



**IDA**  
International  
Disability Alliance



# IDA HUMAN RIGHTS PUBLICATION SERIES

International Disability Alliance

## IDA Human Rights Publication Series - The Right to Vote and to Stand for Election

IDA's Human Rights Publication Series is an annual journal dedicated to sharing and gathering information, practices and experiences related to implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) from different sources including organisations of persons with disabilities (DPOs), NGOs, national human rights institutions (NHRIs), United Nations human rights mechanisms and other actors, with a focus on highlighting positive examples of CRPD compliance. It aims to respond to an increased demand for additional guidance on implementation given the diversity and multiplication of practices worldwide.

On line version available at [www.internationaldisabilityalliance.org](http://www.internationaldisabilityalliance.org)

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The International Disability Alliance (IDA) is a unique, international network of global and regional organisations of persons with disabilities. Established in 1999, each IDA member represents a large number of national disabled persons' organisations (DPOs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world's largest – and most frequently overlooked – minority group. Currently comprising eight global and four regional DPOs, IDA's mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

**IDA members are:** Disabled Peoples' International, Down Syndrome International, Inclusion International, International Federation of Hard of Hearing People, World Blind Union, World Federation of the Deaf, World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry, Arab Organization of Persons with Disabilities, Pacific Disability Forum, Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families (RIADIS), and the European Disability Forum.

**Issue 1****EDITORIAL**  
**by Yannis Vardakastanis**

Yannis Vardakastanis © 2013 Greek  
National Council for Persons with  
Disabilities (NCPD Greece)

The International Disability Alliance (IDA) is proud to present the launch of its new journal - the IDA Human Rights Publication Series.

The Human Rights Publication Series aims to gather and share information related to implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) from different sources, and in particular from the global South, highlighting positive examples related to CRPD implementation. In addition, it aims to respond to an increased demand for additional guidance on implementation given the diversity and multiplication of practices worldwide.

The CRPD represents the latest international human rights standards of persons with disabilities. With 130 States Parties to the CRPD to date and 155 signatories, there is growing recognition of the human rights approach to disability, acknowledging all persons with disabilities as rights-holders, whether they have physical, psychosocial, intellectual or sensory disabilities, and that they are entitled to enjoy and exercise all their human rights, without exception, on an equal basis with others.

Article 29 of the CRPD on the right to vote and stand for election is particularly important for persons with disabilities to break the continuum of their invisibility and to emerge as equal citizens with equal voices in the construction and governance of society.

This first edition of the Human Rights Publication Series is devoted to the right to participate in political and public life as enshrined in Article 29 of the CRPD. It was chosen given its relevance for all disability constituencies and the fact that it is linked to some of the core provisions of the Convention, in particular Article 4(3) on State obligations to consult with persons with disabilities and their representative organisations, Article 5 on non-discrimination, Article 12 on equal recognition before the law and Article 19 on living independently and being included in the community.

Yet several institutional barriers continue to impede the rights of persons with disabilities to political participation: restrictions on legal capacity; voting tests based on dis/ability, perceived cognitive in/capacity; inaccessible environments, information and procedures including inaccessible polling stations, lack of accessible information and material on campaigns, lack of accessible information and education on voting and standing for election, the absence of the provision of accommodations and allocation of resources for assistance and support in voting and fulfilling elected mandates, among others.

While there continue to be widespread barriers and challenges to upholding non-discrimination and the right of persons with disabilities to political participation, an enormous amount of learning and innovation is emerging on the subject across different countries and regions.

This inaugural edition of the Human Rights Publication Series presents good examples of reform consisting of discriminatory laws and the clear recognition of the right to participation in political life. The publication provides first-hand information on campaigns being led by organisations of persons with disabilities (DPOs), shares their experiences of challenging discriminatory laws and practices before the courts and other mechanisms, and elaborates on the role of



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various actors in upholding this right including governments, DPOs, NGOs, NHRIs, UN human rights mechanisms. It also proposes an action plan engaging all stakeholders for timely advocacy and monitoring of the implementation of the right to vote and to be elected.

This first edition presents an interview with the **UN High Commissioner for Human Rights** in which she addresses how the OHCHR can promote the right to political participation of persons with disabilities in the carrying out of its mandate. In another exclusive interview, the **Tunisian Organisation for the Promotion of the Rights of Persons with Disabilities** recounts the very tense moments following the Arab Spring when the first democratic steps were being taken in Tunisia and how persons with disabilities seized these opportunities to reclaim their right to political participation.

CRPD Committee members, including both current and former members, have also made contributions to the inaugural issue: Theresia Degener analyses the legal and de facto denial of the right to vote and to be elected; Gábor Gombos evokes the CRPD Committee's jurisprudence on political participation and the impact of the Human Rights Committee's General Comment no 25; Maria Soledad Cisternas describes the advocacy process carried out in Chile to promote legislative reform for the recognition of the right to be assisted in voting; and Diane Mulligan shares the measures being taken in the UK to ensure that persons with disabilities have access to elected office on an equal basis with others.

Thomas Hammarberg, former Council of Europe Commissioner for Human Rights, also contributed a paper highlighting the new era of political participation of persons with disabilities, inherent to which is the enjoyment and exercise of their right to legal capacity.

With respect to international developments, an update is provided on the current steps being taken by the UN Human Rights Committee to explore the right to political participation of persons with disabilities within its mandate of monitoring implementation of the International Covenant on Civil and Political Rights.

**IDA members** - Inclusion International, the World Blind Union and the European Disability Forum - and DPOs from Asia, the Middle East and North African region and Europe - Chosen Power (People First Hong Kong), Inclusion Japan, the Lebanese Association for Self Advocacy, Akim Israel, the Tunisian Organisation for the Promotion of the Rights of Persons with Disabilities, the Association for Social Affirmation of People with Psychosocial Disabilities (SHINE) in Croatia and Lebenshilfe in Germany – share their experiences of how legal, environmental, informational and attitudinal barriers impede the rights of persons with disabilities to political participation and present good practices and proposals of advocacy including awareness raising, monitoring and litigation to combat disability-based discrimination in this respect.

In addition, two National Human Rights Institutions (NHRIs), from Germany and New Zealand, the Office of the Disability Ombudsperson in Croatia, the Philippines' Commission for Elections, and several national, regional and global NGOs provide examples of campaigns and good practices on their from across the world on active lobbying for legal reform, carrying out of pilot projects and legal advocacy to ensure implementation of Article 29 on the ground.

IDA wishes to thank the High Commissioner for Human Rights and the OHCHR, former and current CRPD Committee members, Thomas Hammarberg, national, regional and global DPOs and NGOs, NHRIs, the Open Society Foundations, and others for their valuable contributions to this first ever edition of the IDA Human Rights Publication Series.

Finally, IDA invites readers to send in their comments and suggestions on this edition of the Publication Series via email to , and to share and exchange on practices with respect to the right to political participation of persons with disabilities on the IDA CRPD Forum Listserv.

I wish you very fruitful reading,

**Yannis Vardakastanis**  
IDA Chair

**Issue 1**
**A new era for the political participation of persons with disabilities  
 Interview with the High Commissioner for Human Rights, Navanethem Pillay**


© UN Photo/Pierre Viot

**“States should promote truly universal suffrage, including for people with disabilities.”**

Navanethem Pillay - Navy Pillay, as affectionately known - became the UN High Commissioner for Human Rights on July 2008 and had her mandate renewed for two years, beginning on September 2012.

Ms Pillay, a South African national, was the first woman to start a law practice in her home province of Natal in 1967. In 1995, after the end of apartheid, Ms Pillay was appointed a judge on the South African High Court, and in the same year was chosen to be a judge on the International Criminal Tribunal for Rwanda, where she served a total of eight years, the last four (1999-2003) as President. In 2003, she was appointed as a judge on the International Criminal Court in the Hague, where she remained until August 2008. As UN High Commissioner, she has continually worked to promote the rights of persons with disabilities in a mainstreamed way in her Office. More information about the High Commissioner can be found in the OHCHR webpage.

Ms Pillay kindly accepted to be interviewed by IDA for this first ever publication of the Human Rights Series to elaborate on the study carried out by her office on participation in political and public life by persons with disabilities, A/HRC/19/36. The study analyses relevant provisions of the Convention on the Rights of Persons with Disabilities (CRPD), and highlights good practices for the participation of persons with disabilities in elections and in the conduct of public affairs. Further, the study identifies the main challenges that continue to prevent or limit the equal and effective participation of persons with disabilities in the political and public life of their countries.

