



# Convention on the Rights of Persons with Disabilities

Distr.: General  
14 October 2021

Original: English

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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-fifth session (16 August– 14 September 2021)

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

1. As at 14 September 2021, the date on which the twenty-fifth session closed, there were 184 States parties to the Convention on the Rights of Persons with Disabilities and 100 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-fifth session of the Committee

2. The twenty-fifth session opened in a public meeting with welcoming remarks by the Director, Human Rights Council and Treaty Mechanisms Division, Office of the United Nations High Commissioner for Human Rights (OHCHR). The welcoming remarks and other statements delivered during the session are available on the Committee's website. The Chair delivered an oral report on intersessional activities, which is also available on the Committee's website.

3. The Committee reviewed and adopted the provisional agenda and tentative programme of work for the twenty-fifth session.<sup>1</sup>

#### III. Membership of the Committee

4. On 18 August 2021, Committee member Soumia Amrani passed away. She had been elected to the Committee in 2020 to serve for the term 2021–2024. On 26 August 2021, Morocco was invited to appoint, within two months, another expert from among its nationals, pursuant to article 34 (9) of the Convention.

5. The list of members of the Committee as at 14 September 2021, indicating the duration of their terms of office, is available on the Committee's website.

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\* Reissued for technical reasons on 26 October 2021.

<sup>1</sup> CRPD/C/25/1.



## IV. Working methods

6. The Committee discussed various issues related to its working methods.

## V. Activities related to general comments

7. The Committee continued its work to prepare a general comment on article 27 of the Convention, on the right to work and employment. It held two closed meetings for general discussion on the subject and adopted a draft of general comment No. 8. The draft will be posted on the Committee's website for broad consultation in October 2021.

## VI. Activities related to the Optional Protocol

8. The Committee examined four communications. It found violations of the Convention in two of them: *Rékasi v. Hungary*,<sup>2</sup> regarding the author's exercise of legal capacity in financial matters; and *Z.H. v. Sweden*,<sup>3</sup> concerning the deportation of the author to Afghanistan where he would risk not having access to adequate medical treatment. The Committee decided to discontinue the consideration of the other two communications, *M.S. v. Sweden* and *A.S. v. Sweden*,<sup>4</sup> as the expulsion decisions against the authors had become statute-barred and they no longer faced a risk of being returned to Afghanistan.

9. The Views and decisions adopted by the Committee regarding the communications will be made available on the Committee's website.

## VII. Other decisions

10. The Committee adopted the present report on its twenty-fifth session.
11. The full list of the decisions adopted by the Committee is available in the annex I to the present report.

## VIII. Future sessions

12. The twenty-sixth session of the Committee is provisionally scheduled to be held in Geneva from 7 to 25 March 2022 and will be followed by the fifteenth meeting of the pre-sessional working group, from 28 March to 1 April 2022. In the context of the coronavirus disease (COVID-19) pandemic, OHCHR will continue to assess whether in-person sessions of treaty bodies may take place. In the event that an in-person session is not possible, the Chair, with the support of the Secretary, will decide on the appropriate course of action.

## IX. Accessibility of the Committee's meetings

13. The twenty-fifth session of the Committee was held virtually. Members and participants used an online platform for simultaneous interpretation in the three working languages of the Committee (English, French and Spanish). International Sign interpretation, French Sign Language interpretation and remote captioning in English and French were also available. Public meetings were webcast. Despite the online platform being more accessible to persons with disabilities than that used during the twenty-third session, particularly for persons with visual disabilities, certain members were still obliged to depend on the support of personal assistants to participate in the meetings on an equal basis with others. Only a few personal assistants of members with disabilities qualified for compensation for their work under the United Nations rules governing travel. OHCHR is making additional efforts to

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<sup>2</sup> CRPD/C/25/D/44/2017.

<sup>3</sup> CRPD/C/25/D/58/2019.

<sup>4</sup> CRPD/C/25/D/66/2019 and CRPD/C/25/D/74/2019.

provide reasonable accommodation for members who require it during future online sessions. No plain language, Easy Read or Braille versions of documents were available during the session.

