



## 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 233<sup>rd</sup> and 234<sup>th</sup> meetings, held on 29 and 30 March 2016 respectively, and adopted the following concluding observations at its 251<sup>st</sup> meeting, held on 11 April 2016.
2. The Committee welcomes the initial report of Portugal and thanks the State party for its written replies (CRPD/C/PRT/Q/1/Add.1) to the list of issues prepared by the Committee (CRPD/C/PRT/Q/1) and its replies to the questions formulated during the dialogue.
3. The Committee commends the State party on its delegation, which was composed of a large number of representatives and was led by the Secretary of State for the Inclusion of Persons with Disabilities, a woman with disabilities.
4. The Committee appreciates the cordial and fruitful dialogue held between the delegation and the members of the Committee.

### II. Positive aspects

5. The Committee commends the State party on progress achieved in certain areas related to the rights of persons with disabilities, and in particular the ongoing review of its legislation with a view to ensuring its conformity with the provisions of the Convention.
6. The Committee is pleased to note the efforts made by the State party to give effect to the Convention through the adoption of laws, plans and programmes, among which are noteworthy. :

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\*\* The present document is being issued without formal editing.

(a) The National Mental Health Plan 2007-2016, which aims to extend the National Network for Integrated Continuous Care;

(b) Law 21/2008, dated 12th May, thanks to which 98% of students with disabilities in the State party attended mainstream schools in 2015;

(c) The implementation of the IV National Action Plan against Domestic Violence 2011-2013, and the following programmes of the Portuguese Security Forces to protect persons with disabilities from violence: “IAVE Project” and “Programme to Support Disabled People” of the National Republican Guard (GNR); “Significativo Azul”, “Espaço Júlia” and “Programa Contigo” of the Public Security Police (PSP) and “SEF in motion” of the Immigrants and Borders Service;

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

(e) The establishment by the National Institute for Rehabilitation of a hotline to provide adapted support to persons with disabilities, their families, and organisations and services engaged in the field, regarding their rights, duties and allowances, and refer them to existing resources.

### III. Areas of concern

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

7. The Committee is concerned by the use of medical assessment of disability and that there are no legally-binding criteria for the eligibility of persons with disabilities in relation to access to various social protection programmes, and instead the National Table of Incapacities caused by Work Accidents and Occupational Diseases is used by analogy.
8. **The Committee recommends that the State party review the assessment criteria to determine the degree of disability of the individual to bring them into line with the Convention, and adopts suitable regulations in its legislation and policies. The Committee also recommends that the State party ensures that all persons with disabilities are able to secure their disability certificate, and that access to social protection programmes and aid is available to all persons with disabilities.**
9. The Committee notes that the State party has still not carried out a comprehensive cross-cutting review of its legislation in order to harmonise it with the Convention, and that laws, regulations, customs and practises which discriminate against persons with disabilities continue to exist.
10. **The Committee recommends that the State party perform a comprehensive cross-cutting review of its legislation and policies, in order to harmonise it with article 1 of the Convention to ensure protection against all kinds of discrimination on grounds of disability and that State Party involve in this**

**process organizations which represent persons with disabilities and human rights independent institutions .**

11. The Committee notes that the State party is working on a new disability strategy which will remain in place until 2020. Nevertheless, it is concerned by the failure to implement the I National Strategy on Disability 2011-2013, which was not assigned adequate budget resources for implementation and did not include the participation of organisations of persons with disabilities in its design, monitoring or assessment.
- 12. The Committee recommends that the State party adopt a new strategy on the implementation of the Convention, with the involvement of organisations of persons with disabilities in the design, monitoring and assessment stages, a budget allocation, timeframes for implementation and a dedicated monitoring mechanism. The Committee also recommends that the European Union Structural Funds allocated to the State party until 2020 be used to develop policies which 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 State party's legislation does not include an obligation to provide reasonable accommodations to persons with disabilities in the exercise of all their rights.
- 14. The Committee recommends that the State party explicitly sets out in its legislation the obligation to provide reasonable accommodations to persons with disabilities in all areas covered by the Convention.**
15. The Committee is concerned about the lack of efficiency of legal remedies provided to persons with disabilities in the framework of responsibilities granted to the National Institute for Rehabilitation to assess non-compliance with disability policies, since claims and complaints lodged by persons with disabilities often remain unresolved and/or without sanction.
- 16. The Committee recommends that the State party review its legislation and policies in order to provide efficient legal remedies to persons with disabilities in cases of discrimination.**

