



# Convention on the Rights of Persons with Disabilities

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## Committee on the Rights of Persons with Disabilities

### Report of the Committee on the Rights of Persons with Disabilities on its twenty-first session (11 March–5 April 2019)

#### I. States parties to the Convention and the Optional Protocol thereto

1. As at 5 April 2019, the date on which the twenty-first session closed, there were 177 States parties to the Convention on the Rights of Persons with Disabilities and 94 States parties to the Optional Protocol thereto. The lists of States parties to these instruments are available on the website of the Office of Legal Affairs of the Secretariat.

#### II. Opening of the twenty-first session of the Committee

2. The twenty-first session opened in a public meeting with welcoming remarks by the acting Chair of the Committee. The opening statement of the Office of the United Nations High Commissioner for Human Rights (OHCHR) was delivered by the Director of the Human Rights Council and Treaty Mechanisms Division and is available on the Committee's website.

3. The Committee reviewed and adopted the provisional agenda and tentative programme of work for the twenty-first session (CRPD/C/21/1 and Corr.1).

#### III. Membership of the Committee

4. The following newly elected members of the Committee made a solemn declaration, in accordance with rule 14 of the Committee's rules of procedure, at the opening of the twenty-first session, on 11 March 2019: Gertrude Oforiwa Fefoame, Mara Cristina Gabrielli, Amalia Eva Gamio Ríos, Rosemary Kayess, Kim Mi Yeon, Markus Schefer and Risnawati Utami. Two re-elected members, Danlami Umaru Basharu and Jonas Ruskus, also made a solemn declaration. Dmitry Rebrov made a solemn declaration on 20 March 2019, having been appointed following the resignation of Valery Nikitich Rukhledev in January 2019 to serve the remainder of Mr. Rukhledev's term.

5. The list of members of the Committee as at 5 April 2019, indicating the duration of their terms of office, is available on the Committee's website.

#### IV. Election of the Bureau

6. The election of the Bureau was led by the Chief of the OHCHR Groups in Focus Section. The following members were elected for a term of two years, in accordance with rules 15, 16 and 17 of the rules of procedure of the Committee:



<i>Chair:</i>	Danlami Umaru Basharu
<i>Vice-Chairs:</i>	Jun Ishikawa Rosemary Kayess Jonas Ruskus
<i>Rapporteur:</i>	Amalia Eva Gamio Ríos

## V. Working methods

7. The Committee discussed various issues related to its working methods and adopted the decisions contained in annex I to the present report.

## VI. Activities related to general comments

8. With regard to the possibility of developing a general comment on article 11 of the Convention, on situations of risk and humanitarian emergencies, the Committee decided that the working group that it had formed at its twentieth session would comprise Monthian Buntan, Ms. Gabrielli and Mr. Ishikawa, with Mr. Buntan as Chair.

## VII. Activities related to the Optional Protocol

9. On 2 April 2019, the Committee examined four communications. With regard to *V.F.C. v. Spain* (CRPD/C/21/D/34/2015), the Committee found that the author's mandatory retirement amounted to a violation of article 27 (a), (b), (e), (g), (i) and (k), read alone and in conjunction with article 3 (a), (b), (c), (d) and (e); article 4 (1) (a), (b) and (d) and (5); and article 5 (1), (2) and (3) of the Convention. As regards *T.M. v. Greece* (CRPD/C/21/D/42/2017), the Committee concluded that the case was inadmissible. The Committee discontinued *Kendall v. Australia* (CRPD/C/21/D/15/2013), and decided to postpone the examination of communication No. 32/2015 to further assess some elements of the complaint.

10. The Committee adopted the report of the Special Rapporteur for follow-up on Views. In this connection, it decided to continue the follow-up procedure and request additional information from the State party concerned in five cases. It also decided to discontinue the follow-up procedure in one case, considering that the measures adopted by the State party to implement the Committee's recommendations had been largely satisfactory (*Nyusti and Takács v. Hungary*, CRPD/C/9/D/1/2010).

11. The Committee considered matters related to inquiry proceedings pursuant to articles 6 and 7 of the Optional Protocol.