**Question 1: From your point of view, how is it possible to promote the paradigm shift embodied by the CRPD regarding Article 29?**

The shift set out in the CRPD is from a charitable or purely medical approach to disability to one which is firmly rooted in human rights. The person with a disability must be regarded as a holder of fundamental human rights, not as a secondary citizen merely in need of protection. The CRPD also acknowledges that disability is an evolving concept – it is about the

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interaction between people and their environments, and about the extent to which the environment accommodates, or fails to accommodate, different needs.

To promote this paradigm shift, it is necessary to focus on eliminating the legal, attitudinal and environmental barriers that such individuals face in their everyday lives that prevent or limit their participation in society on an equal basis with others. States and other actors must work to raise awareness, within State institutions and among the general public, of the rights of people with disabilities in general, and their right to participate in the political and public life of their countries in particular.

### No restriction is allowed

*Question 2: What measures should be taken by States Parties to be in line with the standards and obligations accepted by them under Article 29 of the CRPD?*

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, denying the right to political participation for all people under a protective measure, such as partial or full guardianship. In other countries, an individual assessment is carried out by a medical practitioner or by a judge on the capacity of a person with intellectual or psychosocial disabilities to vote.

States should promote truly universal suffrage, including for people with disabilities. They should modify or repeal existing laws, regulations, customs and practices that link political rights to legal capacity.

Under Article 29, States parties must extend formal voting rights to people with disabilities, but they must also go further than that. The State has a duty to guarantee, through the adoption of positive measures, that all eligible persons have the actual opportunity to exercise their voting rights, for example by making polling stations accessible to wheelchair users, facilitating the use of assistive voting devices to enable people with visual impairments to vote independently, or allowing people with disabilities to be assisted in voting by a person of their choice. 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.

When a person with a disability is elected to a public position, such as Member of Parliament, she or he should be provided with all required support, including personal assistants and additional public funds to cover for disability-related costs.



Sign Language interpreter interpreting during the launch of the Report on the Rights of Persons with Disabilities in Timor-Leste © 2011 OHCHR



A young woman simulating casting her vote in the lead up to elections in HK © 2012 Chosen Power

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## Addressing attitudinal barriers in society

*Question 3: What are the roles and responsibilities of National Human Rights Institutions, the courts, Parliamentarians and other independent authorities in addressing the attitudinal barriers that still exist in society which have led to the enacting of legislation in many countries which prevents certain categories of people with disabilities, in particular people with intellectual and psychosocial disabilities, from their right to vote or to be elected, as well as other rights?*

States have the primary responsibility to implement the CRPD at the national level, but other actors also have a role to play in addressing barriers, particularly attitudinal barriers, that prevent full enjoyment of human rights by people with disabilities.

Parliament has the responsibility to adopt or review relevant legislation to bring it in compliance with the CRPD. Legislation should include measures to raise awareness throughout society, including at the family level, to foster respect for the rights of persons with disabilities, to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, and to promote awareness of the capability and contributions of persons with disabilities. National legislation should also promote appropriate training for those working in the administration of justice, such as judges, magistrates, police, court staff and prison staff.

National Human Rights Institutions can, for example, undertake research related to disability rights in general and political rights of persons with disabilities in particular and include information on these subjects in its annual activities and reports, and in reports to UN bodies.

National courts can also play an important role in the implementation and monitoring of the CRPD and in the interpretation of Article 29 at the national level. Not only does a court case provide a remedy for the complainant, but it can provide the trigger for law reform as well as clarity on the law. Cases that come before national judges provide an opportunity to clarify how to apply the global standards in the national context. Where a case is particularly important or complicated, the National Human Rights Institution could refer it to a national court to ensure the fullest consideration of the issue as well as a legally enforceable solution. In addition, a case supporting disability rights can help raise public awareness of the rights of persons with disabilities and the Convention.

## (In)appropriate alternative ways of voting

*Question 4: What measures should be taken by States Parties to guarantee that persons with disabilities vote in polling stations like everyone else?*



Voting with assistance in the Tunisian elections of 23 October 2011 © 2011 A. Vincens de Tapol for Handicap International & GIZ

States can take several measures to guarantee that people with disabilities vote in polling stations like everyone else. The first step is to eliminate physical and communication barriers. Polling stations must be made accessible and information on elections, voter registration, voting procedures and the ballots themselves must be available in accessible formats. This would include the use of sign language, Braille, and easy-to-read or audio versions of relevant material. As mentioned above, people with disabilities can be allowed to be assisted in voting by a person of their choice.

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States can also provide regular relevant training for all officials responsible for operating and supervising polling stations. Such officials can then render the necessary support to people with different impairments.

Alternative ways of voting, such as by post or at special polling stations, should only be used in cases where it is not possible or extremely difficult for people with disabilities to be able to vote in other polling stations.

One of the best ways to guarantee that the right measures will be taken is to involve people with disabilities in their design. States can include people with disabilities as members of election committees to facilitate this.

*Question 5: What role do you envisage for the UN in supporting that persons with disabilities vote in polling stations like everyone else? What can the OHCHR do in particular to offer support to States in designing CRPD compliant legislation and putting in place CRPD compliant practices? For example, is it possible for the OHCHR to provide training and advice, support projects in cooperation with organisations of persons with disabilities (DPOs) to raise awareness, compile good practices on the implementation of Article 29, etc.?*

OHCHR actively promotes the ratification and effective implementation of the CRPD, including Article 29 on participation in political and public life, and supports States in fulfilling their obligations under the Convention. We do indeed provide legal advice on revising legislation and policies in line with the CRPD. We are about to finalise a Legislation Handbook on the CRPD, which we hope will provide guidance to legislators in identifying areas to be reviewed to assess compliance with the Convention. It also identifies good practices to help guide law reform efforts.

The OHCHR also provides training on the CRPD and its Optional Protocol for a broad variety of stakeholders. Further, the OHCHR has developed a training package on the CRPD and its Optional Protocol. The training package seeks to provide basic information on a rights-based approach to disability, on the fundamental elements of the Convention and its Optional Protocol, and on the processes and issues underlying their ratification, implementation and monitoring.

Currently, my colleagues are collecting good practices from different parts of the world on how persons with disabilities have overcome barriers in exercising their political rights. Organisations of persons with disabilities are important partners in bringing such good practices to our knowledge.

## Revision of the Human Rights Committee's General Comment n° 25

*Question 6: Recognising that the Human Rights Committee is a body of independent experts, what steps can be taken by the OHCHR, persons with disabilities and their representative organisations, to encourage the Committee to respond to your appeal to review General Comment no 25?*



A mother votes in the June 2011 election in the former Yugoslav Republic of Macedonia. ©2011 OHCHR

In my report, I stated that in the light of developments in the area of human rights of persons with disabilities, 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. This review should reflect the progressive evolution of international human rights law in this field and the new human rights standards enshrined in the CRPD.

As a Committee of independent experts, it is for the Committee itself to define whether, how and when to revise the General Comment, but certainly encouragement and engagement from civil society on this issue would be welcomed.

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## The Arab Spring and the rise of Tunisians with disabilities Interview with Imed Ouertani

On 14 January 2011, Tunisians came together to claim their rights in the first uprising of the Arab Spring. Persons with disabilities also joined in this movement. The following is an interview with Imed Ouertani, the President of the Tunisian Organisation for the Promotion of the Rights of Persons with Disabilities, an organisation of persons with disabilities born in the wake of the Arab Spring.

### *Question 1: What was the impact of the Arab Spring on persons with disabilities in Tunisia?*

Before the revolution, political participation in general, and in particular by persons with disabilities, was very limited. Those who dared to speak about the system risked reprisals which could go as far as being sentenced to prison.

Before the revolution, organisations of persons with disabilities mostly fell into the category of organisations for persons with disabilities. The participation of persons with disabilities at the management level and self representation by disabled persons themselves in these "DPOs" was very rare.