### **Women with disabilities (art. 6)**

17. The Committee is concerned about the lack of actions by the State party focusing specifically on preventing and combating the multiple and intersectional discrimination faced by women and girls with disabilities, as well as about the lack of information in this respect. It is also concerned that women with disabilities are not consulted when designing programmes and measures related 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 gender equality policies, programmes and strategies, and the gender perspective in its disability strategies, employing a twin-track approach which also includes levelling and affirmative action measures to eliminate multiple and intersectional discrimination from all areas of life, both in urban and in rural areas. Likewise, the Committee recommends that the State party ensure that women with disabilities are consulted, through their representative organisations, on the design of programmes and measures related to all issues affecting them directly.**

#### **Children with disabilities (art. 7)**

19. The Committee notes with concern the negative impact of austerity measures taken by the State party on the range of support services for families who have children with disabilities, and on support measures to ensure a quality inclusive education for children with disabilities. It also notes that the State party's disability strategies and strategies for children do not take into account the requirements of children with disabilities.

**20. The Committee recommends that the State party adopt necessary measures, including the use of European Structural and Investment Funds and other pertinent funds, in order to minimise the impact of austerity measures on children with disabilities, enhancing support for families and ensuring the measures necessary for children with disabilities to receive a quality inclusive education. It also recommends that the State party ensure consultations with children with disabilities and with the organisations representing them on all issues affecting them, and that they are given disability- and age-appropriate support.**

#### **Accessibility (art. 9)**

21. The Committee notes that the Accessibility Act has been under review since 2012, the second phase of the National Plan for the Promotion of Accessibility for the period 2011-2015 has yet to be started, and that recent legislation concerning urban regeneration provides for exemption from accessibility requirements. It also notes that legislation fails to distinguish between the licensing body and the monitoring body, and that sanctions for non-compliance with accessibility regulations are rare.

22. The Committee recommends that the State party pay attention to the links between article 9 of the Convention and Sustainable Development Goal (SDG) 11, targets 11.2 and 11.7 to provide access to safe, affordable, accessible and sustainable transport systems for all, notably by expanding public transport, paying special attention to the needs of vulnerable people, women, children, persons with disabilities and the elderly; and provide universal access to green and public spaces that are safe, inclusive and accessible, particularly for women and children, the elderly and persons with disabilities.

- 23. The Committee recommends that the State party take effective measures, in close consultation with representative organisations of persons with disabilities, in order to adopt swiftly an amended accessibility act which is in compliance with the Convention, as set forth in the Committee's General Comment No 2 (2014) on accessibility, including effective and accessible complaints and implementation mechanisms.**

#### **Situations of risk and humanitarian emergencies (art. 11)**

24. The Committee is concerned that the policies of civil protection and humanitarian assistance in the State party do not take sufficiently into consideration the needs of persons with disabilities in these areas.
- 25. The Committee recommends that all elements of the State party's disaster-reduction policies and programmes to be inclusive and accessible for all persons with disabilities.**
26. The Committee notes that certain disability-related aspects are considered in the State party's policies and programmes regarding migration, refugees and asylum. However, it is deeply concerned that migrants, refugees and asylum seekers with disabilities often find themselves in situations of destitution or extreme poverty.
- 27. The Committee recommends that the State party redouble its efforts in its policies and programmes regarding migration, refugees and asylum in order to support migrants, refugees and asylum seekers with disabilities in situations of destitution or extreme poverty.**

#### **Equal recognition before the law (art. 12)**

28. The Committee is deeply concerned that in the State party there is a large number of persons with disabilities subjected to total or partial guardianship and, as such, deprived of certain rights, for instance the rights to vote, to marry, to found a family, and to manage assets and properties. It is also concerned that the current review of the Civil Code continues to include restrictions in legal capacity.
- 29. The Committee recommends that the State party adopt appropriate measures to ensure that all persons with disabilities who have been deprived of their legal capacity may exercise all the rights set out in the Convention, including the right to vote, to marry, to found a family or to manage assets and property, as stated in its General Comment No 1 (2014) on equal recognition before the law. The Committee also recommends that the State party repeal the existing total and partial guardianship systems, which remove or limit the legal capacity of the individual, and develop supported decision-making systems which enable and promote the effective exercise 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 accommodations made for them in the State party.
- 31. The Committee recommends that the State party adopt all necessary measures to combat the discrimination that persons with disabilities face in accessing justice, making sure that full procedural accommodations are made and funds are allocated to train legal system personnel on the Convention.**