## VIII. Other decisions

12. The Committee adopted the present report on its twenty-first session.

13. The full list of the decisions adopted by the Committee is available in annex I to the present report.

## IX. Future sessions

14. The twenty-second session of the Committee is scheduled to be held in Geneva from 26 August to 20 September 2019 and will be followed by the twelfth meeting of the pre-session working group, from 23 to 27 September 2019.

## **X. Accessibility of the Committee's meetings**

15. Remote captioning was provided by the United Nations in all official public meetings and in three private meetings. International Sign interpretation was provided during public meetings. National sign language interpretation was provided during the dialogues with five States parties to the Convention, namely Cuba, Niger, Rwanda, Saudi Arabia and Spain. Norwegian sign language interpretation was provided by the State party. Russian sign language interpretation was provided in all public and private meetings from 20 March 2019. Webcasting was provided during public meetings. Remote captioning was provided during thematic briefings to the Committee by the organizers of the briefings.

## **XI. Cooperation with relevant bodies**

### **A. Cooperation with United Nations organs and specialized agencies**

16. At the opening meeting of the session, representatives of the following United Nations agencies, departments and programmes made statements: the Economic and Social Commission for Asia and the Pacific (by video link), the International Labour Organization, OHCHR, the Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members, the United Nations Children's Fund, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the World Health Organization.

17. At the opening meeting, the Committee also heard from a representative of the Standing Committee on Victim Assistance and Socioeconomic Reintegration established by the State parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.

18. The Committee met with the Chair of the Human Rights Council task force on secretariat services, accessibility for persons with disabilities and use of information technology to exchange views on promoting the accessibility of Human Rights Council meetings to persons with disabilities.

19. The Committee met with the Special Rapporteur on the rights of persons with disabilities to discuss matters relating to the coordination of the Special Rapporteur's mandate with that of the Committee.

20. The Bureau of the Committee met with the OHCHR Human Rights and Disability Advisor to discuss matters relating to the United Nations system-wide accountability framework on disability inclusion.

21. The Committee prepared and submitted a written contribution regarding the 2030 Agenda for Sustainable Development in response to a call for input by the high-level political forum on sustainable development. The contribution contained observations on progress, gaps, areas requiring urgent attention, risks and challenges with respect to achieving the Sustainable Development Goals that would be the focus of the forum to be held in July 2019. The meaningful and effective participation of organizations of persons with disabilities was one of the areas identified as requiring urgent attention in order to support the cross-cutting principles of the Convention and achieve the Sustainable Development Goals.

### **B. Cooperation with non-governmental organizations and other bodies**

22. At the opening meeting of the session, the Committee was addressed by representatives of the International Disability Alliance, the European Disability Forum and the Global Alliance of National Human Rights Institutions. The Committee also heard updates from the Centre for the Human Rights of Users and Survivors of Psychiatry, Rehabilitation International and organizations of persons with disabilities from the States parties whose reports were considered by the Committee during the session.

23. The Committee met in private with the Chair of the Working Group on Disability of the Global Alliance of National Human Rights Institutions to explore avenues for future collaboration.

24. Country-specific and thematic side events to brief the Committee were organized by Uloba – Independent Living Norway; Sociedad y Discapacidad; the Centre for the Human Rights of Users and Survivors of Psychiatry; the Global Rehabilitation Alliance and the International Committee of the Red Cross MoveAbility Foundation; the International Federation of Anti-Leprosy Associations; World Enabled; and the Commonwealth Secretariat, the United Nations Educational, Scientific and Cultural Organization Chair on transforming the lives of people with disabilities through physical education sport, fitness and recreation, at the Institute of Technology Tralee, and the International Paralympic Committee.

25. Public side events were organized by Down Syndrome International to celebrate World Down Syndrome Day and by Autism Europe to celebrate World Autism Awareness Day.

## **XII. Consideration of reports submitted in accordance with article 35 of the Convention**

26. The Committee considered the initial reports of Cuba (CRPD/C/CUB/1), Niger (CRPD/C/NER/1), Norway (CRPD/C/NOR/1 and Corr.1), Rwanda (CRPD/C/RWA/1 and Corr.1), Saudi Arabia (CRPD/C/SAU/1), Senegal (CRPD/C/SEN/1), Turkey (CRPD/C/TUR/1) and Vanuatu (CRPD/C/VUT/1) and the combined second and third reports of Spain (CRPD/C/ESP/2-3). The Committee adopted concluding observations on those reports, which are available on its website.

