, inclusive education. The**

Committee also recommends that the State party ensure that children with disabilities and their representative organizations are consulted on all matters that affect them and that appropriate assistance, according to their disability and age, is provided.

Accessibility (art. 9)

21. The Committee notes that the Accessibility Act has been under review since 2012, that the second phase of the National Plan for the Promotion of Accessibility 2011-2015 has not yet been launched and that the recent legislation on urban renewal provides for an exemption from compliance with accessibility standards. It also notes that the legislation makes no distinction between the licensing body and the body responsible for monitoring, and that there are barely any penalties for non-compliance with accessibility standards.

22. The Committee recommends that the State party bear in mind the links between article 9 of the Convention and targets 11.2 and 11.7 of the Sustainable Development Goals, so as to provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of the vulnerable, women, children, persons with disabilities and older persons, and to provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities.

23. The Committee recommends that the State party take productive measures, in close consultation with the representative organizations of persons with disabilities, for the prompt adoption of an amended law on accessibility that is in line with the Convention, as indicated in the Committee's general comment No. 2 (2014) on accessibility (article 9 of the Convention), and provides for effective and accessible complaint and enforcement mechanisms.

Situations of risk and humanitarian emergencies (art. 11)

24. The Committee is concerned that the State party's civil protection and humanitarian assistance policies do not adequately take the needs of persons with disabilities into consideration in situations of risk and in humanitarian emergencies.

25. The Committee recommends that all aspects of the State party's policies and programmes on disaster risk reduction be inclusive of and accessible to all persons with disabilities.

26. The Committee notes the consideration of some aspects of disability in the State party's policies and programmes on migration, refuge and asylum. However, the Committee is deeply concerned that migrants, refugees or asylum seekers with disabilities often live in poverty or extreme poverty.

27. The Committee recommends that the State party make greater efforts to provide assistance to migrants, refugees or asylum seekers with disabilities in poverty or extreme poverty in its policies and programmes on migration, refuge and asylum.

Equal recognition before the law (art. 12)

28. The Committee notes with deep concern that in the State party a large number of persons with disabilities are subjected to full or partial guardianship and therefore deprived of such rights as the right to vote, marry, form a family or manage assets and property. The Committee is also concerned that the current revision of the State party's Civil Code continues to provide for restrictions on the legal capacity of persons with disabilities.

29. The Committee recommends that the State party take appropriate measures to ensure that all persons with disabilities who have been deprived of their legal capacity

can exercise all the rights enshrined in the Convention, including the right to vote, marry, form a family or manage assets and property, as indicated in its general comment No. 1 (2014) on equal recognition before the law (article 12 of the Convention). The Committee also recommends that the State party repeal the existing regimes of full and partial guardianship, under which a person has no or limited legal capacity, and develop systems of assisted decision-making to enable and promote the realization of the rights of persons with disabilities, in accordance with article 12 of the Convention.

Access to justice (art. 13)

30. The Committee is concerned about the limited access to justice for persons with disabilities and the lack of procedural accommodation for them in the State party.

31. **The Committee recommends that the State party take all necessary measures to combat the discrimination faced by persons with disabilities in accessing justice by ensuring the provision of full procedural accommodation and of funding for training judicial personnel on the Convention.**

Liberty and security of the person (art. 14)

32. The Committee is concerned that under the State party's Code of Criminal Procedure persons with psychosocial disabilities are exempt from criminal liability, and that their right to procedural guarantees in criminal proceedings is not respected. It is also concerned that persons with disabilities are committed on the basis of dangerousness and deprived of liberty on the basis of disability under the Mental Health Act (Acts Nos. 36/1998 and 101/1999).

33. **The Committee requests that the State party, in accordance with the Convention and the Committee's guidelines on article 14 (2015):**

(a) **Review its criminal law in order to ensure that all persons with disabilities have guarantees of due process, including the presumption of innocence and the right to a fair trial, on an equal basis with others, and are provided with reasonable accommodation and access to information and communication at the various stages of judicial and/or administrative proceedings for deprivation of liberty;**

(b) **Remove the concept of dangerousness and the related preventive and security measures from its criminal law in cases where a person with a psychosocial disability is accused of a crime, as well as the deprivation of liberty on the grounds of impairment provided for in its legislation on mental health.**

Freedom from exploitation, violence and abuse (art. 16)

34. The Committee notes with concern that the State party's legislation and the measures it has taken to protect persons with disabilities, especially women and children, from exploitation have not sufficed.