After the revolution, there was a collective movement towards independence. We experienced a true awakening - a consciousness that, from now on, each individual could speak with their own voice. This led to the creation of the Tunisian Organisation for the Promotion of the Rights Persons with Disabilities (Organisation Tunisienne de Défense des Droits des Personnes Handicapées- OTDDPH), bringing together young Tunisians with disabilities and parents of children with disabilities representing different disability constituencies. OTDDPH is the first self-representative organisation of persons with disabilities in Tunisia which has a cross disability focus and which exercises a human rights based approach.

Both before and after the creation of OTDDPH, we benefitted from a series of trainings on the UN Convention on the Rights of Persons with Disabilities (CRPD) conducted by Handicap International and the International Disability Alliance (IDA), which contributed to the building of our advocacy platform and skills, and helped us to seize the day to ensure that the Arab Spring would equally bear fruit for persons with disabilities in Tunisia.

### *Question 2: What was first up on the agenda following the revolution?*

In April 2011, the Independent Higher Authority of the Election (Instance Supérieure Indépendante pour les Elections - ISIE) was created. Its principal mission was to monitor the elections of the National Constituent Assembly and to ensure that the elections were democratic, pluralist, fair and transparent.

On 10 May 2011, the ISIE announced Decree-law no 2011-35 relative to the election of the National Constituent Assembly,1 of which Article 61 provided for the right of persons who know how to read and write, or with "visible damage", to vote and to be accompanied by someone to vote.



Imed Ouertani © 2011 A. Vincens de Tapol for Handicap International & GIZ

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With the support of the Moroccan Collective for the Promotion of the Rights of Persons with Disabilities, OTDDPH elaborated a memorandum whose objective was to further draw the ISIE's attention to the right of persons with disabilities to vote. The memorandum proposed concrete recommendations, for example, amendment of the text of the Decree-law of May 2011 to ensure physical access to the designated polling stations and polling booths and the provision of sign language interpretation during televised broadcasts concerning the electoral campaign. Moreover, we also requested a meeting with the ISIE.

This request was approved and over several meetings with the ISIE, we presented and discussed provisions of the CRPD and the Committee's recommendations to Tunisia. As a result, the ISIE accepted OTDDPH's recommendations and adopted the ordinance of 4 October 2011 establishing measures to facilitate the exercise of the right to vote of voters with disabilities (Arrêté fixant les mesures facilitant à l'électeur handicapé l'exercice de son droit de vote). In addition, in August 2011, the ISIE amended the Decree – law 2011-35 of 10 May 2011 by Decree- law 2011- 72, which required the ISIE to “take all necessary measures in order to permit disabled voters to exercise their right to vote in favourable conditions”.

**Question 3: With the introduction of these legal instruments, were all the elements in place to guarantee the right to vote for all Tunisians with disabilities?**



A polling booth for wheelchair users  
 © 2011 A. Vincens de Tapol for  
 Handicap International & GIZ

The adoption of the ordinance of 4 October 2011 and Decree law no 2011-72 were positive steps in enhancing the accessibility of elections to facilitate the act of voting for persons with disabilities. The ordinance establishing measures to facilitate the exercise of the right to vote of voters with disabilities provides details of the measures which need to be taken to ensure accessibility. For example, it sets out the obligation to provide sign language interpretation for TV programmes concerning the electoral campaign, the use of logos to facilitate voting by persons with low vision, and the availability of polling booths adapted to wheelchair users. Yet the ordinance poses a challenge to the implementation of the CRPD when it comes to the right to vote: Article 5 of the ordinance provides for the following voters with disabilities to be able to be accompanied to vote by someone of their choice: blind persons, persons who cannot write on account of their disability, and persons with “light mental disability”. The ordinance's distinction of degrees of disability clashes with the spirit and letter of the CRPD. Reference to persons with “light mental disability” in this provision implies that persons with more severe disabilities will be denied accompaniment and assistance, which in practice would lead to their exclusion from the right to vote altogether.

Following the adoption of the ordinance of 4 October 2011, we have been lobbying against the distinction of “degrees” of disability, and maintaining that universal suffrage means the right to vote for everyone regardless of disability- actual or perceived-, its type or degree. This discriminatory provision provoked debate between OTDDPH and members of the ISIE. We raised the CRPD Committee's recommendation for the urgent adoption of legislative measures to ensure that persons with disabilities, including persons under guardianship (of whom the overwhelming majority are persons deemed incapable, or persons with intellectual disabilities), are entitled to exercise their right to vote and participate in public life on an equal basis with others- which means they should have the support they may need to do so.

Besides this problematic position, numerous other barriers remain concerning the effective participation of persons with disabilities such as insufficient accessible information including on the steps of how to vote, on campaigns and party platforms; the lack of training for staff at polling stations; and the inaccessibility of voting for persons living in institutions, among others. These barriers are further explored in OTDDPH's report entitled *La Tunisie Nouvelle ne se fera pas sans nous* (the New Tunisia will not be made without us) published by Handicap International in March 2012.

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**Question 4: After decades of autocratic rule, Tunisia prepared for its first free elections in fifty years. How did OTDDPH encourage persons with disabilities to participate?**



Awareness raising workshop organised by the OTDDPH © 2011 A. Vincens de Tapol for Handicap International & GIZ

Following the adoption of the ordinance establishing measures to facilitate the exercise of the right to vote of persons with disabilities, the OTDDPH organised and conducted several awareness raising workshops held across eight different regions of Tunisia in which a strong number of young persons and women with disabilities participated. The objective of the workshops was to encourage and mobilise persons with disabilities to participate in the democratic elections, for most of whom this would be their first experience to participate in democratic elections ever.

Beyond the workshops, OTDDPH had enrolled several of its members to act as official election observers, which permitted us to carry out direct

observation of the elections in more than 100 voting stations across the country with a view to evaluating respect of accessibility standards as well as measuring participation by persons with disabilities in the elections.

OTDDPH also carried out mainstreaming of CRPD standards and the Committee's recommendations by collaborating with mainstream NGOs such as the Tunisian Association for the Integrity of Elections and the NGO "I Watch", which is responsible for election observation. Thanks to these mainstreaming efforts, for the first time the questionnaires for election observers included questions and information on how to ensure the participation of voters with disabilities in the election process.

On 23 October 2011, the date of the elections, OTDDPH observed strong participation by persons with disabilities, not only in the capital of Tunis but also in the North and South regions of Tunisia. While we also observed that there had been some persons with disabilities standing for election, it was still at a very weak level of participation.

**Question 5: The elections led to the convening of the National Constituent Assembly tasked to draft the new Constitution of Tunisia. What was the role of DPOs in this process?**

Our principal priority was to have our rights included and enshrined in the new Constitution to ensure the highest level of legal protection. To reach this goal, we initiated an advocacy campaign before the National Constituent Assembly for the inclusion of a provision on the rights of persons with disabilities in the new Tunisian Constitution. Among other actions, we participated in and presented at committee hearings, speaking to the presidents and members, convened informal meetings with Constituent assembly members, appeared in TV spots, met with locals, as well as participated in the Universal Periodic Review of Tunisia before the Human Rights Council to raise our advocacy objectives at an international forum.

With the assistance of Professor Kais Saïd, expert in Constitutional law, OTDDPH also drafted a provision on the rights of persons with disabilities which was proposed to the Constituent Assembly for inclusion in the draft Constitution. This proposition figured in the first draft of the Constitution at Article 30 and read as follows (unofficial translation): "The State protects persons with disabilities from all forms of discrimination.

Each citizen with disability has the right to benefit, according to the nature of their disability, from all measures to guarantee their full inclusion in society. The State must take all the necessary measures to ensure the equality of persons with disabilities with other citizens."



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However, this provision has been narrowed in the second draft of the Constitution which was made public on 14 December 2012. The provision of the second draft, now figuring at Article 39, no longer uses the language of “guarantee” but dilutes it to “permit”, i.e. measures to permit the full inclusion of persons with disabilities in society. In addition, the obligation of the State to take the necessary measures to ensure the equality of persons with disabilities with other citizens is missing altogether in this second draft.

Today OTDDPH’s objectives are focused on ensuring the fullest guarantees and rights for persons with disabilities in the Constitution. Currently, we do not know what is the projected timeframe for the adoption of the Constitution, hence we continue advocating at every opportunity to raise awareness of our rights and to ensure that the Constitution enshrines our rights- the rights of all persons with disabilities in Tunisia.