27. The Committee adopted lists of issues under the simplified reporting procedure in relation to Belgium (CRPD/C/BEL/QPR/2-3), the Cook Islands (CRPD/C/COK/QPR/2-3), Czechia (CRPD/C/CZE/QPR/2-3) and Denmark (CRPD/C/DNK/QPR/2-3).

## **XIII. Conference of States Parties to the Convention**

28. The Committee confirmed that it would be represented at the twelfth session of the Conference of States Parties to the Convention by its Chair.

## Annex I

### Decisions adopted by the Committee at its twenty-first session

1. The Committee adopted concluding observations in relation to the initial reports of the following State parties: Cuba (CRPD/C/CUB/CO/1), Niger (CRPD/C/NER/CO/1), Norway (CRPD/C/NOR/CO/1), Rwanda (CRPD/C/RWA/CO/1), Saudi Arabia (CRPD/C/SAU/CO/1), Senegal (CRPD/C/SEN/CO/1), Turkey (CRPD/C/TUR/CO/1) and Vanuatu (CRPD/C/VUT/CO/1). It also adopted concluding observations in relation to the combined second and third reports of Spain (CRPD/C/ESP/CO/2-3).
2. The Committee adopted lists of issues under the simplified reporting procedure in relation to the following States parties: Belgium (CRPD/C/BEL/QPR/2-3), Cook Islands (CRPD/C/COK/QPR/2-3), Czechia (CRPD/C/CZE/QPR/2-3) and Denmark (CRPD/C/DNK/QPR/2-3).
3. The Committee considered matters related to its communication and inquiry procedures pursuant to articles 6 and 7 of the Optional Protocol. The Committee considered four communications. It found violations of the Convention in one of them, declared the second inadmissible, discontinued the third and decided to postpone its consideration of the fourth. A summary of the Views of the Committee can be found in annex II to the present report.
4. The Committee decided that its working languages during the biennium 2019–2020 would be English, Russian and Spanish.
5. The Committee decided that the members of the Working Group on Communications and Inquiries would be Amalia Eva Gamio Ríos, Samuel Njuguna Kabue, Rosemary Kayess, László Gábor Lovászy and Markus Schefer. The Committee designated Mr. Schefer as Special Rapporteur on communications under the Optional Protocol and Ms. Gamio Ríos as Special Rapporteur for follow-up on Views.
6. The Committee decided that the members representing the Committee in the joint working group with the Committee on the Rights of the Child on children with disabilities would be Danlami Umaru Basharu, Imed Eddine Chaker, Gertrude Oforiwa Fefoame, Robert George Martin, Jonas Ruskus and Risnawati Utami.
7. The Committee designated Mr. Basharu, Ms. Kayess and Ms. Utami as focal points for the Global Disability Summit, 2030 Agenda for Sustainable Development and Sustainable Development Goals.
8. The Committee designated Ms. Kayess and Mr. Martin as focal points on reprisals.
9. The Committee designated Jun Ishikawa as focal point on accessibility.
10. The Committee designated Mr. Lovászy as focal point on disability and new technologies.
11. The Committee designated Ms. Kayess and Kim Mi Yeon as focal points for engagement with national human rights institutions.
12. The Committee designated Mr. Basharu and Monthian Buntan as focal points on the 2020 review of the treaty body strengthening process.
13. The Committee designated Mr. Buntan and Mr. Lovászy as focal points for the United Nations system-wide accountability framework on disability inclusion.
14. With regard to the reports of States parties to be considered at its twenty-second session and country rapporteurs, the Committee decided to consider the reports of the following States parties: Albania (Mr. Lovászy), Australia (Mr. Buntan and Mr. Martin), Ecuador (Ms. Gamio Ríos), El Salvador (Ms. Gamio Ríos), Greece (Mr. Lovászy and Mr. Schefer), India (Mr. Buntan and Ms. Utami), Iraq (Mr. Chaker), Kuwait (Ahmad Alsaif) and Myanmar (Mr. Ishikawa). The Committee also decided to adopt lists of issues under its

simplified reporting procedure in relation to Canada (Ms. Kayess and Mr. Martin) and Ukraine (Mr. Ruskus). The Committee instructed its secretariat to inform all concerned permanent missions of those State parties.