35. The Committee recommends that the State party, in consultation with organizations of persons with disabilities, explicitly incorporate a disability perspective into its legislation (including Act No. 112/2009 on domestic violence), strategies and programmes to prevent exploitation, violence and abuse, and strengthen measures, including in-service training of police, prosecutors and judges on the implementation of a due diligence framework, to protect persons with disabilities, especially women and children.

Protecting the integrity of the person (art. 17)

36. The Committee is concerned that persons with disabilities, especially those who have been declared legally incapacitated, continue to be subjected, against their will, to termination of pregnancy, sterilization, scientific research, electroconvulsive therapy or psychosurgical interventions.

37. The Committee recommends that the State party take all possible measures to ensure that the right to free, prior and informed consent to medical treatment is respected and that it put in place assisted decision-making mechanisms.

Living independently and being included in the community (art. 19)

38. The Committee is concerned that the State party has no national policy on living independently, that it has not regulated personal assistance and that the allowance for such assistance is currently very low, thus forcing some people to live in institutions for persons with disabilities or for older persons, in which the State party invests more in than in support for living independently. It is also concerned that the National Programme for Mental Health 2007-2016, which aims to expand the National Network for Integrated Continuous Care, has not yet established support services in the community.

39. The Committee recommends that the State party, in close consultation with organizations representing persons with disabilities, adopt a national strategy for living independently, including increased investment to facilitate living independently in the community rather than in institutions, that it regulate personal assistance and that it increase the availability of sign language interpreters and fingerspelling systems in public services. It also urges the State party to establish support services in the community for persons with intellectual or psychosocial disabilities.

Freedom of expression and opinion, and access to information (art. 21)

40. The Committee is concerned about the restricted access to information and communication of persons with disabilities in the State party as a result of the lack of accessible formats and technologies appropriate to different kinds of disability, including the fingerspelling system, Braille, augmentative and alternative communication, and other accessible means, modes and formats of communication of their choice, including easy-to-read formats.

41. The Committee recommends that the State party take the necessary measures to ensure the enforcement of its legislation on access to information and communication with a view to giving persons with disabilities of any kind access to accessible formats and technologies appropriate to different kinds of disability, including sign language, fingerspelling interpreters, Braille, augmentative and alternative communication, and other accessible means, modes and formats of communication of their choice, including easy-to-read formats. It also recommends that the State party promote the official recognition of Portuguese sign language and Braille.

Respect for home and the family (art. 23)

42. The Committee notes that the State party's Civil Code restricts the right of some persons with disabilities to marry, have custody of their children and adopt. It also notes that austerity measures have led, among other things, to cuts to social services and to financial support for families, which has a particularly negative effect on women caregivers to persons with disabilities.

43. **The Committee recommends that the State party amend and harmonize its Civil Code to guarantee the rights of all persons with disabilities to marry, have custody of their children and adopt. It also recommends that the State party take appropriate measures to ensure that its economic and social austerity policies and measures endorse financial support for families with persons with disabilities, with special protection and support for women who are carers for persons with disabilities.**

Education (art. 24)

44. The Committee notes that, although the great majority of students with disabilities attend regular schools in the State party, there is a lack of support and that, because of austerity measures, human and material resources have been cut, thereby putting the right to and opportunity for an inclusive education of high quality at risk. The Committee also notes that the State party has established “model schools” for deaf, blind, deaf-blind and visually impaired students, as well as for students with autism, which would be a form of segregation and discrimination.

