



General Assembly

Distr.: General
21 December 2011

Original: English

Human Rights Council

Nineteenth session

Agenda items 2 and 3

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Thematic study by the Office of the United Nations High Commissioner for Human Rights on participation in political and public life by persons with disabilities*

Summary

The present study focuses on participation in political and public life by persons with disabilities. It analyses relevant provisions of the Convention on the Rights of Persons with Disabilities, highlights good practices in the field of participation of persons with disabilities in elections and in the conduct of public affairs, and identifies the main challenges that still prevent or limit the equal and effective participation of persons with disabilities in the political and public life of their countries.

* The present report is being circulated in all official languages. The annex is being circulated in the language of submission only.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–2	3
II. Political rights: normative content	3–12	3
A. Right to vote and to be elected.....	7–8	4
B. Right to participate in the conduct of public affairs.....	9–10	4
C. Right to have access to public service	11–12	4
III. Participation in political and public life by persons with disabilities	13–23	5
IV. Article 29 and its interdependence with other Convention rights	24	6
V. Main issues concerning the effective realization of the rights of persons with disabilities to participate in political and public life.....	25–67	7
A. Universal suffrage.....	25–41	7
B. Right to stand for elections and to effectively hold office	42–50	10
C. Accessible elections	51–58	12
D. Participation of persons with disabilities in political and public life	59–61	13
E. Monitoring, data collection and indicators	62–64	14
F. International cooperation to support the participation of persons with disabilities in political and public life	65–67	14
VI. Conclusions and recommendations	68–74	15
Annex		
List of respondents		17

I. Introduction

1. In its resolution 16/15, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a study on the participation of persons with disabilities in political and public life, in consultation with relevant stakeholders, including States, regional organizations, including regional integration organizations, United Nations agencies, the Special Rapporteur on disability of the Commission for Social Development of the Economic and Social Council, civil society organizations, including organizations of persons with disabilities, and national human rights institutions. The Council also requested that the study be made available on the OHCHR website, in an accessible format, prior to the nineteenth session of the Council.

2. OHCHR sent a note verbale to Member States and letters to intergovernmental organizations, non-governmental organizations, national human rights institutions, the Inter-Parliamentary Union and the Special Rapporteur on disability of the Commission for Social Development requesting responses to a set of questions related to the thematic study. The questionnaire was also sent to United Nations human rights field presences. The annex to the present document contains a full list of respondents. All submissions are available on the OHCHR website.¹

II. Political rights: normative content

3. Article 25 of the International Covenant on Civil and Political Rights recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. The list of political rights contained in this provision is based on article 21 of the Universal Declaration of Human Rights.

4. Political rights have also been set down in a number of other international human rights conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (c)), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 7 and 8) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 41). At the regional level, political rights have been included, inter alia, in the first Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 3), the American Convention on Human Rights (art. 23) and the African Charter on Human and Peoples' Rights (art. 13).

5. In paragraph 1 of its general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, the Human Rights Committee emphasized that article 25 “lies at the core of democratic government based on the consent of the people”. In contrast with other human rights and fundamental freedoms, which are ensured to all individuals within the territory and subject to the jurisdiction of the State, most international and regional human rights treaties only recognize political rights for “citizens”.

6. Although only the rights set out in article 25 constitute political rights *sensu stricto*, a number of other rights are of fundamental importance for the democratic decision-making process. Broadly speaking, political freedoms – such as freedom of opinion, expression, information, media, assembly and association – may also be understood as political rights.

¹ See www.ohchr.org/EN/Issues/Disability/Pages/StudyPoliticalAndPublicLife.aspx.

Citizens may take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.

A. Right to vote and to be elected

7. The right to vote is arguably the most important political right. Genuine periodic elections are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors.

8. No citizen can be hindered or restricted de jure or de facto in the enjoyment of political rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, restrictions to the exercise of political rights are permissible, provided that they are established by law and based on objective and reasonable criteria.

B. Right to participate in the conduct of public affairs

9. Participation in the conduct of public affairs, referred to in article 25 (a) of the International Covenant on Civil and Political Rights, is a broad concept that relates to the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. It also covers participation in public debates and peaceful demonstrations. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs should be established by the constitution and other laws.

10. The right to participate in the conduct of public affairs can be exercised “directly or through freely chosen representatives”. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative or executive bodies, when they choose or change their constitution or decide public issues through a referendum or another electoral process. Participation through freely chosen representatives is exercised mainly through the exercise of voting rights.

C. Right to have access to public service

11. Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access, on general terms of equality, to public service positions. This provision permits farther-reaching restrictions than those allowable for the right to vote and be elected. In addition to the “reasonable” restrictions permissible for all political rights, access to public service is moreover guaranteed only “on general terms of equality”. Therefore, States parties are not precluded from placing conditions on access to public service, such as minimum age, level of education, standard of integrity or special qualifications.

12. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.

III. Participation in political and public life by persons with disabilities

13. Article 29 of the Convention on the Rights of Persons with Disabilities sets out the rights of persons with disabilities in their participation in political and public life. It requires that States parties to the Convention guarantee political rights to persons with disabilities and adopt all appropriate measures to ensure that they enjoy these rights on an equal basis with others.

14. This provision encompasses a broad notion of participation in political and public life. At one level, it refers to political participation in terms of the right to vote and be elected (art. 29 (a)). This right is of crucial importance for ensuring equality of opportunity for persons with disabilities and their full and effective participation and inclusion in society. Through its exercise, persons with disabilities assert their individual autonomy, which includes the freedom to make one's own choices, and their right to be recognized as persons before the law.

15. Under article 29, persons with disabilities have not only the right, but also the "opportunity" to vote and be elected. This sets up a duty on States parties to guarantee, though the adoption of positive measures, that all eligible persons have the actual opportunity to exercise their voting rights. Consequently, it is not enough to extend formal voting rights to persons with disabilities; States are also required to ensure that persons with disabilities are truly able to make use of their right to vote, for example by making polling stations accessible to wheelchair users, facilitating the use of assistive voting devices to enable persons with visual impairments to vote independently, or allowing persons with disabilities to be assisted in voting by a person of their choice.

16. As with all positive obligations to fulfil human rights, States have a margin of appreciation in identifying the measures which should be adopted to ensure that persons with disabilities have an actual opportunity to participate in the conduct of public affairs of their country on an equal basis with others. Where this is not realized, mere passivity on the part of the State would, however, constitute a violation of the right of persons with disabilities to participate in political and public life on an equal basis with others.

17. In broader terms, article 29 (b) requires States parties to the Convention to take appropriate steps to promote an enabling environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others.

18. As is the case for article 25 of the Covenant, article 29 does not explain what a full and effective participation in "political and public life" or "in the conduct of public affairs" would entail. However, the ordinary meaning of article 29 leaves no doubt that persons with disabilities are entitled to participate in all aspects of political and public life of their country. Participation in political and public life is not only an objective in itself, but also a prerequisite for the effective enjoyment of other rights. Through involvement in law and policy reform in the area of disability, persons with disabilities and their representative organizations have the chance to make changes in society and to improve legislation and policies in the areas of health, rehabilitation, education, employment, access to goods and services, and any other aspect of life.

19. In order to facilitate an effective participation of persons with disabilities in the conduct of public affairs, article 29 (b) imposes a duty on States to adopt positive measures to encourage the active involvement of persons with disabilities in non-governmental organizations and associations concerned with public and political life, and in political parties, as well as the forming and joining of organizations of persons with disabilities (DPOs) at the local, regional, national and international levels.

20. In its broadest sense, participation is a theme that runs throughout the whole Convention. Full and effective participation and inclusion in society are included in the list of general principles that guide the interpretation and implementation of the entire Convention, cutting across all issues (art. 3 (c)). These concepts mean that society, both in its public and in its private dimensions, is organized to enable all people to take part fully in all its spheres.

21. Being fully included in society means that persons with disabilities are recognized and valued as equal participants. Their needs are understood as integral to the social and economic order and not identified as “special”. To achieve full inclusion, an accessible, barrier-free physical and social environment is necessary. Linked to the concept of participation and inclusion is that of universal design, which requires the consideration of the needs of all members of society during the design of products, environments, programmes and services, so as to ensure that no adaptation or specialized design are required later on (art. 2).

22. Article 4 of the Convention, which lists the general obligations undertaken by States parties to ensure and promote the full realization of all human rights and fundamental freedoms by persons with disabilities, includes an obligation to consult and involve persons with disabilities and their representative organizations in the development and implementation of legislation and policies to implement the Convention, as well as in decision-making processes affecting their lives and their full participation and inclusion in society (art. 4, para. 3).

23. States parties must also ensure that persons with disabilities and their representative organizations are involved and participate fully in monitoring the implementation of the Convention at the national level (art. 33, para. 3). States are also invited to give due consideration to the duty to consult closely and to involve actively persons with disabilities in the nomination of experts to the Committee on the Rights of Persons with Disabilities (art. 34, para. 3).

IV. Article 29 and its interdependence with other Convention rights

24. Participation in political and public life is closely related to and dependent upon the implementation of other Convention provisions, including:

(a) Article 4, para. 1 (b), which requires States parties to take all appropriate steps, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(b) Article 9, which imposes an obligation to adopt adequate measures to ensure that persons with disabilities have access, on an equal basis with others, to information and communications, including information and communications technologies and systems;

(c) Article 12, which reaffirms the right of persons with disabilities to recognition everywhere as persons before the law and to enjoy legal capacity on an equal basis with others in all aspects of life;

(d) Article 19, which recognizes the right of persons with disabilities to full inclusion and participation in their community;

(e) Article 21, which calls for the adoption of all appropriate measures to facilitate access to information, whether provided through public or private entities, in accessible formats, and the use of sign languages, Braille, and other accessible means,

modes and formats of communication in official interactions (for instance, political broadcast).