#### **Liberty and security of person (art. 14)**

32. The Committee is concerned that the State party's Criminal Procedure Code declares persons with psychosocial disabilities to be criminally irresponsible, and that their legal safeguards are not respected in criminal proceedings. Likewise, it is concerned about the internment of persons with disabilities based on the concept of dangerousness, as well as deprivation of liberty on the basis of disability under the Mental Health Law (Law 36/1998 and Law 101/1999).
- 33. The Committee requests that the State party, in accordance with the Convention and the Committee guidelines on article 14 (2015),:**
- (a) Review its criminal law in order to ensure all persons with disabilities enjoy equal due process guarantees, including the presumption of innocence and the right to a fair trial, on equal basis with others, by providing procedural and reasonable accommodations and access to information and communication at the request of legal and/or administrative proceedings concerning deprivation of liberty; and,**
- (b) Remove from its criminal law the dangerousness criterion and the preventive and security measures linked with that, in cases where a person with psychosocial disability is accused of a criminal offence, eliminate the possibility of deprivation of liberty under this criterion, and repeal provisions of the Mental Health Law which permit deprivation of liberty on the basis of disability .**

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

34. The Committee notes with concern that despite State party legislation and the measures taken to protect persons with disabilities, and especially women and children, from exploitation, violence and abuse, these have not been sufficient.
- 35. The Committee recommends that the State party, in consultation with organisations of persons with disabilities, explicitly include the disability perspective in its legislation, strategies and programmes to prevent exploitation, violence and abuse, including the Law on domestic violence (Law 112/2009), and step up intensifying measures to protect persons with disabilities, and especially women and children, including the continuation**

**of police training , prosecutors and judges in the implementation of a due diligence framework.**

**Protecting the integrity of the person (art. 17)**

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

**37. The Committee recommends that the State party adopt all possible measures to ensure respect for the right to provide free, informed and prior consent to medical treatment and to provide support mechanisms for decision making in the State party.**

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

38. The Committee is concerned about the lack of a national policy for independent living in the State party, the lack of regulations governing personal assistance, and the fact that the amount currently paid for ‘Third person assistance allowance’ is very low, resulting in some persons in the State party being forced to live in institutions for persons with disabilities or in homes for older people, in which the State Party invest more than in support for living independently. It is also concerned that the National Mental Health Plan 2007-2016, which aims to extend the National Network for Integrated Continuous Care, has yet to put in place community-based services.

**39. The Committee recommends that the State party, in close consultation with representative organisations of persons with disabilities, adopt a national strategy for independent living, including increased investment in living independently in the community rather than in institutions, regulate in the field of personal assistance, and offer wider access to sign language interpreters and deafblind sign language interpretation in its public services. Furthermore, the Committee urges the State party to establish community-based support services for persons with intellectual and psychosocial disabilities.**

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

40. The Committee is concerned about the lack of access to information and Communication for persons with disabilities in the State party due to the lack of accessible formats and appropriate technologies for different types of disabilities, such as sign language, including tactile-sign language and braille, augmentative and alternative communication modes, and other accessible means, modes and formats of communication chosen by persons with disabilities, including easy- read formats.

**41. The Committee recommends that the State party adopt the necessary measures to ensure enforcement of its legislation regarding access to information and communication in order to facilitate access by persons**

with all types of disability to accessible formats and appropriate technologies for all kinds of disability, such as sign language and interpreters of tactile-sign system, braille, augmentative and alternative communication modes, and other accessible means, modes and formats of communication chosen by persons with disabilities, including easy-read formats. Furthermore, it recommends that the State party promotes the official recognition of Portuguese sign language and the braille system.

#### **Respect for home and the family (art. 23)**

42. The Committee notes that the Civil Code in the State party restricts the right of certain persons with disabilities to marry, to hold custody of their sons and daughters, and to adopt. It also noted that austerity measures have resulted in cutbacks, *among other things*, in social services and financial support for families, with particularly negative consequences for women “carers” of persons with disabilities.

