
COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

Political changes in Tunisia an opportunity for disability rights, says Committee



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The Committee on the Rights of Persons with Disabilities (the Committee) met for its 5th session from 11 to 15 April, a meeting that marked a number of firsts. It was the first time the enlarged Committee, which has grown from 12 to 18 members, came together and engaged in dialogue with a State party – Tunisia – and adopted a set of Concluding Observations. The dialogue also took place during a period of significant political change for Tunisia, which the Committee in its Concluding Observations presented as a unique opportunity for persons with disability to have their rights further recognised and to contribute to the development of the country. Significant themes of the session included: definitions and terminology on persons with disabilities, legal capacity, and a focus on civil and political rights.

ENLARGED COMMITTEE, NEW BUREAU

At the opening of the session, the eight newly elected members, Ms Theresia Degener (Germany), Mr Carlos Rios Espinosa (Mexico), Mr Gabor Gombos (Hungary), Mr Hyung Shik Kim (Republic of Korea), Mr Stig Langvad (Denmark), Ms Silvia Judith Quan Chang (Guatemala), Ms Fatiha Hadj Salah (Algeria), and Mr Damjan Tatic (Serbia), who took up their functions in January 2011, were officially inaugurated as Committee members.

A new bureau was elected as follows: Mr Ronald McCallum (Australia), re-elected as Chair; Ms Maria Soledad Cisternas Reyes (Chile), Ms Jia Yang (China) and Ms Edah Maina (Kenya) as Vice Chairs; and Ms Theresia Degener (Germany) as Rapporteur. During the election process, Committee members agreed the bureau should have a balanced geographical representation, which was effectively achieved.

FIRST-EVER DIALOGUE WITH A STATE PARTY

The delegation of Tunisia, including representatives of the principal ministries and headed by the Minister of Social Affairs, presented its introductory statement to the Committee in just over 20 minutes. Committee member, Ms Al Suwaidi (Qatar), the country rapporteur, opened questions following the State's address with a review of the principal issues of concern, which were subsequently deepened in the dialogue.

The questions posed by the Committee touched upon almost every provision of the *Convention on the Rights of Persons with Disabilities* (the Convention). Those that stood out as not addressed were Articles 20 (personal mobility), 26 (habilitation and rehabilitation), 28 (adequate standard of living and social protection), and 30 (participation in cultural life, recreation, leisure and sport).

Committee members were vocal in their questions relating to the low reported number of persons with disabilities in Tunisia, particularly women with disabilities. They linked this to the restrictive definition of 'persons with disabilities' currently employed in domestic legislation. The Government of Tunisia said its definition had departed from the 'medical model' and is currently in line with the World Health Organization (WHO) classification of persons with disabilities. In response, Mr Gábor Gombos indicated that the Convention goes beyond the WHO approach, with Mr Langvad expressing concern that the restrictive definition of persons with disabilities in Tunisian law could limit the application of the Convention to a subset of the rights holders for which it was intended.

In response to questions regarding the use of degrading terminology to refer to persons with disabilities in the Tunisian report and in legislation,¹ the State delegation responded that such terms are used internationally, for example in French legislation. It argued that as long as this continues to be the case, Tunisian legislation would not be amended in this respect. In a strong counter response, Ms Jia Yang clarified that the Tunisian Government has an opportunity to take the lead in the evolution of terminology with respect to persons with disabilities, and the Convention provides standardised language that reflects the recognition of the rights of persons with disabilities.

Another point of contention between the Committee and the delegation was with respect to Article 12 on the legal capacity of persons with disabilities. Several Committee members (Mr Gombos, Ms Maina, Ms Maria Soledad Cisternas Reyes, Ms Ana Palaez Narvaez, and Mr Rios Espinosa) questioned the compatibility of the Tunisian system of guardianship with Article 12 of the Convention. This system restricts individuals with 'mental incapacity' in the exercise of certain rights, while Article 12 states that all persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Mr Kim highlighted that the Convention does not permit distinctions between different types of disabilities,² and that the right to legal capacity applies to everyone equally. The State delegation conceded that it was perhaps not fully aware of the latest developments on the exercise of legal capacity and expressed its willingness to discuss and exchange information on the subject. However, Committee members did not have a chance to elaborate and provide guidance to the State on the precise scope and meaning of Article 12. This is regrettable as Article 12, often referred to as 'the heart of the Convention', impacts upon all of the rights, but is also of the provisions of the Convention most commonly misunderstood.