45. **The Committee recommends that the State party, in close consultation with organizations representing persons with disabilities, review its legislation on education to bring it into line with the Convention and take measures to provide additional resources and materials to facilitate access to and enjoyment of inclusive education of high quality for all students with disabilities, providing public schools with the resources they need to ensure the inclusion of all students with disabilities in ordinary classrooms.**

46. **The Committee recommends that the State party consider the relationship between article 24 of the Convention and targets 4.5 and 4.a of the Sustainable Development Goals to ensure equal access to all levels of education and vocational training, as well as to build and upgrade education facilities to make them disability-sensitive and safe.**

47. The Committee is concerned that even though the State party has a special quota for the admission of students with disabilities to public universities, it has not regulated the support universities should provide to such students. It is further concerned that there is restricted access to certain fields of study and professional degrees for students with particular disabilities.

48. **The Committee recommends that the State party introduce in its legislation regulations on the access of students with disabilities to higher education and vocational training on an equal basis with other students, while providing reasonable accommodation and the required support services.**

Health (art. 25)

49. The Committee notes that the State party has paid little attention to the rights of persons with disabilities in its legislation and policies in the field of health care, sexual and reproductive health, HIV/AIDS and sexually transmitted diseases, and that health services, especially obstetric and gynaecological services, are not always accessible. The Committee is further concerned that the primary prevention of disability is understood as a measure taken in implementation of the Convention.

50. **The Committee recommends that the State party take all necessary measures to ensure that persons with disabilities have unrestricted access to health care, including sexual and reproductive health care, by explicitly prohibiting discrimination on grounds of disability in its legislation, ensuring the universal accessibility of its programmes and services in both urban and rural areas and providing health**

professionals with adequate training. The primary prevention of disability should also be excluded from health programmes.

Work and employment (art. 27)

51. The Committee is concerned about discrimination and inequality in employment and the conditions of work of persons with disabilities, in particular women, and about the failure of the Labour Code to require companies to provide reasonable accommodation. The Committee is also concerned about the working conditions of persons with disabilities in the Occupational Activity Centres, including their average wage, and about the fact that when they exercise their right to work and employment the most common outcome is employment in these Centres.

52. The Committee recommends that the State party, in close consultation with organizations representing persons with disabilities, review its public- and private-sector labour legislation to bring it into line with the Convention and that it take measures to enforce the law and apply the stipulated penalties for non-compliance. The Committee also recommends that it do away with segregated working environments, that it review the legislation regulating the Occupational Activity Centres from a human rights perspective to bring them into line with the Convention and that it step up efforts to promote access to the regular labour market for persons with intellectual disabilities and autism. The State party should promote corporate social responsibility in connection with the employment of persons with disabilities. The Committee recommends that the State party consider the links between article 27 of the Convention and target 8.5 of the Sustainable Development Goals, with a view to achieving full and productive employment and decent work for all women and men, including for persons with disabilities, and equal pay for work of equal value.

Adequate standard of living and social protection (art. 28)

53. The Committee notes the efforts made by the State party to mitigate the impact of austerity measures on persons with disabilities. However, it is concerned that there are no support services of any kind for persons with disabilities who, as a result of the implementation of austerity measures, are forced, in the absence of family support or assistance networks, to live in poverty or extreme poverty.

54. The Committee recommends that the State party, in cooperation with organizations representing persons with disabilities, take the following measures:

(a) **Urgently review austerity measures to prevent further negative and regressive effects on the standard of living and social protection of persons with disabilities by taking steps that enable them to be included in the community;**

(b) **Provide support services for living independently and residential homes respectful of the rights of persons with disabilities, their wishes and preferences, in addition to providing cash subsidies to make it possible for unemployed persons with disabilities and without family support to have a decent standard of living;**

(c) **Step up efforts, in line with the human rights approach of the Convention, to strengthen the right to a decent standard of living and the social protection of persons with disabilities who are living in poverty and extreme poverty, allocating funds sufficient for that purpose;**

(d) **Consider the links between article 28 of the Convention and target 10.2 of the Sustainable Development Goals in order to empower and promote the social, economic and political inclusion of all, irrespective of their disability.**

Participation in political and public life (art. 29)

55. The Committee is seriously concerned that in the State party there are persons with disabilities, especially those who are deprived of their legal capacity or live in psychiatric institutions, who are deprived of their right to vote or prevented from exercising this right in elections and that electoral processes, including political campaigns, are not accessible. The Committee is also concerned that there are internal regulations that may require a medical document attesting to the capacity of a person with disabilities to vote if he/she has a “clear mental incapacity” recognized by the president of the polling station.