**43. The Committee recommends that the State party review and harmonise its Civil Code to safeguard the rights of all persons with disabilities to marry, to hold custody of their sons and daughters, and to adopt. It further recommends that States Party adopts appropriate steps to ensure that its financial and social austerity policies and measures promote financial support for families with a member with disabilities, providing particular protection and support to women personal assistants of persons with disabilities.**

#### **Education (art. 24)**

44. The Committee notes that although the vast majority of students with disabilities in the State party attend mainstream schools, there is a lack of support, and that due to the austerity measures, there have been cuts in human and material resources that compromise the right and opportunity for an inclusive and quality education. The Committee also notes that the State party has established ‘schools of reference’ for deaf, deafblind, blind and partially sighted students and for students with autism, which constitutes a form of segregation and discrimination.

**45. The Committee recommends that the State party, in close consultation with representative organisations of persons with disabilities, revise its legislation in the field of education to bring it into line with the Convention, and take steps to increase human and material resources and to facilitate access and enjoyment of a quality inclusive education for all pupils with disabilities, providing state schools with adequate resources to ensure the inclusion of all students with disabilities in mainstream classrooms. The Committee also recommends that the State party pay attention to the links between article 24 of the Convention and SDG 4, targets 4.5 and 4(a) to ensure equal access to all levels of education and vocational training; as well as build and upgrade education facilities that are disability-sensitive and safe.**

46. The Committee is concerned that, despite there being a special quota for students with disabilities to enter public universities, the State party has not adopted regulations governing the support universities are obliged to provide to said students. In addition, it is concerned that access to certain university



degrees and professional qualifications is restricted for students with specific disabilities.

**47. The Committee recommends that the State party regulates the legislation of general access for students with disabilities to further education and vocational training, under the same conditions as other students and ensuring the provision of the reasonable accommodations and necessary support services.**

#### **Health (art. 25)**

48. The Committee notes that the State party has paid scant attention to the rights of persons with disabilities in legislation and policies adopted in the State party in the fields of healthcare, sexual and reproductive health, HIV/AIDS, and sexually transmitted infections, which are not always accessible, and especially in the case of obstetrics and gynaecology services. The Committee is further concerned that primary prevention of disability is regarded as a measure of implementation of the Convention.

**49. The Committee recommends that the State party take all necessary measures in order that persons with disabilities may access healthcare without restriction, including sexual and reproductive health, by explicitly prohibiting discrimination on the grounds of disability in legislation and ensuring universal access to its programmes and services, both in urban and rural areas, while providing appropriate training to healthcare staff. It is also recommended that primary prevention of disability is excluded from programs.**

#### **Work and employment (art. 27)**

50. The Committee is concerned by discrimination against and inequalities in employment and working conditions for persons with disabilities, and in particular women, and by the fact that the State party's Labour Code does not oblige employers to provide reasonable accommodation. It is also concerned about the working conditions faced by persons with disabilities in occupational activity centres, including the average salary, and by the fact that these segregated environments are the most common situation for persons with intellectual disabilities and autism when exercising the right to work and employment.

**51. The Committee recommends that the State party, in close consultation with organisations which represent persons with disabilities, review its labour legislation, both in the public and in the private sectors, to bring it into line with the Convention, and take measures to enforce the rules and sanctions stipulated in its legislation in the event of non-compliance. The Committee also recommends that the State party eliminate segregated working environments, including a review of legislation governing occupational activity centres from a human rights approach to comply with the Convention, and step up its efforts to promote access for persons with intellectual disability and autism to the**

open labour market. Furthermore, it recommends that the State party promote corporate social responsibility with regard to the employment of persons with disabilities. The Committee recommends that the State party pay attention to the links between article 27 of the Convention and SDG 8, target 8.5 to ensure achievement of full and productive employment and decent work for all including persons with disabilities and equal pay for work of equal value.

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

52. The Committee notes the efforts made by the State party to alleviate the impact of austerity measures on persons with disabilities. Nevertheless, the Committee 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 into situations of destitution or extreme poverty as they do not have family networks to provide support or company.

53. The Committee recommends that the State party, in partnership with representative organisations of persons with disabilities, undertakes the following steps:

- a) Urgently review its austerity measures in order to avoid further negative and regressive consequences for the standard of living and social protection of persons with disabilities through the adoption of measures which facilitate their effective inclusion in the community ;
- b) Offer support services for independent living and shelter homes which respect the rights of persons with disabilities, their will and preferences, and by putting in place financial allowances enabling persons with disabilities who are unemployed and lack family support to enjoy an adequate standard of living;
- c) Strengthen its efforts to enhance the right to an adequate standard of living and to social protection for persons with disabilities who find themselves in situations of destitution and extreme poverty, according to the human rights approach of the present Convention, allocating sufficient funding for these purposes;
- d) Pay attention to the links between article 28 of the Convention and SDG 10, target 10.2 to empower and promote economic inclusion of all, irrespective of disability status.