CIVIL SOCIETY PARTICIPATION

Given the repressive nature of the former Tunisian Government and the political changes that occurred in January 2011, Tunisian organisations of persons with disabilities (DPOs) were not in a position to make submissions to the Committee at any stage of the review process. To fill this gap, the International Disability Alliance (IDA) conducted a mission in Tunisia at the end of March to meet with national and local DPOs, in an effort to collect information on the situation of persons with disabilities on the ground and to formulate recommendations to the Committee. IDA made a written submission and was granted a 15-minute private meeting with the Committee members in the lead up to the dialogue with Tunisia. The Committee did not receive any other written submissions from NGOs.

Depending on the State examined, and the capacities of national and local DPOs, the ideal way of engaging with the Committee may vary. Future practice will shed more light on this, and may provide additional guidance on how best to engage.

CONCLUDING OBSERVATIONS

The Concluding Observations on Tunisia adopted by the Committee were made public on 29 April 2011.³ One positive point emphasised in the Concluding Observations is the unique opportunity for persons with disabilities to participate in the building of a new country, and to contribute both as members of the Constitutional Council, the body designated to draft the new Constitution, and through being actively involved in consultations by the Council.⁴

In general, the Concluding Observations focus more on civil and political rights than economic, social and cultural rights. They do not, for example, include any mention of social protection nor support to families of children with disabilities. This is despite IDA having made recommendations to the Committee on Articles 19 (living in the community), 20 (personal mobility), 25 (right to health), 26 (habilitation and rehabilitation), 28 (adequate standard of living and social protection), and 30 (participation in cultural life, recreation, leisure and sport). The absence of representatives of Tunisian DPOs deprived the Committee of the opportunity to hear more concrete examples of how the economic, social and cultural rights of persons with disabilities are being infringed.

DYNAMIC INTERPRETATION OF THE CONVENTION

In its Concluding Observations on Tunisia, the Committee also raised a number of important elements, which may put to rest divergent interpretations of the Convention. In particular, as the Convention presents the latest standards on the rights of persons with disabilities, some existing texts, including some general comments of other treaty bodies, are now in contradiction to the Convention. This emerging 'jurisprudence' of the Committee is therefore particularly important, as those new concepts will no doubt be built upon by the Committee in the future. Key elements include:

- The Committee recommends a review and reformulation of the definition of disability based on the Convention to prevent the exclusion of 'in particular persons with psychosocial disabilities ("mental illness") or intellectual disabilities, or others not able to obtain a disability card, either due to disability or by association with a disability'.
- The Committee clearly states that the definition of reasonable accommodation⁵ must be incorporated into

1 The report used terms such as 'persons lacking in mental capacity', 'persons suffering from the disability of mental retardation', 'persons suffering from the disability of insanity'.

2 The State delegation had earlier explained that persons with physical disabilities retain full legal capacity.

3 Concluding Observations on Tunisia available at <http://bit.ly/rpXEnN>.

4 See para 10 of the Concluding Observations on Tunisia.

5 'Reasonable accommodation' means necessary and appropriate

the law including explicit recognition that the denial of reasonable accommodation constitutes disability based discrimination.

- The Committee recommends the State party to encourage and support the creation, capacity-building and effective participation of representative organisations, or groups of persons with disabilities and parents of persons with disabilities, in the development and implementation of legislation and policies concerning persons with disabilities, in particular to implement the Convention.⁶
- The Committee recommends replacing laws on substituted decision-making (guardianship, trusteeship) by supported decision-making in the exercise of legal capacity.⁷
- The Committee recommends repealing laws that allow for deprivation of liberty on the basis of disability, including a psychosocial or intellectual disability.⁸
- The Committee did not address freedom of expression and freedom of opinion in a paragraph of its own, instead raising it under the paragraph dealing with Article 24 on the right to education (see para. 32). It calls on the State to provide information intended for the general public in accessible formats and – especially with respect to the deaf, hard of hearing and deaf blind – to recognise and promote the use of sign language. While the paragraph does not specifically state that this recommendation applies also to the promotion of sign language in schools, there is a strong case that it does, given that the recommendation is made in the context of the Committee's considerations of the right to education.
- Regarding the right to participation in political and public life,⁹ the Committee recommends the urgent adoption of legislative measures to ensure that persons with disabilities, including those who are currently under guardianship or trusteeship, can exercise their right to vote and to participate in public life on an equal basis with others.