Young member of the OTDDPH casting his vote © 2011 A. Vincens de Tapol for Handicap International & GIZ

**Question 6: How has OTDDPH made use of the CRPD Committee’s Concluding Observations on Tunisia in its advocacy efforts?**

In April 2011, Tunisia was the first country to be reviewed by the Committee on the Rights of Persons with Disabilities. In the Committee’s Concluding Observations on 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).

OTDDPH has been using the CRPD and the Committee’s recommendations as the basis for our advocacy work, in particular with respect to our actions to promote the political participation of persons with disabilities. We believe in the strength of our human rights based approach which brings us greater legitimacy, however, we are learning that very few decision makers are aware of the CRPD and the paradigm shift which it represents, as embodied in particular in Article 12 of the Convention, and Tunisia’s legally binding obligations to implement the Committee’s recommendations. Nor has the government fulfilled its obligation to widely disseminate the Committee’s Concluding Observations and has neither taken steps to provide guidance to its Ministries and decision makers on those recommendations to ensure respect for the rights of persons with disabilities throughout Tunisia.

**Question 7: What message would you like to pass to DPOs across the world based on what you have learned from your experiences? How can we better advocate for the promotion of the right of persons with disabilities to political participation?**

Do not leave any empty spaces in your advocacy; stay close to the people you represent and from whom you have your mandate. The right to political participation must be recognised as a gateway to accessing all other rights and to guaranteeing our full and equal participation in society. OTDDPH still has a lot to learn and a lot to share. We would be happy to exchange with the readers, so please do not hesitate to contact us!

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### Testimony of an election observer

*During the elections of 23 October 2011, in which I acted as an election observer in Mnihla, I witnessed an act of direct discrimination against a blind man. Although the man was visibly blind, the polling station staff refused that he be permitted to vote accompanied by his assistant on the grounds that he did not have a disability card. This refusal was brought to the attention of the polling station director who exercised discretion to permit him to vote accompanied by an assistant. The director upheld this refusal and the blind voter was obliged to enter the polling booth on his own and mark his vote unknowingly on the ballot paper since Braille ballot papers had not been provided.*

*Despite the fact that the ordinance establishing measures to facilitate the exercise of the right to vote of voters with disabilities obliges the director of the polling station to enable the right to vote and puts forward several open-ended options to do so, no solutions were proposed in this case. This refusal violated the individual's right to vote and demonstrated the urgent need for more efforts to render elections accessible, and for more awareness raising and training for polling station staff to accommodate the needs and uphold the rights of persons with disabilities to vote on an equal basis with others.*

<sup>1</sup> The original version of the decree-law is no longer available online. The [amended version](#) is accessible in French.

**Issue 1****Implications of the paradigm shift on the right of persons with disabilities to vote and stand for election***by Gábor Gombos***CRPD and the paradigm shift**

The UN Convention on the Rights of Persons with Disabilities (CRPD) can be summarised through three main ideas, namely:

- 1. Persons with disabilities cannot be discriminated against in the enjoyment and exercise of any of their rights on the basis of disability;*
- 2. The State has an obligation to provide the necessary supports and accommodations that a person with disabilities may require in order to enjoy their rights on an equal basis with others; and*
- 3. The denial of reasonable accommodation amounts to disability based discrimination.*



Gábor Gombos © Soteria Foundation

**Non-discrimination at the heart of the CRPD**

The CRPD negotiation process placed the principle of non-discrimination at the very heart of the text; the non-discrimination approach is fundamental to the CRPD including with respect to the right to vote inscribed in Article 29.

In the CRPD Committee's dialogue with Spain in 2011, the Committee questioned whether the State could have a legitimate reason to deprive some persons with disabilities of their right to vote with the universal aim to maintain a modern democratic society, and whether this could be done in an objective manner. Spain could not provide an answer. In the same sense, the CRPD Committee, in its List of Issues, asked Tunisia to explain the nature of any restriction, based on disability, on the rights of persons with disabilities to vote or to be elected, on an equal basis with others, including deprivation or restriction of legal capacity.<sup>1</sup>

The CRPD Committee endeavoured, in cases where it was not clear, to demonstrate that depriving persons with disabilities of their right to vote is always arbitrary. The Committee showed that if there is no justification to curtail the fundamental right to vote and be elected, which is necessary and proportionate, then objectivity on its own could not be a sufficient justification.

For instance, in the List of Issues directed to Peru, the CRPD Committee asked the State to inform the manner in which a person with a disability may be deprived of his or her right to vote when placed under guardianship.<sup>2</sup> In the Committee's Concluding Observations, it called on Peru to restore voting rights of all persons with disabilities, including those subject to judicial interdiction and urged the State to guarantee the right to vote of persons with disabilities in institutions.<sup>3</sup>

In the same manner, the CRPD Committee asked China to provide information on the number of persons with disabilities deprived of their political rights and the grounds for such deprivation. Further, the Committee requested the State to provide disaggregated data on the number of persons with disabilities holding public office.<sup>4</sup>

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Considering the answers received, which confirmed discrimination against persons with disabilities with respect to the exercise of political rights, the CRPD Committee urged China to revise its national legislation in order to “ensure that all persons with disabilities have the right to vote on an equal basis with others” and to “*enhance the active participation of persons with disabilities in politics through affirmative action*”.<sup>5</sup>

In effect, the CRPD Committee considers, and aims to demonstrate to States, that there are no standards, no verified tools which judges (or other bodies) could use to determine someone’s voting competences, cognitive functioning or perceived capacity. There is no legitimate purpose for this deprivation and it amounts to an arbitrary deprivation of a fundamental right and clearly constitutes discrimination against persons with disabilities on the basis of disability.

### Legal capacity and the right to vote and be elected

Over the dialogues held so far with States, the CRPD Committee adopted a strong understanding that no person with disabilities can be deprived of their right to vote and right to political participation in conjunction with their disabilities.

However, it is not taken for granted that a number of countries understand the real meaning of the message. In many countries across the world, laws and courts act to restrict the legal capacity of persons with disabilities. Often through proceedings of interdiction or legal incapacitation, persons with disabilities are deemed unfit by doctors and the authorities to exercise their civil and political rights such as, among others, the right to marry, contract, own property, make health care decisions, access justice, decide where and with whom to live and, not least, the right to vote. Substituted decision-making regimes such as full or partial guardianship are entrenched in the medical model approach to disability and represent a host of violations of the letter and spirit of the CRPD.

With respect to Tunisia, in April 2011, the CRPD Committee recommended urgent legislative measures to ensure that persons deprived of legal capacity can exercise their right to vote and take part in political life on an equal basis with others.<sup>6</sup> In September 2012, the Committee echoed this recommendation to Argentina.<sup>7</sup>

Concerning Spain, the CRPD Committee emphasised that even an individualised judicial decision to deprive a person’s right to vote is in contradiction with Article 29 of CRPD.<sup>8</sup>

Following the same spirit, the CRPD Committee expressed concerns regarding Hungary whose laws permit a judge to remove the right to vote from those with “limited mental ability” following an individualised assessment of their voting capacity,<sup>9</sup> and that legislation allows for the right to vote of persons with intellectual or psychosocial disabilities to be restricted if the person concerned has been deprived of his or her legal capacity.

The CRPD Committee urged Hungary to review all relevant legislation in order to ensure that “all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote, and that they can participate in political and public life on an equal basis with others”.

Furthermore, the Committee made an elaborated recommendation regarding Article 12 which highlights the impactful nature of this provision on the exercise of all other rights, encompassing the right to vote:

*“The Committee recommends that the State party use effectively the current review process of its Civil Code and related laws to take immediate steps to derogate guardianship in order to move from substitute decision-making to supported decision-making, which respects the person’s autonomy, will and preferences and is in full conformity with article 12 of the Convention, including with respect to the individual’s right, on their own, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose their place of residence. The Committee further recommends the State party to provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges, and social workers on the recognition of the legal capacity of persons with disabilities and on mechanisms of supported decision-making.”<sup>10</sup> (emphasis added)*

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## Evolving standards

Human rights are inalienable, universal, interdependent and indivisible. As such, it is crucial to ensure coherence across the corps of human rights law - be they national, regional or international.