## **X. Cooperation with relevant bodies**

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

14. At the opening meeting of the session, representatives of the following United Nations agencies, departments and programmes made statements: the United Nations Office for Disaster Risk Reduction, the United Nations Population Fund, the United Nations Children's Fund and the International Labour Organization. The Special Envoy of the Secretary-General on Disability and Accessibility also made a statement, in a pre-recorded video message.

15. The Chair of the Human Rights Council task force on secretariat services, accessibility for persons with disabilities and use of information technology delivered a statement, providing an update on activities undertaken to promote accessibility in meetings of the Council.

16. The Bureau of the Committee met with the Special Rapporteur on the rights of persons with disabilities to discuss topics of common interest and the status of his thematic reports. The discussion focused on a coordinated approach to future work and the content of the Special Rapporteur's next reports.

17. The Bureau also met with the OHCHR Human Rights and Disability Adviser to discuss enhanced coordination.

18. At the closing meeting of the session, the following United Nations agencies, departments and programmes made statements: United Nations Mine Action Service (pre-recorded video statement), the World Health Organization, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the International Telecommunication Union and the World Intellectual Property Organization. The film entitled "For inclusive quality police services for persons with disabilities", produced by the Special Envoy of the Secretary-General on Disability and Accessibility, was also shown.

19. Also at the closing meeting, the Director, Division of Conference Management, and the Chief, Languages Service, Division of Conference Management, United Nations Office at Geneva, addressed the Committee and presented the Disability-Inclusive Language Guidelines. The Guidelines were available in the six official languages of the United Nations.

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

20. At the opening meeting of the session, the Committee was addressed by representatives of the Confederación Mexicana de Organizaciones en Favor de la Persona con Discapacidad Intelectual, the International Disability and Development Consortium and the International Disability Alliance.

21. The independent monitoring mechanism of France under article 33 (2) of the Convention, the Defender of Rights, and the Secretary-General of the national human rights institution, the National Consultative Commission on Human Rights, participated in the Committee's public review of the initial report of France. During the private meetings on country situations, the Committee had the opportunity to gather information and interact with several organizations of persons with disabilities.

22. At the closing meeting of the session, the following organizations addressed the Committee: Deepness Dementia Radio, the International Disability Alliance, Inclusion International, Inclusion Ireland, the Fundación Saraki, Human Rights Watch, and Autistic Minority International (pre-recorded video statement). A representative of youth with disabilities also made a statement.

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

23. Owing to the COVID-19 pandemic, the Committee held two constructive dialogues online, on an exceptional, pilot basis. The Committee considered the initial reports of Djibouti and France,<sup>5</sup> and adopted concluding observations on those reports,<sup>6</sup> which are available on its website.

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<sup>5</sup> CRPD/C/DJI/1 and CRPD/C/FRA/1.

<sup>6</sup> CRPD/C/DJI/CO/1 and CRPD/C/FRA/CO/1.