15. The Committee decided that its twenty-second session would be held from 26 August to 20 September 2019 and would be followed by the twelfth session of the pre-session working group, from 23 to 27 September 2019. The Committee requested the pre-session working group at its twelfth session to adopt lists of issues in relation to Djibouti, France, Japan, the Lao People's Democratic Republic, Mexico, Singapore, Switzerland and Venezuela. The Committee also requested the pre-session working group to adopt lists of issues under the Committee's simplified reporting procedure in relation to Mauritius and Slovakia. The Committee instructed its secretariat to inform all concerned permanent missions of those States parties.

16. The Committee adopted a follow-up progress report on individual communications (CRPD/C/21/3).

17. The Committee adopted its biennial report (2017–2018) to the General Assembly and the Economic and Social Council (A/74/55).

18. The Committee adopted the report on its twenty-first session.

## Annex II

### Summary of the Views and decisions adopted by the Committee regarding communications submitted under the Optional Protocol

#### *V.F.C. v. Spain*

1. The Committee examined the communication in the case of *V.F.C. v. Spain* (CRPD/C/21/D/34/2015). The author of the communication was V.F.C., a national of Spain who had had a traffic accident on 20 May 2009 that had left him with a permanent motor disability. As a result of the accident, his status had been declared to be one of “permanent disability for the performance of his occupation”. The author had submitted an application to Barcelona City Council requesting it to assign him to “modified duty” and identify a post suited to his disability. However, the City Council had rejected his application. On appeal before the administrative court, the City Council’s decision had been overturned. The City Council had then filed an appeal against that judgment, which had been upheld by the High Court of Catalonia. The author had filed an application with the Constitutional Court for the remedy of *amparo* against the High Court judgment, which had been rejected on procedural grounds. The author claimed that the legislation in force discriminated against him in that it provided for differential treatment of persons in different administrative categories of disability, even though placement in such categories was not determined on the basis of a medical examination for evaluating the possibility of assignment to tasks or duties that represented alternatives to the usual tasks of regular duty.

2. The State party contended that the communication should be found inadmissible for failure to exhaust domestic remedies, or, if the Committee found the communication admissible, that the allegations were without merit.

3. In its considerations, the Committee recalled that article 27 (1) of the Convention required States parties to recognize the right of persons with disabilities to retain their employment, on an equal basis with others; to take all appropriate steps, including through legislation, to prohibit discrimination on the basis of disability with regard to the continuance of employment; and to ensure that reasonable accommodation was provided to persons who acquired a disability during the course of employment. It also recalled its general comment No. 6 (2018) on equality and non-discrimination, in which it stated that in order to achieve de facto equality in terms of the Convention, States parties must ensure that there was no discrimination on the grounds of disability in connection with work and employment. The Committee further recalled that the process of seeking reasonable accommodation should be cooperative and interactive and aim to strike the best possible balance between the needs of the employee and the employer. In determining which reasonable accommodation measures to adopt, the State party must ensure that the public authorities identify the effective adjustments that could be made to enable the employee to carry out his or her key duties. The Committee found that the rules that prevented the author from being assigned to modified duty did not safeguard his rights under the Convention, especially the possibility of having his particular disability evaluated with a view to building any capacities that he might have to perform modified duties or other complementary activities.

4. The Committee therefore concluded that the author’s mandatory retirement had constituted a violation of article 27 (a), (b), (e), (g), (i) and (k), read alone and in conjunction with article 3 (a), (b), (c), (d) and (e); article 4 (1) (a), (b) and (d) and (5); and article 5 (1), (2) and (3) of the Convention.

5. The Committee stated that the State party was under an obligation to afford the author the right to compensation for any legal costs incurred in filing the communication, and to take appropriate measures to ensure that the author was given the opportunity to undergo an assessment of fitness for alternative duties for the purpose of evaluating his potential to undertake modified duties or other complementary activities, including any

reasonable accommodation that might be required. In general, the State party was under an obligation to take all necessary measures to align the modified-duty regulations with the principles enshrined in the Convention and the recommendations contained in the Views to ensure that assignment to modified duty was not restricted only to persons with a partial disability; and to harmonize the variety of local and regional regulations governing the assignment of public servants to modified duty in accordance with the principles enshrined in the Convention and the recommendations contained in the Views.