Following the entry into force of the CRPD as the pronouncement of the latest international standards on the right to political participation of persons with disabilities, many international and regional human rights bodies have aligned themselves with the CRPD and Article 29, stating that neither restriction nor exclusion is permitted regarding the right to political participation of persons with disabilities. For example, the Council of Europe's Committee of Ministers, Commissioner for Human Rights and Venice Commission have explicitly confirmed that persons with disabilities, regardless of their impairment, illness or health condition, have the right to vote and to stand for election on the same basis as other citizens, and that they should not be deprived of this right by any law restricting their legal capacity or by any judicial or other decision based on their disability, cognitive functioning or perceived capacity.

Moreover, the Inter-American Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities adopted in 2011 a resolution on the need to interpret the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities in the context of Article 12 of the CRPD.<sup>11</sup> In particular, the Inter-American Committee pronounced as obsolete the provision which stated that the declaration of a person as legally incompetent does not constitute discrimination and instructed reinterpretation in light of the CRPD, as well as dissemination and application of this resolution on a wide scale given that most Organisation of American States members are also bound by it. The Committee stipulated that it will not suffice to simply amend legislation, but that amendments will have to come with the judicial, administrative, educational, financial, and social measures needed to enforce the new paradigm inscribed in Article 12 by guaranteeing recognition of universal legal capacity, regardless of the type or extent of disability, phasing out declarations of incompetence and fostering mechanisms of decision-making with support.

Besides the CRPD Committee, several other treaty bodies also hold mandates over the right to political participation of persons with disabilities, in particular the Human Rights Committee. The Human Rights Committee in fact has a General Comment on the right to participate in public affairs, voting rights and the right of equal access to public service, General Comment no 25.<sup>12</sup> Given its publication in 1996, it comes as no surprise that the General Comment reflects an approach which is outdated and out of step with the CRPD.

General Comment no 25 states that any restriction of the right to vote should be based on objective and reasonable criteria, including age and citizenship. However, without any comment on reasonableness or objectivity, the General Comment specifies that "*established mental incapacity*" may be a ground for restriction.<sup>13</sup>

Further, paragraph 10 of the General Comment states that "*it is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements.*"

What can be the reasonable or objective justification that allows persons with physical disability to exercise universal suffrage, but not persons with "mental incapacity"? The conclusion is that there is no reasonable or objective justification for it. One cannot reasonably suggest that people with one category of disability should be entitled to a human right, whilst others should not.

It is expected that human rights norms evolve and new standards are articulated and concretised with the development of jurisprudence and the entry into force of new human rights treaties. Conversely, we can expect that certain human rights norms become obsolete and no longer represent the latest enunciation of rights standards. This is the case with paragraph 4 of the Human Rights Committee's General Comment no 25. Adopted in 1996, disability rights awareness and recognition had not yet reached its height.

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Today, however, with the paradigm shift introduced by the CRPD, there is no justification to continue to restrict the rights of persons with psychosocial disabilities or persons with intellectual disabilities from the right to vote on the basis of “mental incapacity”.

Nevertheless, the Human Rights Committee’s General Comment continues to be cited by some States as a pretext to not affording equal rights to person with disabilities in the context of political participation. Just last year, General Comment no 25 was cited by the Philippines as the basis to a reservation emitted in March 2012 in the context of the adoption of the *Human Rights Council resolution on the right to political participation of persons with disabilities*: the Filipino government delegation asserted that “insane” people must remain deprived of their political rights.

The Commission on Elections of the Philippines (COMELEC), in partnership with Filipino organisations of persons with disabilities (DPOs), has publicly expressed objection to this reservation as a measure of discrimination and as contrary to the obligations of the Philippines under the CRPD, representing a flagrant violation of Articles 4, 5, 12 and 29 of the CRPD. It is a missed opportunity that the Human Rights Committee did not address this issue in their recent review of the Philippines in October 2012 although it was raised in written and oral submissions to the Human Rights Committee made on behalf of the Filipino coalition of DPOs.

The Human Rights Committee has projected that it will examine more closely the right of persons with disabilities to political participation in the context of its country reviews. Most countries which will be reviewed during its 107th session in March 2013 have explicit questions on the right to political participation of persons with disabilities featured in the list of issues, namely Peru,<sup>14</sup> Paraguay<sup>15</sup> and Hong Kong,<sup>16</sup> whilst for Angola<sup>17</sup> and Belize,<sup>18</sup> the Committee has posed questions respectively on laws in place to ensure the enjoyment of legal capacity by persons with disabilities on an equal basis with others, and measures to improve the situation of persons with disabilities in all spheres of life. Moreover, the list of issues<sup>19</sup> and list of issues prior to reporting<sup>20</sup> adopted at the Human Rights Committee’s last session also seek information on voting practices for persons with disabilities. Interestingly, the bulk of the questions specifically directed on the right to vote are formulated in the same manner: as a query regarding the aim or purpose of the restrictions, exclusions or disqualifications from the right to vote, and soliciting an explanation of how they are compatible or consistent with the Covenant. Such questions are welcome and the Human Rights Committee is encouraged to continue enquiring about the civil and political rights of persons with disabilities to States coming under review.

## Towards a coherence of standards

There is valuable merit to be had in ensuring coherence of international human rights standards by regional and international human rights mechanisms. It reinforces the legitimacy of international human rights law and serves to better guide and direct States in the crucial task of practical implementation for the fulfilment of rights on the ground.

Some steps could be taken in order to encourage more opportunities for exchange within the UN treaty body system towards reinforcing coherence of mutual standards, in particular the right to political participation, for instance:

- 1. Regular meetings between the CRPD Committee and the Human Rights Committee and other treaty bodies to discuss substantive issues common to treaty body mandates;*
- 2. Increased attention by treaty bodies to the issue of political participation of persons with disabilities when examining state reports;*
- 3. Increased advocacy by DPOs and other civil society organisations before mainstream treaty bodies (and not solely concentrating efforts and participation before the CRPD Committee) to raise the rights of persons with disabilities to political participation, among other disability rights issues;*

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*4. Individual communications lodged by DPOs and civil society organisations alleging violations of the rights of persons with disabilities could be directed to treaty bodies other than the CRPD Committee (if admissibility criteria permit), for example to the Human Rights Committee on the right to political participation.*

<sup>1</sup> CRPD/C/TUN/Q/1, para 27

<sup>2</sup> CRPD/C/PER/Q/1, para 20

<sup>3</sup> CRPD/C/PER/CO/1, para 45

<sup>4</sup> CRPD/C/CHN/Q/1, para 26

<sup>5</sup> CRPD/C/CHN/CO/1, para 46

<sup>6</sup> CRPD/C/TUN/CO/1, para 35

<sup>7</sup> CRPD/C/ARG/CO/1, para 48

<sup>8</sup> CRPD/C/ESP/CO/1, para 48

<sup>9</sup> This concern extends to the judgment against Hungary by the European Court of Human Rights, *Alajos Kiss v Hungary* (Application no 38832/06, 20 May 2010), which is not fully CRPD compliant in which the Court concluded that individualised judicial decisions on the right to vote in this context are acceptable.

<sup>10</sup> CRPD Committee Concluding Observations on Hungary, CRPD/C/HUN/CO/1, 27 September 2012, para 26

<sup>11</sup> Resolution OEA/ Ser.L/XXIV.3.1, CEDDIS/RES.1(I-E/11), 4 May 2011; General Observation of the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities on the need to interpret Article I.2(b) in fine of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities in the context of Article 12 of the United Nations Convention on the Rights of Persons with Disabilities, OEA/ Ser.L/XXIV.3.1CEDDIS/doc.12(I-E/11) rev.1, 28 April 2011

<sup>12</sup> CCPR/C/21/Rev.1/Add.7

<sup>13</sup> Human Rights Committee General Comment no 25 (1996), para 4.

<sup>14</sup> CCPR/C/PER/Q/5, para 8

<sup>15</sup> CCPR/C/PRY/Q/3, para 6

<sup>16</sup> CCPR/C/CHN-HKG/Q/3, para 25

<sup>17</sup> CCPR/C/AGO/Q/1, para 4

<sup>18</sup> CCPR/C/BLZ/Q/1, para 6

<sup>19</sup> CCPR/C/ALB/Q/2, para 23. Lists of issues on Hong Kong and Belize were also adopted during this session.