V. Main issues concerning the effective realization of the rights of persons with disabilities to participate in political and public life

A. Universal suffrage

25. The concept of universal suffrage lies at the core of modern democracies. It consists of the extension of the right to vote to adult citizens (or subjects) as a whole. The first movements toward universal suffrage occurred in the early nineteenth century, and focused on extending voting rights to all male citizens, regardless of property requirements or other measures of wealth. In the late nineteenth and early twentieth century, the focus of the universal suffrage movement became the removal of voting restrictions against women. In this process, the understanding of democracy changed to such an extent that the exclusion of certain groups of individuals based on grounds such as race, colour or sex would represent today an obvious violation of the principle of universal suffrage.

26. Article 25 (b) of the International Covenant on Civil and Political Rights recognizes the right of every citizen “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage”. A certain contradiction can be seen between the principle of universal – i.e. unlimited – suffrage in this provision and the authorization, in the chapeau of article 25, to provide for reasonable restrictions (“without unreasonable restrictions”).² However, this incongruence can be explained by the fact that at the time the Covenant was adopted, most States viewed restrictions on the right to vote for individuals belonging to certain groups or categories – including aliens, children and juveniles, persons lacking legal capacity and convicted criminals – as not representing a violation of universal suffrage.

27. In assessing the compatibility of these restrictions with the principle of universal suffrage, the Human Rights Committee affirmed that any conditions which apply to the exercise of voting rights should be based on “objective and reasonable criteria”. It may be reasonable, for example, to require a higher age for election or appointment to particular offices than for exercising the right to vote, while restrictions of the right to vote on the ground of physical disability would constitute a violation of article 25. The Committee also held that in its view, “established mental incapacity may be a ground for denying a person the right to vote or to hold office”.³

28. The legal landscape has changed dramatically since the adoption of the Human Rights Committee’s general comment in 1996. Today, it may be argued that the majority of voting restrictions “are no longer compatible with the prohibition of discrimination in articles 2, para. 1, and 25 or with the present-day understanding of democracy”.⁴ This holds true, in particular, with regard to limitations of the right to vote and stand for election on the basis of psychosocial or intellectual disabilities.

² Manfred Nowak, *UN Covenant on Civil and Political Rights – CCPR Commentary*, 2nd revised ed. (Kehl am Rhein, Engel, 2005), p. 576.

³ General comment No. 25, para. 4.

⁴ Nowak, *UN Covenant* (footnote 2 above), p. 577.

29. Article 29 of the Convention on the Rights of Persons with Disabilities requires States parties to guarantee to persons with disabilities the equal and effective enjoyment of political rights, including the right to vote and be elected. This provision does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, any exclusion or restriction of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability would constitute “discrimination on the basis of disability” within the meaning of article 2 of the Convention.

30. It may be argued that such restriction is not based on disability itself, but rather on a lack of legal capacity. Such an argument would be, however, inconsistent with the provisions of article 12, paragraph 2, of the Convention, which recognizes that persons with disabilities enjoy legal capacity “on an equal basis with others in all aspects of life”. This provision does not provide any exception. It only requires States parties to take appropriate measures “to provide access by persons with disabilities to the support they may require in exercising their legal capacity” (art. 12, para. 3). Consequently, deprivation of legal capacity based on a perceived or actual mental illness or psychosocial disability may constitute a violation of the obligations set out in article 12.

31. Recent developments in the jurisprudence of international and regional human rights mechanisms and bodies support the argument that restrictions of the right to vote and stand for election on the basis of a psychosocial or intellectual disability are not consistent with modern human rights standards on disability.

32. The European Court of Human Rights has dealt with the issue of automatic disenfranchisement of a person with mental health problems in the case *Kiss v. Hungary*.⁵ Diagnosed with manic depression and placed under partial guardianship, the applicant was excluded from the electoral register pursuant to the Hungarian Constitution, which contains an absolute voting ban for people under guardianship. Relying on article 3 of the first Protocol to the European Convention on Human Rights (right to free elections), he complained that his disenfranchisement constituted an unjustified deprivation of his right to vote. The Court could not accept an absolute bar on voting rights applied to any person under partial guardianship irrespective of his or her actual faculties. It affirmed that the State had to provide weighty reasons when applying a restriction on fundamental rights to a particularly vulnerable group in society, such as persons with psychosocial disabilities. The Court concluded that the imposition of an automatic, blanket restriction on the franchise of those under partial guardianship amounted to a violation of article 3 of the first Protocol.