## Annex I

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

1. The Committee adopted concluding observations in relation to the initial reports of Djibouti and France.<sup>1</sup>
2. The Committee considered four individual communications submitted for its consideration under the Optional Protocol to the Convention. It found violations of the Convention in two of them, and decided to discontinue the other two. A summary of the Views and decisions of the Committee can be found in annex III to the present report. The Views and decisions would be transmitted to the parties as soon as possible and would subsequently be made public.
3. The Committee considered matters related to inquiries pursuant to the Optional Protocol, and decided to register an inquiry.
4. The Committee decided to establish a working group on women and girls with disabilities, and appointed Gertrude Oforiwa Fefoame and Vivian Fernández de Torrijos as its Chair and Vice-Chair respectively.
5. The Committee adopted a draft of the general comment on the right of persons with disabilities to work and employment. The draft would be posted on the Committee's website, with a call for submissions and broad consultation with all relevant stakeholders, in October 2021.
6. The Committee adopted a draft outline of its guidelines on deinstitutionalization, which it would publish on its website in October 2021. A broad consultation with all stakeholders would be launched by mid-December 2021 and would be open until the end of January 2022. The guidelines would supplement the Committee's general comment No. 5 (2017), on living independently and being included in the community. The working group on deinstitutionalization would continue to work on the draft guidelines.
7. The Committee decided to continue its engagement with the Special Rapporteur on the rights of persons with disabilities and the Special Envoy of the Secretary-General on Disability and Accessibility, including on the subject of the incompatibility with the Convention of the draft additional protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, of the Council of Europe.
8. The Committee decided that its twenty-sixth session would be held in Geneva from 7 to 25 March 2022, subject to confirmation by the Secretary of the feasibility of an in-person session. At that session, the Committee would consider the initial reports of Jamaica, Switzerland and Venezuela (Bolivarian Republic of) and the combined second and third periodic reports of Hungary, Mexico and Tunisia. In the event that an in-person session was not possible, the Chair of the Committee, with the support of the Secretary, would decide on the appropriate course of action.
9. The Committee decided that the fifteenth session of the pre-sessional working group would be held from 28 March to 1 April 2022. The Chair of the Committee, with the support of the Secretary, would identify the lists of issues and lists of issues prior to reporting to be adopted by the pre-sessional working group at that session.
10. The Committee decided that additional resources were required in the following three priority areas, to enable it to address its increased workload:
  - (a) Dealing with the backlog of submitted reports pending review (currently 82 reports), with a third session in 2023, 2024 and 2025;

<sup>1</sup> CRPD/C/DJI/CO/1 and CRPD/C/FRA/CO/1.

(b) Producing documents, including those relating to individual communications, in plain language and Easy Read;

(c) Holding sessions of the Committee away from Geneva.

11. Pursuant to rule 22 of the Committee's rules of procedure,<sup>2</sup> as the above-mentioned decision had financial implications, the Committee decided to request the Secretary-General to prepare programme budget implications for the following, all beginning in 2023:

(a) Holding a third session each year for three years, each consisting of three weeks of plenary meetings with International Sign interpretation, other sign language interpretation, remote captioning and documents in plain language, Easy Read and Braille, to enable the Committee to review at least 10 additional States parties at each additional session;

(b) Producing other documents, including those relating to individual communications, in plain language and Easy Read;

(c) Holding one session each year away from Geneva, in one of the regional commissions of the United Nations, ensuring geographical rotation of the venue.

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

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<sup>2</sup> CRPD/C/1/Rev.1.

## Annex II

### States parties whose initial reports are more than five years overdue

<i>Party</i>	<i>Due date</i>
Guinea	8 March 2010
San Marino	22 March 2010
Lesotho	2 January 2011
Yemen	26 April 2011
Syrian Arab Republic	10 August 2011
United Republic of Tanzania	10 December 2011
Malaysia	19 August 2012
Saint Vincent and the Grenadines	29 November 2012
Romania	3 March 2013
Belize	2 July 2013
Cabo Verde	10 November 2013
Nauru	27 July 2014
Eswatini	24 October 2014
Dominica	1 November 2014
Cambodia	20 January 2015
Barbados	27 March 2015
Papua New Guinea	26 October 2015

## Annex III

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

#### *Rékasi v. Hungary*

1. The Committee examined the communication in the case of *Rékasi v. Hungary*.<sup>1</sup> The author of the communication was Magdolna Rékasi, a national of Hungary. She claimed to be a victim of a violation by the State party of her rights under articles 3 and 12 (3), (4) and (5) of the Convention, as her will and preferences had not been taken into consideration in relation to her financial matters while she was under guardianship.

2. On 29 January 2009, the author was placed under guardianship by the Municipal Court of Jászberény, after having been diagnosed with schizophrenia. Until 2016, she had not had the legal capacity to exercise her rights over her financial assets as the guardianship had fully limited her legal capacity in relation to financial matters. As a result of a review process, the author had regained her legal capacity in relation to her financial matters. On 20 June 2016, the guardian had handed over the final account of the management of the author's finances. The account showed that, on 22 March 2012, the guardian had entered into a contract for life insurance on behalf of the author. The guardianship authority of the city of Újszász had approved the payment of the insurance fee. The author had not been informed about the insurance contract, and she had not had the opportunity to express her opinion or personal preference about it as the guardian had never sought her opinion. She had never received a copy of the contract nor a copy of the petition submitted by the guardian or a copy of the approval of the guardianship authority. The insurance fee had amounted to approximately \$1,500. The only goal of the insurance was to cover the cost and expenses of the author's funeral in the event of her death.