***T.M. v. Greece***

6. The Committee examined the communication in the case of *T.M. v. Greece* (CRPD/C/21/D/42/2017). The author of the communication was T.M., a national of Greece. On 13 May 2016, after having been diagnosed with Asperger syndrome in January 2016, the author had applied for disability certification at the Disability Certification Centre (KEPA). The author claimed that during the subsequent assessment of her disability, the KEPA first-degree Health Committee had misdiagnosed her as having a severe borderline personality disorder, without making any reference to the medical diagnosis of Asperger syndrome established in January 2016 by her doctor. She claimed to be a victim of a violation of her rights under articles 1, 3, 16, 17, 22, 25, 26 and 28 of the Convention.

7. The State party had submitted that the communication should be found inadmissible for failure to exhaust domestic remedies, as the author had failed to comply with applicable administrative procedures by not allowing the examination of her case by the KEPA second-degree Health Committee, and as she had not contested any potential negative decision before the administrative courts.

8. In its considerations, the Committee recalled its jurisprudence that, although there was no obligation to exhaust domestic remedies if they had no reasonable prospect of success, authors of communications must exercise due diligence in the pursuit of available remedies and it noted that mere doubts or assumptions about the effectiveness of domestic remedies did not absolve the authors from the obligation to exhaust them. The Committee considered that by failing to comply with the administrative procedures related to her complaint before the second-degree Health Committee and by failing to appeal any negative findings before the administrative courts, the author had failed to exhaust available domestic remedies. The Committee therefore concluded that the communication was inadmissible pursuant to article 2 (d) of the Optional Protocol.

***Kendall v. Australia***

9. The Committee examined the communication in the case of *Kendall v. Australia* (CRPD/C/21/D/15/2013). The author of the communication was Steven Kendall, a national of Australia. In 2003, the author had been affected at the Jacana acquired brain injury centre in the State of Queensland. At the time of his complaint, in 2013, he had still been living at the Jacana centre, despite having been advised by medical staff in July 2005 that his rehabilitation programme would shortly be coming to an end and that he had been assessed as ready for discharge because “no further rehabilitation outcomes” were likely to be achieved. The medical staff had determined that the author would require accommodation and disability support services to be available in the community before he could be discharged. Between July 2005 and November 2010, staff at the Jacana centre had made various referrals and applications on behalf of the author for community-based accommodation and support services, all of which had been unsuccessful. On 30 November 2010, the staff had submitted an application to Queensland Department of Communities Housing and Homelessness Services and to Queensland Disability and Community Care Services for social housing and disability support services. The staff at those services had assessed the author as being eligible for social housing and as having a “high need” for housing. His name had been placed on the housing register. However, the Department of Communities Housing and Homelessness Services had advised that social housing would not be allocated to the author unless he was first provided with disability support services. Disability and Community Care Services had assessed the author as being eligible for disability support services, but had advised that it did not have the capacity to fund such support for him. Consequently, the author’s application for social housing had remained

pending. All the claims that he had submitted to competent domestic authorities had been rejected. In his complaint to the Committee, the author had claimed that the situation amounted to a violation of his rights under articles 14, 18, 19, 22, 23, 26 and 28 of the Convention.

10. In December 2014, the State party had sent its observations on admissibility and the merits of the communication. It had submitted that the author's complaint should be held inadmissible for non-exhaustion of domestic remedies and for lack of substantiation. The State party had noted that, after having submitted his complaint to the Committee, the author had been housed in the community, once adapted social housing and funding for support services had become available. After four reminders, the author had indicated in September 2017 that he would submit new comments. On 18 December 2018, a final reminder had been sent to the author, informing him that, in the circumstances, the Committee might decide to discontinue his complaint. On 18 January 2019, the author had confirmed that he had been "released from Jacana Centre", but had not indicated when he had left the centre.

11. At its meeting on 15 March 2019, the Committee, having been informed that the author had been provided with the housing and accommodation support services referred to in his complaint, had decided to discontinue the consideration of the communication.

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