33. The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, welcomed this “landmark ruling”. He noted that the Convention on the Rights of Persons with Disabilities stipulates that State authorities “shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”. Noting that the very purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights by all persons with disabilities, he stated that this leaves no room for procedures in which judges or medical practitioners would assess the voting competence of a person and then give a green light – or not. “As we do not test that capability for someone without disabilities, this would amount to blatant discrimination”.⁶

34. On 16 November 2011, the Committee of Ministers of the Council of Europe adopted a recommendation on the participation of persons with disabilities in political and public life (CM/Rec(2011)14). Building upon the Convention on the Rights of Persons with

⁵ European Court of Human Rights, *Alajos Kiss v. Hungary*, Application No. 38832/06, 20 May 2010.

⁶ Statement by Thomas Hammarberg, “Persons with disabilities must not be denied the right to vote”, 22 March 2011. Available from <https://wcd.coe.int/ViewDoc.jsp?id=1763941&Site=COE>.

Disabilities, the recommendation calls for European governments to “ensure that their legislation overall does not discriminate against persons with disabilities in political and public life”. It also affirms that “all persons with disabilities, whether they have physical, sensory, or intellectual impairments, mental health problems or chronic illnesses, have the right to vote on the same basis as other citizens, and should not be deprived of this right by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning or perceived capacity”.

35. The Committee on the Rights of Persons with Disabilities has dealt with the issue of disenfranchisement of persons with psychosocial or intellectual disabilities in its concluding observations on the initial reports of Tunisia (CRPD/C/TUN/1) and Spain (CRPD/C/ESP/1). With regard to Tunisia, the Committee recommended “the urgent adoption of legislative measures to ensure that persons with disabilities, including persons who are currently under guardianship or trusteeship, can exercise their right to vote and participate in public life, on an equal basis with others” (CRPD/C/TUN/CO/1, para. 35). In other words, it called for the reinstatement of the right to vote for persons who are currently deprived of their right to vote.

36. In its concluding observations on Spain, the Committee made the link between deprivation of legal capacity and the right to vote more explicit. It expressed concerns that the right to vote of persons with intellectual or psychosocial disabilities can be restricted if the person concerned has been deprived of his or her legal capacity, or has been placed in an institution. The Committee further noted that this deprivation appeared to be “the rule and not the exception”, as evidenced by the number of persons with disabilities who have been denied their right to vote in the State party, and regretted “the lack of information on standards of evidence or grounds, and criteria used by judges when depriving persons of their right to vote” (CRPD/C/ESP/CO/1, para. 47).

37. The Committee recommended “that all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others”. It also requested Spain to amend the law which currently allows the denial of the right to vote based on individualized decisions taken by a judge, so as to ensure that all persons with disabilities have the right to vote (*ibid.*, para. 48).

38. The responses to the questionnaire show that in many countries, the right to political participation continues to be linked to the legal capacity of the individual. Some States have an automatic or quasi-automatic exclusion provision in their legal systems. They deny the right to political participation to all persons under a protective measure, such as a partial and plenary guardianship, regardless of their actual and/or individual level of functional ability or whether they have an intellectual disability or a mental health problem. In other countries, the capacity of persons with psychosocial or intellectual disabilities to vote is subject to an individual assessment carried out by a medical practitioner or by a judge of the individual’s actual ability to vote.

39. Only a small number of countries have lifted all restrictions on the political participation of persons with psychosocial or intellectual disabilities. Austria, for example, has lifted all restrictions on the right of persons with disabilities to vote and be elected, and persons with psychosocial and intellectual disabilities are allowed to exercise their political rights on an equal basis with others.⁷ Canada has also eliminated legal restrictions at the

⁷ According to article 26, paragraph 5 of the Austrian Constitution, a person can only be deprived of his or her right to vote and to be elected in the case of a criminal conviction.

federal levels, although some restrictions continue to exist at the provincial level.⁸ In the United Kingdom of Great Britain and Northern Ireland, the Electoral Administration Act 2006 abolished the common law rule that a person with mental health conditions lacks legal capacity to vote.⁹

40. Some countries are currently reviewing their legislation on legal capacity in order to ensure its consistency with the provision of article 29. In the Czech Republic, for example, the reform of the guardianship system is currently under way and will be introduced in the new Civil Code. The Government of Mexico also intends to review its legislation and practice on the deprivation of legal capacity so as to ensure that persons with disabilities fully enjoy their human rights, including political rights, on an equal basis with others.

41. A limited number of countries continue to maintain in their legislation provisions that exclude other categories of persons with disabilities from the exercise of the right to vote. However, responses to the questionnaire show that these exceptions are progressively being lifted as a result of the ratification of the Convention. In Argentina, for example, Law No. 26.571 of December 2009 has abrogated the provision of the National Electoral Code that excluded illiterate deaf persons from the exercise of the right to vote.