<sup>20</sup> CCPR/C/AUS/Q/6, para 22

Gábor Gombos is a disability rights expert and former member of the CRPD Committee. He is Adjunct Professor at the NALSAR Law University of Hyderabad, India and Adjunct Professor of the National University of Ireland in Galway.

**Issue 1**
**The right to political participation: from exclusion to universality**
*by Theresia Degener*

The right to vote and be elected lies at the heart of democracy. Taking part in decision-making signifies true citizenship and equality. The history of the human right to vote and be elected reveals a development from exclusion and denial to the gradual recognition of universality and indivisibility.

To situate the right to vote and be elected in the context of disability means to consider whether persons with disabilities have equal access to elections and public affairs, whether they are heard and represented inside and outside of parliament and within governmental bodies, from the local to the international level.



Theresia Degener © 2010

It is necessary to ensure that all groups across the disability community are represented in the political process, especially those at highest risk of being the target of discrimination. It is equally important to consider factors beyond the related clusters of persons with disabilities (persons who are blind, deaf, or with physical or intellectual impairments), and to also encompass gender, age and other layers of identity. The Convention on the Rights of Persons with Disabilities (CRPD) specifically mentions women and children with disabilities in this respect (Articles 6 and 7). It is the only human rights treaty that has an explicit provision on multi-dimensional discrimination with regard to women.

## Challenging the incapacity approach to disability

The legal and de facto denial of the right to vote and be elected for disabled persons should be considered as one of the most serious human rights violations. Many countries have laws that deny persons declared legally incapacitated to exercise their right to vote and stand for elections. In reality, this group of persons is overwhelmingly constituted by persons with intellectual or psychosocial impairments. These laws are in violation of Article 29 of the CRPD, according to which all disabled persons, independent of their impairment, have an equal right to participate in the electoral process. Following the adoption of the CRPD, there is recognition of the need to revise the traditional understanding of voting capacity. In 2010, the European Union Agency for Fundamental Rights published a report which reveals that a number of EU members have lifted all restrictions on political participation for persons with psychosocial or intellectual impairments, allowing all disabled persons full and equal participation in the voting process.<sup>1</sup>

In 2011, the Council of Europe adopted a new recommendation which emphasises that all disabled persons have a right to vote and to political participation and they “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”.<sup>2</sup> This is a lucid commitment to a new understanding of disability and legal capacity in light of Article 29 of the CRPD. Thus, the Council of Europe acknowledges that the CRPD is a manifestation of a shift in paradigm in disability law.

The thematic study of the Office of the High Commissioner for Human Rights (OHCHR) on participation in political and public life by persons with disabilities<sup>3</sup> is a clear proof of this. The OHCHR report stresses that “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”.<sup>4</sup>



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De facto denial of the right to political participation of disabled persons takes many forms: inaccessible voting places, inaccessible voting procedures, inaccessible political information and communications, and the underrepresentation of disabled persons are only some examples.

De facto denial of the right to political participation also takes place when disabled persons are institutionalised. Human rights reports on the situation of institutionalised disabled people reveal that they are stripped of all their human rights. Political participation of institutionalised disabled persons is often non-existent regardless of whether they are under legal guardianship or not.

## The approach of the UN treaty bodies

### The CRPD Committee

The CRPD Committee, in its Concluding Observations on the initial reports of Tunisia recommended the State to urgent adopt "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".<sup>5</sup> In its Concluding Observations on Spain, the Committee demonstrated great concern by the fact 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. It is further concerned that the deprivation of this right appears to be the rule and not the exception."

The Committee recommended to the State party 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 went on to specify that measures which allow "the denial of the right to vote based on individualized decisions taken by a judge" must be amended, and called on Spain to provide reasonable accommodation, recommending that "all persons with disabilities who are elected to a public position are provided with all required support, including personal assistants".<sup>6</sup>

With respect to Peru, the Committee urged the State to: "Restore voting rights to all people with disabilities who are excluded from the national voter registry, including people with disabilities subject to judicial interdiction".<sup>7</sup> In addition, in its latest review with respect to Argentina, the Committee called for the review of the electoral code, in particular relating to the exercise of legal capacity and the right to vote on an equal basis with others, and access to vote for institutionalised disabled persons.<sup>8</sup>

It can be concluded by the CRPD Committee recommendations that State parties should review their voting laws and ensure inclusion of all persons with disabilities, regardless of their impairments, legal capacity status and institutional placement, as well as abolish the de facto denial of the right to political participation by making the political process accessible and providing reasonable accommodation to persons with disabilities.

**Issue 1****Other treaty bodies**

The tri-fold state party obligation to respect, protect and ensure the right to political participation of persons with disabilities and non-discrimination also falls under the mandate of sister UN treaty bodies and has been considered by them.

For instance, the **Committee on the Elimination of Discrimination against Women** (CEDAW Committee) has extensive jurisprudence recommending State Parties to adopt targeted measures, including temporary special measures with clear time frames, in accordance with article 4, paragraph 1, of the Convention on the Elimination of all forms of Discrimination against Women and with the CEDAW Committee's General Recommendation no 23, to ensure the equal participation and representation of women in public and political life, with a particular focus on women with disabilities.<sup>9</sup>

For example, the CEDAW Committee issued Concluding Observations on the right to political participation of women with disabilities, recommending to Italy to "Apply temporary special measures in various forms in areas where women are underrepresented, such as legislative, executive, administrative and political bodies, or disadvantaged, in particular with the aim to further improve the situation of rural, migrant, older, Roma and Sinti women, and women with disabilities, and allocate additional resources where needed to accelerate their advancement."<sup>10</sup>

The **Human Rights Committee** has made advances towards giving more attention to persons with disabilities in the scope of their mandate. For example, it recommended to Argentina to "take measures with a view to protecting the rights of these persons [users of mental health services] under the Covenant and to aligning its legislation and practice with international standards on the rights of persons with disabilities."<sup>11</sup>

In the same spirit, the Human Rights Committee urged Belgium to "intensify its efforts to combat discrimination, further the integration of persons with disabilities into political, social and economic affairs and adopt measures to facilitate such persons' access to the labour market."<sup>12</sup>

The Human Rights Committee also demonstrated its concerns with respect to Bulgaria on the deprivation of persons with disabilities of their legal capacity, preventing them from exercising their rights, and recommended that the State party should "Review its policy of depriving persons with mental disabilities of their legal capacity..."<sup>13</sup>

Specifically on the right to vote of persons with disabilities, while the Human Rights Committee has a General Comment on Article 25 on participation in public affairs and the right to vote, dating from 1996 and which is not fully CRPD compliant, the Human Rights Committee is beginning to examine the issue more closely upon repeated calls from civil society and a formal request sent by the Chair of the CRPD Committee. The Human Rights Committee included a question each in the List of issues on Peru,<sup>14</sup> Hong Kong and Paraguay requesting the State party to: "Kindly also describe the restrictions which the State party has placed on the right to vote of persons with disabilities, the purpose of those restrictions and explain how they are compatible with the Covenant."<sup>15</sup> These states will be reviewed at the Human Rights Committee's session in March 2013.

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### Way forward

The UN treaty bodies' jurisprudence mentioned above demonstrates how those bodies are playing a crucial role to mainstream the rights of persons with disabilities, placing them at the centre of decision-making processes.

However, in order to achieve abolition of the de facto denial of enjoyment of many human rights on an equal basis with others, including the right to vote and to be elected, it is necessary for the treaty bodies to continue to examine these questions under their respective mandates and to take a more proactive role in protecting and promoting the rights of persons with disabilities in line with the CRPD, and specifically on the right to vote and be elected as inscribed in Article 29 and the CRPD Committee's jurisprudence.