3. In its Views, the Committee noted that the author was only 42 years old at the time of the conclusion of the contract, in a good state of health, and with no immediate risk of death at that moment. The Committee also noted the author's statement that the conclusion of the insurance contract, the sole goal of which was to provide coverage for her burial, was, in her opinion, an irresponsible financial decision that was contrary to her interests. It observed that, while the author was entitled to repurchase the insurance under the contract, she could not recover the full amount, which represented a significant loss for the author, who only received a monthly pension of \$203. In that regard, it observed that the State party had not explained the urgency or the need to conclude the life insurance contract on behalf of the author, considering all the circumstances.

4. The Committee recalled that, under article 12 of the Convention, States parties were obliged to recognize that persons with disabilities enjoyed legal capacity on an equal basis with others in all aspects of life. The Committee also recalled that States parties are obliged to provide support in the exercise of the legal capacity of persons with disabilities. The Committee further recalled that in accordance with paragraph 21 of its general comment No. 1 (2014), where, after significant efforts had been made, it was not practicable to determine the will and preferences of an individual, the "best interpretation of will and preferences" must replace the "best interests" determinations.

5. The Committee found that the decision of the guardianship authority to authorize the author's guardian to conclude a life insurance contract on behalf of the author, without having made significant efforts to determine her will or preferences, or the "best interpretation" of her will and preferences, had amounted to a violation of her rights under article 12 (3), (4) and (5) of the Convention.

<sup>1</sup> CRPD/C/25/D/44/2017.



*Z.H. v. Sweden*

6. The Committee examined the communication in the case of *Z.H. v. Sweden*.<sup>2</sup> The author of the communication was Z.H., a national of Afghanistan. His application for asylum had been rejected by the State party. He claimed that his deportation to Afghanistan would constitute a violation of his rights by the State party under articles 10 and 15 of the Convention. He also claimed that he had had no access to justice and had not been treated with equal recognition before the law by the domestic authorities in the course of his asylum procedure, contrary to articles 12 and 13 of the Convention.

7. In his complaint, the author claimed that he had been diagnosed with post-traumatic stress disorder with psychotic features. According to medical reports, he suffered from anxiety, tension, restlessness, sleep disturbances, delusions, hallucinations and suicidal thoughts. His condition had been assessed to be life-threatening because of the risk of suicide. The Swedish Migration Agency considered that the circumstances in the author's case had been exceptionally distressing and acknowledged that there had been shortcomings in the care available to patients with mental health problems in the Afghan health system. Relying on the available country information, the Migration Agency had nonetheless concluded that some sort of psychiatric treatment, and the medications prescribed for the author in Sweden, would be available in Kabul and therefore that he would run no risk of death or other forms of ill-treatment if returned to Afghanistan.

8. Subsequently, the author had claimed that there had been impediments to the enforcement of his deportation order. He had submitted new medical reports as evidence to substantiate that he suffered not only from post-traumatic stress disorder but also from paranoid schizophrenia. The Migration Agency had found, however, that the medical certificates that he had submitted, including regarding the author's diagnosis with paranoid schizophrenia, did not constitute new circumstances that would warrant a fresh examination of the case, owing to the fact that his symptoms had already been brought before the authorities in the context of his post-traumatic stress disorder diagnosis and had constituted part of the asylum authorities' consideration.