B. Right to stand for elections and to effectively hold office

42. As is the case for the right to vote, in many countries the right to be a candidate in elections continues to be linked to the legal capacity of the individual. Consequently, persons under full or partial legal guardianship lose both the right to vote and the right to be elected. Such exceptions are usually based on decisions taken by a court of law declaring that the person is unable, in view of his or her mental conditions, to understand the nature and significance of his or her action. In some cases, a person under guardianship cannot be a candidate in elections, even if he or she may exercise the right to vote. In France, for example, persons under guardianship or curatorship retain, in principle, the full enjoyment of the right to vote, but cannot exercise any elective function (art. L200 of the Electoral Code).

43. These limitations reflect an outdated and discriminatory approach to persons with disabilities and their role in society which is inconsistent with the obligations arising from the Convention on the Rights of Persons with Disabilities. Unlike article 25 of the Covenant, article 29 does not mention any permissible ground for excluding or restricting the exercise, on an equal basis with others, of the right of persons with disabilities to stand as candidates in political elections. Therefore, any such restriction would constitute a violation of articles 2, 12 and 29 of the Convention.

44. The replies to the questionnaire show that only in a limited number of countries can persons with psychosocial or intellectual disabilities participate as candidates in elections on an equal basis with others. In the United Kingdom, for example, there are no restrictions on the right of persons with disabilities to be elected.¹⁰

⁸ In Quebec, for example, persons under curatorship cannot vote or run for office in provincial, municipal and school elections.

⁹ Persons with mental health conditions are eligible to vote, including those in psychiatric hospitals, unless they have been detained under certain sections of the Mental Health Act 1983 and are therefore unable to understand the voting procedure or are convicted criminal offenders.

¹⁰ In February 2011, the Government announced its intention to repeal Section 141 of the Mental Health Act 1983 which set the process by which Members of Parliament were required to vacate their seats if they had a mental health condition and were authorized to be detained under mental health legislation

45. In order to ensure that persons with disabilities are able to exercise their right to stand for elections, to effectively hold office and perform all public functions at all levels of government, the Convention requires States parties to adopt all appropriate measures, including the use of assistive and new technologies, to guarantee that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others (art. 29 (a) (ii)).

46. This provision clearly recognizes that States parties are required to do much more than merely abstain from taking measures which might have a negative impact on the right of persons with disabilities to stand for elections. The elimination of active discrimination against persons with disabilities in the field of political and public life is not per se sufficient to ensure their equal and effective enjoyment of political rights. In addition to the negative obligation of refraining from discriminatory actions and practices against persons with disabilities, States parties are also required to adopt positive measures, including reasonable accommodation as defined in article 2 of the Convention, to overcome the obstacles that de facto prevent persons with disabilities from exercising their right to be elected on an equal basis with others.

47. The Committee on the Rights of Persons with Disabilities shed some light on this issue in its concluding observations on the first periodic report of Spain. In order to guarantee the effective enjoyment of the right of persons with disabilities to effectively hold office and perform all public functions at all levels of government, the Committee recommended that all persons with disabilities who are elected to a public position be provided with all required support, including personal assistants (CRPD/C/ESP/CO/1, para. 48).

48. The replies to the questionnaire provide some examples of the measures adopted by the respondent States to implement the right of persons with disabilities to participate as candidates in elections. These measures include the identification and elimination of obstacles to physical accessibility (e.g. architectonic barriers that prevent or limit the access of persons with physical disabilities to public buildings), the development and implementation of minimum standards and guidelines for the accessibility of public buildings, the provision of information in accessible formats (e.g. Braille and in forms that are easy to read and understand) in buildings and other facilities open to the public, and the promotion and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities.

49. In May 2011, the Government of the United Kingdom organized a consultation on access to elected office for disabled people. The consultation document put forward six concrete proposals for providing additional support for persons with disabilities seeking elected positions as Members of Parliament, councillors or other elected officials, including: developing awareness-raising programmes to encourage the active participation of persons with disabilities in the conduct of public affairs; organizing training and development opportunities to support the involvement of persons with disabilities in political life; and establishing an Access to Elected Office Fund to support disability-related costs.¹¹

50. Article 5, paragraph 4, of the Convention deals with the adoption of affirmative action as a means to eliminate discrimination and achieve equality of opportunities for

for a period of six months or more. Although these provisions had never been used, Section 141 was felt to be symptomatic of an outdated attitude towards mental illness which was out of touch with the modern understanding of mental health.

¹¹ See www.homeoffice.gov.uk/publications/equalities/public-political-equality/access-response/.

persons with disabilities. It provides that specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities are not to be considered discrimination under the terms of the Convention. Some of the respondents to the questionnaire, for example Burkina Faso, reported that their national legislation provides for the establishment of quotas to ensure an adequate representation of persons with disabilities in legislative, executive or judicial bodies. The Government of Mexico is considering amending the Federal Code of Electoral Institutions and Procedures in order to encourage political parties to establish quotas for persons with disabilities in electoral lists.