FOLLOW UP

Unlike the practice of some other treaty bodies, the Committee's recommendations do not oblige the State to report back on particular priority points within a specified timeframe.¹⁰ The only indicated action and timeframe for

modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (Article 2, the Convention).

⁶ Article 4(3).

⁷ Article 12.

⁸ Article 14.

⁹ Article 29.

¹⁰ This is required after one year for the Committee on the Elimination of Racial Discrimination and Committee against Torture, and one to two years for the Committee on the Elimination of Discrimination

reporting is 'to include in its second periodic report detailed information on measures taken to follow up on the recommendations in the present concluding observations.'¹¹ From the perspective of DPOs, and with a view to the effective implementation of the Convention, it is desirable that in the future the Committee will engage in facilitating follow-up by prioritising certain issues on which the State should report back within the next year – a method proven to be effective in sister treaty bodies.

However, in recognition of the role played by persons with disabilities, the Committee encourages the State party to continue in the implementation of the Convention and to involve civil society organisations, in particular DPOs, in the preparation of its second periodic report to be submitted by 2 April 2014.

OTHER DEVELOPMENTS AND UPCOMING SESSION

During the session the Committee also adopted the List of Issues on Spain. In a private briefing hosted by IDA, a DPO representative appeared before the Committee for the first time in the context of the Committee's review procedures. The representative from the umbrella organisation of persons with disabilities, CERMI (Comité Español de Representantes de Personas con Discapacidad), presented the DPO's principal issues of concern to assist the Committee in compiling its list of questions. The success of this intervention is tangible; with some minor exceptions, such as unclear language in parts of the List of Issues,¹² the questions are direct and well-tailored to the national context. IDA will continue to advocate for allocation of time within the formal session itself for DPOs and NGOs to brief Committee members. A clear advantage to this option over lunchtime briefings is the availability of interpretation, which provides the opportunity for veritable exchange between DPO representatives and all Committee members.

At the Committee's closing session, several decisions were announced. A Day of General Discussion will not be held at the Committee's September session, as has been the case since the inception of the Committee. The session will instead concentrate on State reports, holding a dialogue with Spain and adopting Lists of Issues with respect to Peru and China. Mr Rios Espinosa was named country rapporteur of Peru, while Ms Degener and Mr Kim were named as co-rapporteurs on China.

The Committee also announced the adoption of its working methods, and the approval and adoption of a guidance note on the presentation of communications under the Optional Protocol. These documents have not yet been made publicly available. The next session of the Committee will take place from 19 - 23 September 2011.

against Women.

¹¹ See para 43 of the Concluding Observations on Tunisia.

¹² Articles 12 and 33.

To read the Concluding Observations on Tunisia, the List of Issues on Spain and the submissions made by IDA and CERMI with respect to these two States, visit the OHCHR 5th session web page <http://bit.ly/fyK4zi>.

Facts about the Committee (current as of 13 July 2011)

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| Number of members | 18 members as of January 2011 |
| Treaties covered | Convention on the Rights of Persons with Disabilities; Optional Protocol to the Convention on the Rights of Persons with Disabilities |
| Total number of ratifications | 103* (the Convention), 62 (Optional Protocol) |
| Total number of signatories | 149 (the Convention), 90 (Optional Protocol) |
| Reports received from: | Argentina, Australia, Austria, Azerbaijan, China, Costa Rica, El Salvador, Hungary, Paraguay, Peru, Spain, Sweden, and Tunisia |

* The European Union officially ratified the Convention on 23 December 2010; it is the first time an intergovernmental body has become a party to an international human rights treaty.¹³

Information on the IDA

The International Disability Alliance (IDA) is the network of global and regional organisations of persons with disabilities (DPOs), currently comprising eight global and four regional DPOs. With member organisations around the world, IDA represents the more than one billion people worldwide living with a disability, the world's largest and most frequently overlooked minority group. IDA promotes the effective implementation of the Convention on the Rights of Persons with Disabilities, as well as compliance with the Convention within the whole UN system, including in the work of other treaty bodies.

For more information on IDA and its activities: www.internationaldisabilityalliance.org.

Article by Victoria Lee, International Disability Alliance Secretariat. For more information on how to engage with the Committee, email vlee@ida-secretariat.org. ■

¹³ Under Article 44 of the Convention, 'regional integration organisations' can become a party to the Convention, and are included within the designation 'States parties'. It is the first time this provision has been included in a UN human rights treaty.