<sup>1</sup> EU FRA: The right to political participation of persons with mental health problems and persons with intellectual disabilities, October 2010

<sup>2</sup> Committee of Ministers of the Council of Europe (2011): Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, 16 November 2011

<sup>3</sup> The OHCHR study is available in the UN languages at [www.ohchr.org/EN/Issues/Disability/Pages/ThematicStudies.aspx](http://www.ohchr.org/EN/Issues/Disability/Pages/ThematicStudies.aspx)

<sup>4</sup> A/HRC/19/36, 2011, para 68

<sup>5</sup> CRPD/C/TUN/CO/1, 2011, para 35

<sup>6</sup> CRPD/C/ESP/1, 2011, paras 47 and 48

<sup>7</sup> CRPD/C/PER/CO/1, 2012, para 45(a)

<sup>8</sup> CRPD/C/ARG/CO/1, 2012, para 48. This was reiterated in recommendations to Hungary, CRPD/C/HUN/CO/1, 2012, para 46

<sup>9</sup> CEDAW Concluding Observations on Austria, CEDAW/C/AUT/CO/7-8, 2013, para 39; Cyprus, CEDAW/C/CYP/CO/6-7, 2013, para 14(c); Hungary, CEDAW/C/HUN/CO/7-8, 2013, para 17(a); Chile, CEDAW/C/CHL/CO/5-6, para 15; Togo, CEDAW/C/TGO/CO/6-7-, 2012, para 39; Samoa, CEDAW/C/WSM/CO/4-5, 2012, para 36; Belarus, CEDAW/C/BLR/CO/7, 2011, para 42(b); Costa Rica, CEDAW/C/CRI/CO/5-6, 2011, para 25; Australia, CEDAW/C/AUL/CO/7, 2010, para 35; Czech Republic, CEDAW/C/CZE/CO/5, 2010, para 43; and General Recommendation no 23, 1997

<sup>10</sup> CEDAW/C/ITA/CO/6, 2011, 21(c)

<sup>11</sup> CCPR/C/ARG/CO/4, 2010, para 24

<sup>12</sup> CCPR/C/BEL/CO/5, 2010, para 11

CEDAW/C/ITA/CO/6, 2011, 21(c)

<sup>13</sup> CCPR/C/BGR/CO/3, 2011, para 17(a)

<sup>14</sup> CCPR/C/PER/Q/5, 2012, para 8

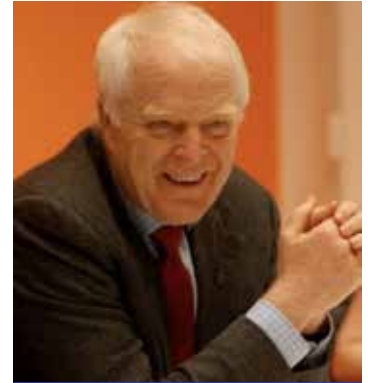
<sup>15</sup> CCPR/C/PRY/Q/3, 2012, para 6

Theresa Degener is Professor of Law and Disability Studies at the Protestant University of Applied Studies in Bochum, Germany and is a member of the CRPD Committee since January 2011.

**Issue 1****A new era for the political participation of persons with disabilities***by Thomas Hammarberg*

Persons with disabilities, like many other marginalised groups, have historically been the object of exclusion from political participation. Unfortunately, ingrained prejudices are slow to change. When it comes to persons with disabilities, the fundamental principle of universal suffrage is still not fully applied in many countries today.

With the entry into force of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), it is enshrined in international law that it is not acceptable to deprive persons with disabilities of their fundamental right to vote regardless of the nature or degree of their disability. Article 29 of the CRPD spells out that States Parties should ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others.



Thomas Hammarberg © 2011  
Terri Potoczna/MDAC

**The right to effectively and fully participate**

The first element raised by Article 29 of the CRPD is the right of persons with disabilities to participate in political life like everyone else, by voting and standing for elections. All persons, including all persons with disabilities, have the same right to actively contribute to and be engaged in wider society, and should have the same opportunities to enjoy this right.

This is both a matter of equal individual rights and of a broader societal interest. As spelled out in the Council of Europe Disability Action Plan,<sup>1</sup> our societies need to reflect the diversity of their citizens and benefit from their varied experience and knowledge. It is crucial to ensure that there is full equality in participation in elections and representation of all members of society in decision-making bodies for the reflection of the diversity of views and needs in national, regional and local legislation and policy development.<sup>2</sup>

Furthermore, this participation should be full and effective, rejecting all forms of barriers and requiring openness by persons who have no disabilities to the participation of persons with disabilities. It calls on public and private actors and institutions to guarantee equal opportunities to all human beings to make productive contributions to the community.

**Universal suffrage**

Universal suffrage is a fundamental principle and people with disabilities may not be discriminated against in this respect. The very purpose of the CRPD Convention is to promote, protect and ensure the full and equal enjoyment of the full range of human rights by all persons with disabilities on an equal basis with others, without distinction. It leaves no room for procedures in which judges or medical practitioners would assess the voting competence of a person; as we do not test that capability for someone without disabilities, this would amount to blatant discrimination.

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A paramount example of CRPD application in this regard is the recommendation of the Committee of Ministers of the Council of Europe which affirms that persons with disabilities have the right to vote on the same basis as other citizens "whether they have physical, sensory, or intellectual impairments, mental health problems or chronic illnesses". Furthermore, it asserts that persons with disabilities 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."<sup>3</sup>

### Legal capacity and the right to vote

At the heart of the paradigm shift which the CRPD introduced, lies the right to legal capacity, i.e. the right to make one's own decision and exercise one's rights. Today, however, persons with intellectual and psychosocial disabilities continue to face barriers in this regard. Very often, their legal capacity is restricted or removed completely, meaning they are no longer entitled to make decisions about their own lives.

Persons with disabilities should be placed at the centre of decision-making processes, being regarded as subjects of their own lives, entitled to the full range of human rights on an equal basis with everyone else.

The aim of the CRPD is to promote the full inclusion and participation of all persons with disabilities in society, including persons with intellectual and psychosocial disabilities. When society deprives individuals of their rights to freely make their own choices and to represent themselves, it contradicts Convention standards. The CRPD places an obligation on governments to ensure that such assistance is provided if needed, including in exercising the right to vote. There is a huge difference between this approach and just depriving someone of their rights. This is the paradigm shift that the CRPD represents: it builds on the idea that we should go further than to just help persons with disabilities to adjust to existing conditions – our societies should seek to adapt to and accommodate everyone, including those with special needs, and including with respect to their right to vote.

The European Court of Human Rights ruled on such a case in 2010, *Kiss v Hungary*<sup>4</sup> in which a man with psychosocial disabilities was denied the right to vote following the partial loss of his legal capacity. The Court interpreted that the indiscriminate removal of voting rights based on a mental disability on account of partial guardianship was not compatible with the principle of universal suffrage enshrined in Article 3 of Protocol no 1 of the European Convention on Human Rights.

Despite this positive aspect of the judgment, the European Court missed the opportunity to go further to declare that any restriction or removal of legal capacity is no longer acceptable and not in accordance with the CRPD which today has been ratified by the absolute majority of EU Member States<sup>5</sup> and by 37 out of the 47 member states of the Council of Europe.<sup>6</sup> The CRPD Committee has made it increasingly clear that any judicial or administrative decision which removes rights on the basis of disability should be eliminated as a matter of priority from national legislation and practices as demonstrated by its Concluding Observations on Spain:

*"The Committee recommends 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. The Committee requests the State party to amend article 3 of Organic Act 5/1985, which allows the denial of the right to vote based on individualized decisions taken by a judge. The amendment should ensure that all persons with disabilities have the right to vote. Furthermore, it is recommended that all persons with disabilities who are elected to a public position are provided with all required support, including personal assistants."*

**Issue 1****Recommendations**

The international human rights community has an important role to play to guide States to realise the full extent of their obligations under the CRPD. The old approach should be replaced by the United Nations Convention standards around the globe. Some concrete steps which can be taken by States and the international human rights community are as follows:

- (i) States should review and reform discriminatory legislation depriving persons with disabilities of their legal capacity.
- (ii) The general principle of non-discrimination should form the basis of government policies geared to ensuring equal rights and opportunities for persons with disabilities through the removal of restrictions on legal capacity, the abolition of voting tests, the introduction of relevant legal provisions, specific forms of assistance, awareness raising and funding.
- (iii) States must make their services more accessible to persons with disabilities to exercise their right to vote and be elected, providing, when necessary, reasonable accommodation to persons with disabilities, including the provision of information in plain language, Braille and sign language and the acceptance of a support person to assist or communicate the will of the individual concerned, if needed.
- (iv) Universal and regional human rights mechanisms should base their decisions and practices on CRPD standards.
- (v) Persons with disabilities and/or their representative organisations should be involved in the whole policy cycle: design, planning, implementation, monitoring and evaluation of policies that affect participation and inclusion of persons with disabilities within the community.