9. In its Views, the Committee declared the communication admissible, insofar as it concerned the author's claims under articles 10 and 15 of the Convention. It recalled that article 10 of the Convention stipulated that States parties reaffirmed that every human being had the inherent right to life and that they must take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others. The Committee also recalled that, under article 15 of the Convention, States parties had the obligation to take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment. In addition, the Committee recalled its recent decision in *N.L. v. Sweden*,<sup>3</sup> in which it had found a violation of article 15 of the Convention on account of the State party's failure to assess whether the author would be able to access medical care in Iraq corresponding to her diagnosis. The Committee noted that in that decision, reference had been made to the relevant jurisprudence of the Human Rights Committee, the Committee against Torture and the European Court of Human Rights, and that the general principles established in those decisions had been reiterated in *N.L. v. Sweden* and remained relevant in the assessment of the case under consideration.

10. In the author's case, the Committee had to determine whether there were substantial grounds for believing that the author would face a real risk of irreparable harm as contemplated in articles 10 and 15 of the Convention if he were to be removed to Afghanistan, such as being exposed to a serious, rapid and irreversible decline in his health resulting in intense suffering or to a significant reduction in life expectancy. The Committee noted that it was undisputed between the parties that the author had been diagnosed with post-traumatic stress disorder and that he was being treated for that condition, which had been assessed to be life-threatening due to the risk of suicide. The Committee was mindful of the author's arguments that a new assessment would have been required by the domestic authorities in

<sup>2</sup> CRPD/C/25/D/58/2019.

<sup>3</sup> CRPD/C/23/D/60/2019.

the light of his diagnosis with paranoid schizophrenia. In view of the fact that there had been an assessment by the asylum authorities of the risks of harm associated with the author's mental health condition, the Committee could not conclude that the refusal of the State party's authorities to conduct a separate risk analysis in a new set of proceedings, based on the author's new diagnosis, had rendered the rejection of the author's asylum application arbitrary or amounted to a manifest error or denial of justice. In the Committee's opinion, the author had discharged the burden of proof upon him, by having adduced evidence capable of demonstrating that there were substantial grounds for believing that he would be exposed to a real risk of ill-treatment if removed. However, the domestic authorities had failed to dispel any doubts about the risks that he would face upon his return to Afghanistan. In that respect, the Committee noted that the domestic authorities had assessed the author's ill health and suicidal ideation to be primarily linked to his disappointment at his asylum process, which seemed to have unreasonably weakened the author's claims associated with his diagnosis. The Committee observed that the migration authorities had held that the medical care necessary to prevent the author from suffering a violation of his rights under article 15 of the Convention would be available to him upon return to Afghanistan. The basis for that assessment had been reports on the general situation of access to health care in Afghanistan, which, however, revealed the limited availability of psychiatric care and access to medication. The Committee noted that the domestic authorities had, to a large extent, acknowledged those deficiencies. Under those circumstances, the State party's authorities had been under an obligation to consider the extent to which the author would actually have access to the required care in Afghanistan and, if serious doubts persisted, to obtain individual and sufficient assurances from that State. The Committee considered that the State party's assertions could not suffice in that regard.

11. In such circumstances, the Committee considered that there remained serious doubts as to whether the author would indeed have access to adequate medical treatment to prevent a violation of his rights under article 15 of the Convention in Afghanistan. It was therefore unable to conclude that the domestic authorities' assessment had not been arbitrary regarding the existence of a real risk of irreparable harm for the author in his country of origin. In the light of those findings, the Committee considered it unnecessary to separately consider the author's claims under article 10 of the Convention.

#### ***M.S. v. Sweden***

12. The Committee decided to discontinue the consideration of the communication in the case of *M.S. v. Sweden*.<sup>4</sup> The State party's decision to deport the author to Afghanistan had become statute-barred on 16 May 2021 and the author therefore no longer faced a risk of being returned to Afghanistan. The State party had requested that the Committee discontinue its consideration of the communication, and the author accepted that request.

#### ***A.S. v. Sweden***

13. The Committee decided to discontinue the consideration of the communication in the case of *A.S. v. Sweden*.<sup>5</sup> The State party's decision to deport the author to Afghanistan had become statute-barred on 19 May 2021 and the author therefore no longer faced a risk of being returned to Afghanistan. The State party had requested that the Committee discontinue its consideration of the communication, and the author accepted that request.

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<sup>4</sup> CRPD/C/25/D/66/2019.

<sup>5</sup> CRPD/C/25/D/74/2019.