56. The Committee recommends that the State party, in cooperation with representative organizations of persons with disabilities, take the necessary measures to enable all persons with all types of disability, including those who are under guardianship or in psychiatric institutions, to exercise their right to vote and stand for election on an equal basis with others, by providing accessible facilities and means of communication.

Participation in cultural life, recreation, leisure and sport (art. 30)

57. The Committee is concerned that the State party has not ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, which provides for access to published material by blind persons, persons with visual impairments or persons who have other difficulties in accessing printed materials.

58. The Committee encourages the State party to take all the appropriate measures to ratify and implement the Marrakesh Treaty as soon as possible.

C. Specific obligations (arts. 31-33)**Statistics and data collection (art. 31)**

59. The Committee is concerned about the lack of consistent and comparable data on persons with disabilities in the State party and of human rights indicators in the data available.

60. The Committee recommends that the State party, in cooperation with persons with disabilities and their representative organizations, use a human rights-based indicators system and a comparable and comprehensive data-collection system disaggregated by gender, age, rural/urban population and type of disability.

61. The Committee also recommends that the State party consider the links between article 31 of the Convention and target 17.18 of the Sustainable Development Goals in order to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.

International cooperation (art. 32)

62. The Committee notes the consideration of disability in the Portuguese Cooperation Strategic Concept 2014-2020, which regulates the State party’s cooperation with the Portuguese-speaking countries in Africa and with Timor-Leste; however, it is concerned about the failure to mainstream the rights of persons with disabilities in the national implementation and monitoring of the 2030 Agenda for Sustainable Development, as well as about the lack of a systematic and institutionalized approach to incorporating the principles and values of the Convention into all its international cooperation policies and programmes.

63. **The Committee recommends that the State party, in close collaboration with representative organizations of persons with disabilities, adopt a development policy in line with the Convention that incorporates its principles and values into all its international cooperation policies and programmes. The Committee also recommends that it mainstream the rights of persons with disabilities in the national implementation and monitoring of the 2030 Agenda for Sustainable Development, in close cooperation with and with the participation of organizations of persons with disabilities.**

National implementation and monitoring (art. 33)

64. The Committee notes the recent designation by the State party of the independent monitoring mechanism to promote, protect and monitor implementation of the Convention. However, it is concerned that this mechanism is neither in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) nor sufficiently funded.

65. **The Committee recommends that the State party take measures to ensure that the independent monitoring mechanism complies fully with the Paris Principles: i.e., that it includes no government representatives, that it has a budget adequate for its work and that it operates in close consultation with organizations of persons with disabilities.**

Cooperation and technical assistance

66. Under article 37 of the Convention, the Committee may provide technical guidance to the State party on any queries addressed to the experts via the secretariat. The State party may also seek technical assistance from United Nations specialized agencies with headquarters in the country or the region.

IV. Follow-up

Follow-up to concluding observations and dissemination

67. The Committee requests the State party to submit, within 12 months and in accordance with article 35 (2) of the Convention, information in writing on the measures taken to implement the recommendations made by the Committee in paragraphs 12 (a new national disability strategy) and 65 (an independent mechanism to monitor the implementation of the Convention) above.

68. The Committee asks the State party to give effect to the recommendations contained in the present concluding observations. It recommends that the State party forward the concluding observations, for consideration and action, to the members of the Government and the legislature, officials in the competent ministries, members of the judiciary and the relevant professional groups, such as educational, medical and legal professionals, to local authorities, the private sector and the media, using accessible social communication strategies.

69. The Committee requests the State party to disseminate the present concluding observations widely, in accessible formats, in particular to NGOs and organizations of persons with disabilities, as well as to persons with disabilities themselves and members of their families.

70. The Committee encourages the State party to involve civil society organizations, in particular organizations of persons with disabilities, in the preparation of its next periodic reports.

Next periodic report

71. The Committee requests the State party to present its combined second to fourth periodic reports by 23 November 2023 at the latest. The Committee also offers the State party the opportunity to submit these combined reports under the simplified reporting procedure, whereby the Committee draws up a list of issues at least one year before the combined reports are due. The State party's replies to this list of issues would constitute its report.