#### **Participation in political and public life (art. 29)**

54. The Committee is extremely concerned that in the State party there are persons with disabilities, and especially those who have been deprived of their legal capacity or who live in psychiatric institutions, who are deprived of exercising their right to vote or are prevented from exercising this right in elections, and that electoral processes, including political campaigns, are not accessible. It is also concerned about the existence of internal regulations that may require a person with disabilities to present a medical document proving his/her capacity to vote, if the person in charge of the polling station believes that he/she demonstrates “notorious mental incapacity”.

**55. The Committee recommends that the State party, in partnership with organisations of persons with disabilities, take necessary measures so that persons with all types of disabilities, including those who are subjected to guardianship or confined to psychiatric institutions, may exercise their right to vote and to stand as candidates under the same conditions as others, *among other things*, by providing accessible facilities and means of communication .**

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

56. The Committee is concerned that the State party has yet to ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, which provides access to printed works for persons who are blind or partially sighted or experience other difficulties to access such publications.

**57. The Committee encourages the State party to take all appropriate measures to ratify the World Intellectual Property Organization Marrakesh Treaty as soon as possible.**

#### **C. Specific obligations (arts. 31 a 33)**

##### **Statistics and data collection (art. 31)**

58. The Committee is concerned about the lack of standard and comparable statistics regarding persons with disabilities in the State party, as well as the lack of human rights indicators in available data.

**59. The Committee recommends that the State party, in partnership with persons with disabilities and their representative organisations, establish a system of human rights-based indicators and a comparable and comprehensive system to collect data disaggregated by sex, age, rural/urban residency and type of disability. The Committee also recommends that the State party pay attention to the links between article 31 of the Convention and SDG 17, target 17.18 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)**

60. The Committee notes the inclusion of disability in the Portuguese Strategic Vision for Cooperation 2014-2020, which sets out State party cooperation with 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 implementation and national monitoring in the 2030 Agenda for Sustainable Development Goals, and the lack of a systematic and

institutionalised approach to incorporate the principles and values of the Convention into all its international cooperation policies and programmes.

**61. The Committee recommends that the State party, in partnership with organisations of persons with disabilities, adopt a development policy in line with the Convention which includes its principles and values in all international cooperation policies and programmes, and mainstream the rights of persons with disabilities in implementing and national monitoring in the 2030 Agenda for Sustainable Development Goals, in close cooperation and with the participation of organizations of persons with disabilities.**

#### **National implementation and monitoring (art. 33)**

62. The Committee notes that the State party recently established the independent monitoring mechanism to promote, protect and monitor implementation of the Convention; however, it is concerned that the mechanism does not fully comply with the Paris Principles, and by the lack of funding allocated to it.

**63. The Committee recommends that the State party adopts measures to ensure that the independent monitoring mechanism is in full compliance with the Paris Principles, in that no government representative should form part of it, ensure it has an adequate budget allocation to perform its duties, and that it work in close consultation with organizations of persons with disabilities.**

#### **Cooperation and technical assistance**

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

#### **Follow-up to concluding observations and dissemination**

65. The Committee requests the State party to provide, within 12 months and in accordance with article 35 (2) of the Convention, written information on the measures taken to implement the Committee's recommendations as set out in paragraphs 12 and 63 above regarding the new national disability strategy and the independent monitoring mechanism for the Convention, respectively.

66. The Committee requests the State party to implement the recommendations of the Committee as contained in the present concluding observations. It recommends that the State party transmit the concluding observations for consideration and action to members of the Government and Parliament, officials in relevant ministries, members of the judiciary and members of relevant professional groups, such as education, medical and legal professionals, as well as to local authorities, the private sector and the media, using accessible social communication strategies

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

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

**Next report**

69. The Committee requests the State party to submit its combined second third and fourth periodic reports no later than 23 November 2023. The Committee also offers the State party the opportunity to submit its combined reports under the simplified reporting procedure, whereby the Committee prepares a list of issues at least one year before the due date of the combined reports. The State party's reply to this list of issues will constitute the State party's report.

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