C. Accessible elections

51. The Convention on the Rights of Persons with Disabilities lists a number of measures that States parties are required to take in order to ensure that persons with disabilities can exercise their right to vote on an equal basis with other citizens. According to article 29 (a), such measures include, inter alia:

- (a) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
- (b) Protecting the right of persons with disabilities to vote by secret ballot;
- (c) Allowing assistance in voting, where necessary and at the express request of the person concerned, by a person of one's own choice.

52. The aim of these measures is to remove the barriers that prevent persons with disabilities to exercise their right to vote and participate in elections. These barriers range from a lack of awareness about the right to vote to inaccessible information about elections and physical barriers at polling stations. In order to remove these barriers, article 29 calls for the implementation of practices which improve access to voting and electoral participation. Failure to guarantee accessibility by means of reasonable accommodation and universal design, as defined in article 2 of the Convention, would infringe the right to political participation of persons with disabilities and the principle of equality and non-discrimination (art. 5).

53. The replies to the questionnaire show that many States have adopted a wide range of legislative and policy measures to remove existing physical barriers and improve the accessibility of voting stations. These measures aim at ensuring that voting stations have wheelchair access, proper lighting and sufficiently wide doorways and corridors to facilitate the circulation of wheelchair users. They also require that appropriate parking spaces be reserved as close as possible to the polling station. Persons with disabilities should be provided, at their request, with a list of accessible polling stations. Some States organize regular training opportunities for all officials responsible for elections, as well as for those responsible for operating and supervising polling stations. Such trainings often include information on how to interact with persons with different impairments and how to support them in the exercise of the right to vote.

54. Some of the respondent States have taken steps to ensure that information on political affairs – and in particular information on elections, voter registration, modalities of voting and accessibility of voting procedures, ballots and facilities – is available in various forms (including sign language, Braille, audio, electronic and easy-to-read and understand versions), and largely disseminated in advance. In Finland, for example, both the election guide and the list of candidates for the parliamentary elections of 2011 were available in Braille. In France, the *Conseil Supérieur de l'Audiovisuel* (Supreme Audiovisual Council) adopted a recommendation on 7 November 2006 aimed at facilitating access to electoral information in an accessible format through the use of subtitles and sign language.

55. In their replies, some States reported on information campaigns, media advertising, guides and awareness-raising initiatives to sensitize persons with disabilities to participate in political and public life. During the latest political elections, for example, Ecuador organized the campaign entitled “You have the right to vote” to encourage the registration of persons with disabilities in the voters’ list and their actual participation in the election process. States also provided information on the measures they have adopted to ensure that ballot papers are available in accessible formats (for instance, large-print versions for persons who are partially sighted or tactile voting devices for persons with visual impairments).

56. When persons with disabilities cannot exercise their right to vote independently, the majority of respondent States allow them to be accompanied by a person of their choice, for example in the voting booth when casting their vote. The assistant is required to help the person concerned to express his or her decision, and not to take the decision in his or her place.

57. Finally, many States provided information on alternative ways of voting, such as electronic voting, mobile polling stations, postal voting, voting by proxy and advance voting, available in accordance with their legislation. In some cases, it appears from their replies that the measures adopted are not consistent with the obligations arising from article 29.

58. Alternative ways of voting should be used only in cases where it is not possible, or it is extremely difficult, for persons with disabilities to vote in polling stations like everyone else. However, in some countries they represent the general practice. For example, some States allow persons with disabilities only to vote from their cars or at special polling stations for persons with disabilities in lieu of improving accessibility of existing polling stations.

D. Participation of persons with disabilities in political and public life

59. The measures adopted by States parties to facilitate the participation of persons with different forms of impairment, the procedures followed to enable the participation of persons with disabilities through their representative organizations in decision-making processes, and the measures adopted to ensure that that such participation is full, effective and meaningful vary from one country to the other.

60. In some countries, measures to support the inclusion of persons with disabilities in political and public life are part of national strategies or programmes on disability. Some countries allocate financial resources to national disability organizations to promote their participation in the activities of relevant Government bodies and advisory boards, and have established national councils on disability or similar consultative bodies to provide advice to the Government on issues relating to disability. In some countries, for example in Norway, there are also local and regional advisory councils on disability issues.

61. States are also required to facilitate the involvement and full participation of civil society, in particular persons with disabilities and their representative organizations, in monitoring the implementation of the Convention at the national level (art. 33, para. 3). The replies to the questionnaire show that States parties to the Convention have adopted a number of measures to implement this provision, such as granting financial or other assistance to DPOs, including persons with disabilities in independent monitoring bodies established pursuant to article 33, paragraph 2, and establishing appropriate procedures for integrating persons with disabilities and their representative organizations in the monitoring process. Most of the respondent States also declared that they had consulted with persons

with disabilities and DPOs in the preparation of their reports to the Committee on the Rights of Persons with Disabilities (art. 35).

E. Monitoring, data collection and indicators

62. The collection and maintenance of appropriate information, including statistical and research data, is important to formulate and implement policies to give effect to the Convention (art. 31), including the provision on participation in political and public life. Through the collection of data and statistics it is possible to identify where barriers to the political participation of persons with disabilities lie. Appropriate information, bearing in mind ethical principles in the collection and use of statistics, can also help identify persons requiring support in order to exercise their political rights.

63. In some States, national authorities collect statistics on disability, for example in relation to education, benefits and rehabilitation available to persons with disabilities. However, only a few respondent States collect statistical information on the inclusion of persons with disabilities in political and public life. Canada provided statistical information on political participation of persons with disabilities in the most recent federal elections.

64. Some of the respondents are planning to start collecting data on the political participation of persons with disabilities in the near future. Australia, for example, is currently developing a set of indicators to monitor progress against the national disability strategy, which includes the political participation of persons with disabilities as one of its policy areas. In Germany, the Federal Ministry of Labour and Social Affairs will include data on the participation of persons with disabilities in political and public life in its next report, which will be published towards the end of 2012.

F. International cooperation to support the participation of persons with disabilities in political and public life

65. In accordance with the Convention, States parties recognize the importance of international cooperation and its promotion in supporting national efforts for the full realization of the rights of persons with disabilities (art. 32).¹² International cooperation can occur between and among States or in partnership with relevant intergovernmental organizations and civil society organizations, in particular organizations of persons with disabilities. International cooperation is to be directed towards “the realization of the purpose and objectives of the present Convention” (art. 32, para. 1). Since the purposes and objectives of the Convention are “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities” (art. 1, para. 1), international cooperation represents an important instrument to support the realization of political rights of persons with disabilities.

66. Only a limited number of States have developed specific cooperation programmes aimed at promoting the participation of persons with disabilities in political and public life. The Australian Agency for International Development, for example, has provided direct support for more inclusive elections in a number of countries, including Indonesia, Papua New Guinea and the Philippines. The majority, however, do not support any specific cooperation programmes relating to the political participation of persons with disabilities. A

¹² See the Thematic study by the Office of the United Nations High Commissioner for Human Rights on the role of international cooperation in support of national efforts for the realization of the rights of persons with disabilities (A/HRC/16/38).

number of States have provided information on programmes and projects that at least indirectly aim at promoting political rights of persons with disabilities. The Canadian International Development Agency, for instance, sponsors a number of projects that aim at reducing the impact of poverty on the most marginalized groups, including persons with disabilities.

67. In 2011, the Human Rights Section of the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) prepared a public report on the rights of persons with disabilities, which focused, inter alia, on the political participation of persons with disabilities. In view of the forthcoming 2012 general elections, the report identifies the obstacles for participation of persons with disabilities in elections and recommends the adoption of a number of measures to overcome these obstacles. In 2012, the Human Rights Section of UNIPSIL will organize a series of workshops on the participation of persons with disabilities in elections. It will also organize media campaigns on the rights of persons with disabilities, which will also touch upon their participation in political and public life.

VI. Conclusions and recommendations

68. **The Convention on the Rights of Persons with Disabilities heralds a new era for the political participation of persons with disabilities. Article 29 requires States parties to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. This provision does not foresee any reasonable restriction, nor does it allow any exception. Article 12, which recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, also does not provide for any exception to the principle, and only requires States parties to take appropriate measures “to provide access by persons with disabilities to the support they may require in exercising their legal capacity”.**

69. **It can be concluded that in accordance with the Convention, exclusion or restriction of political rights of persons with disabilities on the basis of disability may constitute “discrimination on the basis of disability” within the meaning of article 2 of the Convention and is contrary to the Convention.**

70. **In the majority of countries that responded to the OHCHR questionnaire, persons with psychosocial and intellectual disabilities continue to be deprived of their right to vote and be elected on the basis of constitutional or legal provisions that link their political rights to legal capacity. Such restrictions may be inconsistent with the obligations that States parties have undertaken under articles 2, 12 and 29 of the Convention, and should be eliminated as a matter of priority from national legislation and practices, in accordance with article 4, paragraph 1 (a) and (b), of the Convention. In order to ensure that persons with psychosocial or intellectual disabilities exercise their right to vote and be elected on an equal basis with others, States parties should adopt all appropriate measures, in line with article 12, paragraph 3 and 29 (a) (iii), to provide persons with disabilities with the support they may require, including the assistance of a person of their own choice, in exercising their political rights.**

71. **Article 25 of the International Covenant on Civil and Political Rights should be interpreted and applied taking into account the developments in the areas of human rights of persons with disabilities. In the light of these developments, the Human Rights Committee should consider reviewing its general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, so as to reflect the progressive evolution of international human rights law in this field.**

72. The replies to the questionnaire provide a number of positive examples of the efforts undertaken by States to ensure that persons with disabilities can exercise their voting rights on an equal basis with others. However, they also show that in many countries persons with disabilities continue to encounter a number of physical and communication barriers, ranging from inaccessible polling stations to the lack of information in accessible formats, that prevent or limit their equal and effective participation in the conduct of public affairs. Much more needs to be done to ensure the equal and effective enjoyment of political rights by all persons with disabilities.

73. Article 29 (a) (iii) requires States parties to adopt appropriate measures to allow persons with disabilities who cannot exercise their right to vote independently to be assisted in voting by a person of their own choice. In their replies, States have provided several examples of the assistance that persons with disabilities can obtain in order to exercise their right to vote. In particular, they listed a number of alternative ways of voting, such as postal voting or voting at special polling stations, that have been developed and implemented to facilitate the political participation of persons with disabilities.

74. The appropriateness of these measures should always be assessed against the general obligation to include persons with disabilities in all aspects of society and to promote their independence, autonomy and dignity. Alternative ways of voting should only be used in cases where it is not possible, or it is extremely difficult, for persons with disabilities to vote in polling stations, like everyone else. General reliance on voting assistance and alternative voting as a way to ensure the political participation of persons with disabilities would not be consistent with the general obligations undertaken by States parties under articles 4 and 29 of the Convention.

Annex

List of respondents

States

- Argentina
- Armenia
- Australia
- Austria
- Bahrain
- Bosnia and Herzegovina
- Bulgaria
- Burkina Faso
- Canada
- Costa Rica
- Czech Republic
- Ecuador
- Estonia
- Finland
- France
- Germany
- Honduras
- Iraq
- Israel
- Kazakhstan
- Kuwait
- Kyrgyzstan
- Lebanon
- Lithuania
- Mauritius
- Mexico
- Monaco
- Montenegro
- Morocco
- Nepal
- New Zealand
- Nicaragua
- Niger
- Norway
- Oman
- Peru
- Poland
- Portugal
- Qatar
- Republic of Korea
- Republic of Moldova
- Russian Federation
- Samoa
- Saudi Arabia
- Serbia
- Slovakia
- Spain
- Sudan
- Switzerland
- Syrian Arab Republic
- Thailand
- The former Yugoslav Republic of Macedonia
- Tunisia
- Turkey
- Turkmenistan
- Ukraine
- United Kingdom of Great Britain and Northern Ireland
- Uruguay
- Zimbabwe

Intergovernmental organizations

- European Union Agency for Fundamental Rights
- United Nations Educational, Scientific and Cultural Organization, Pakistan

Civil society organizations

- Action on Disability and Development International
- Atlas Alliance
- Belgian Disability Forum
- Cambridge Intellectual & Developmental Disabilities Research Group
- CBM
- Comprehensive Community-Based Rehabilitation, United Republic of Tanzania
- CCS Disability Action
- Disabled without Borders
- Disabled Peoples' International-Germany
- Handicap International
- Human Rights Watch
- International Disability Alliance
- International Foundation for Electoral Systems
- MindFreedom
- Open Society Foundation
- Royal New Zealand Foundation of the Blind
- Ubuntu
- Umbrella organization of Austrian DPOs
- Umbrella organization of Danish DPOs
- World Network of Users and Survivors of Psychiatry

National human rights institutions

- Austrian Monitoring Committee
- Commission Consultative des Droits de l'Homme, Luxembourg
- Comisión Nacional de los Derechos Humanos, Mexico
- Danish Institute for Human Rights
- Defensoría del Pueblo, Argentina
- Defensoría del Pueblo, Colombia
- Defensoría del Pueblo, Ecuador
- Defensoría del Pueblo, Panama
- German Institute for Human Rights
- Human Rights Commission, Maldives
- Human Rights Commission, New Zealand
- National Commission on Human Rights and Freedoms, Cameroon
- National Human Rights Commission, India
- Ombudsman, Azerbaijan
- Ombudsman, Finland
- Ombudsman, Portugal
- Ombudsman, Serbia
- Ontario Human Rights Commission
- Procuraduría de los Derechos Humanos, Guatemala
- Procuraduría para la Defensa de los Derechos Humanos, El Salvador
- Procuraduría para la Defensa de los Derechos Humanos, Nicaragua
- Scottish Human Rights Commission
- South African Human Rights Commission
- Ukrainian Parliament Commissioner for Human Rights

United Nations human rights field presences

- OHCHR, Guatemala
- OHCHR, occupied Palestinian territory
- OHCHR Regional Office for Asia-Pacific
- OHCHR Regional Office for West Africa
- United Nations Country Team, the former Yugoslav Republic of Macedonia
- United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL), Human Rights Section

Individuals

- Ms. Roslyn Band, University College London
 - Ms. Rosinha da Adefal
 - Ms. Mara Gabrielli, Brazilian Congress
-