<sup>1</sup> Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving quality of life of people with disabilities in Europe 2006-2015, Recommendation Rec(2006)5, adopted by the Committee of Ministers on 5 April 2006

<sup>2</sup> See Council of Europe Committee of Ministers Recommendation (2011)14

<sup>3</sup> Committee of Ministers of the Council of Europe (2011): Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, 16 November 2011

<sup>4</sup> Case of Alajos Kiss v Hungary, Strasbourg, Application no 38832/06, 20 May 2010

<sup>5</sup> As of March 2013, 24 out of 27 EU member states are States parties to the CRPD, and all 27 are signatories. In addition, the EU formally acceded to the CRPD in December 2010, making it the first legally binding international human rights instrument to which it is a party.

<sup>6</sup> The following Council of Europe member states have yet to ratify or accede to the CRPD: Andorra, Finland, Georgia, Iceland, Ireland, Liechtenstein, Monaco, Netherlands, Norway and Switzerland (current as of March 2013).

Thomas Hammarberg was Commissioner for Human Rights of the Council of Europe from 2006 to 2012.

**Issue 1****The right of persons with disabilities to political participation before the UN Human Rights Committee: current developments***by Victoria Lee*

Just over one year ago, on 21 March 2012, during the Human Rights Committee's 104th session, a thematic side event was hosted by the International Disability Alliance (IDA) in which the right to political participation of persons with disabilities was raised. The panel of experts included the then Chair of IDA, Diane Richler, former member of the Committee on the Rights of Persons with Disabilities (CRPD Committee), Gábor Gombos, self-advocate from Peru, Maria Alejandra Villanueva, Shantha Rau Barriga of Human Rights Watch and Oliver Lewis of the Mental Disability Advocacy Centre, while former Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, delivered a video message destined to members of the Human Rights Committee. Panellists and Committee members participated in a rich discussion both on issues of substance on the right to vote of persons with disabilities, as well as strategies and approaches which could be taken for greater exchange between the Human Rights Committee and the CRPD Committee in an effort to mutually reinforce their standards, in addition to increased engagement by DPOs and NGOs to bring these issues before the Human Rights Committee through the process of State reviews and individual communications. A detailed summary of the discussions of the side event is available on IDA's website.

One of the principal issues addressed at the side event was General Comment no 25 of the Human Rights Committee on participation in public affairs and the right to vote under Article 25 of the International Covenant on Civil and Political Rights (ICCPR). This General Comment, adopted in 1996, is in conflict with Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD) as it poses that the exclusion of "persons with mental incapacity" established in the law is a "reasonable and objective" exception to the right to vote and to hold office.

Since the side event, the Human Rights Committee has made steps to raise the issue of General Comment no 25 at both the 105th and 106th sessions in the context of its methods of work. It was debated whether the General Comment should and could be revised or replaced, and whether the evolving jurisprudence of the Human Rights Committee through the adoption of Concluding Observations in the context of State reviews would suffice as a means of updating its standards. At the close of its 106th sessions, the Human Rights Committee committed itself to further explore the issue of the right to vote of persons with disabilities at its 107th session in March 2013 and its April retreat to be held in the Hague. With respect to the 107th session, for the first time, almost each country scheduled for review had one question on its list of issues addressing the rights of persons with disabilities- three out of six which specifically targeted the electoral rights of persons with disabilities.

Now in the third and final week of the 107th session, and all dialogues with States concluded, we can say that the Human Rights Committee actively fulfilled its promise. Questions on the right to political participation by persons with disabilities were raised by a number of different Committee members during all but one review.

## Paraguay

Paraguay was the first State party to be reviewed. Its list of issues asked the State to respond to the following requests:

*Please describe the decisions and action taken to safeguard the rights of persons with disabilities and ensure their full participation and inclusion in society. Kindly also describe the restrictions which the State party has placed on the right to vote of persons with disabilities, the purpose of those restrictions and explain how they are compatible with the Covenant. (CCPR/C/PRY/Q/3, para 6)*

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During the dialogue, the Committee pursued this issue by raising the following: the inaccessibility of most electoral colleges as well as state buildings and schools for persons with disabilities; the Electoral Code authorises persons who are blind to be accompanied into the polling booth to vote but does not permit other persons with disabilities to be accompanied in the act of voting; the need to ensure accessibility of elections and to extend to all persons with disabilities the possibility to vote accompanied by a person they trust of their choosing; and the need to remove provisions of the electoral code which exclude persons with disabilities from the right to vote such as persons who are “deaf and mute.”

In response, the Paraguayan government delegation stated that they have developed a pilot project on accessible elections to promote political participation by persons with disabilities which will be implemented in Asunción for the general elections in April and thereafter throughout the country. Beyond recognising the need to harmonise national legislation with the CRPD, the delegation did not directly address the issue of exclusions in the Electoral Code from the right to vote of persons who are “deaf and mute”, nor of “persons declared not rehabilitated or under interdiction” (Articles 91 & 149, Electoral Code).

## Hong Kong

With respect to the Hong Kong Special Administrative Region (HKSAR), the Committee had included the following question in its list of issues:

***According to the information before the Committee, sections 31, 39 and 51 of the Legislative Council Ordinance and sections 30, 14(2), 19(2)(3) and 24(3) of the District Councils Ordinance exclude people with intellectual or psychosocial disability from voting or standing for election. Please explain the reasons for these exclusions and how they are compatible with article 25 of the Covenant. (CCPR/C/CHN- HKG/Q/3, para 25)***

The written replies of HKSAR confirm that persons who have been found under the Mental Health Ordinance to be “incapable by reason of mental incapacity, of managing and administering his or her property and affairs” are disqualified from voting and standing for election. It is explained that the disqualification from voting is aimed at protecting the fairness of elections by warding off the risk of electoral fraud by voters being subject to undue influence or manipulation. In addition, the disqualification from holding office is aimed at ensuring that the Legislative and District Councils are served by “persons who are capable of managing and administering their own property and affairs”.

During the dialogue, the Committee followed up on this by asking for further explanations on how it could be appropriate that the basis for exclusions from these rights is borrowed from another administrative regime, the Mental Health Ordinance, and how being found incapable of managing property and affairs relates to voting. The HKSAR delegation did not provide a targeted response and simply repeated the substance of its written replies; that a person is not disqualified merely because they may have an intellectual or psychosocial disability, but that the exclusion applies only for persons found by a court as incapable by reason of mental incapacity under the Mental Health Ordinance. The HKSAR delegation concluded that the exclusions are reasonable and proportionate to the pursuit of the legitimate aim of protecting the fairness of elections, and that these are fully consistent with Article 25 of the ICCPR.

## Angola

The list of issues on Angola posed the following question:

***Please provide information on the laws and policies in place to ensure that persons with disabilities enjoy legal capacity on an equal basis with others. (CCPR/C/AGO/Q/1, para 4)***



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Human Rights Committee's dialogue with the Angolan government delegation © 2013 CCPR Centre

Although this did not address the right to political participation specifically, during the review, the Committee recognised that restrictions to legal capacity hinder the enjoyment and exercise of all rights, including the right to vote and stand for election. Accordingly, the Committee asked the delegation about Article 154 of the Constitution and Article 12 of the Electoral law which exclude from elections persons who are legally incapacitated and those detained in medical establishments based on their mental disability, submitting that these provisions constitute discrimination as considered by NGOs and the Human Rights Committee. More generally, the Committee enquired about the means put in place to implement the CRPD and eliminate discrimination, encompassing multiple forms of discrimination of persons

with disabilities, including women and children, as well as the role of data collection in promoting equality.

The Angolan delegation did not adequately address the Committee's questions and stipulated that acts practiced by people who are not "mentally equipped" to carry out certain acts must be clinically tested and approved through the courts.

## Belize

The Committee included a general question on persons with disabilities in its list of issues on Belize:

*Please provide information on the measures being taken to improve the situation of persons with disabilities in all spheres of life. (CCPR/C/BLZ/Q/1, para 6)*

The dialogue which ensued in Geneva was a departure from the conventional dialogues the Committee holds with States parties; first, it could hardly be characterised as a dialogue given that no delegation from Belize was able to attend due to financial reasons, and second, no State report had been submitted.<sup>1</sup> The only document which the Committee had before it as a basis for its "dialogue" was the written replies of Belize to its list of issues.

During this session, the general question above on persons with disabilities was expanded upon by the Committee; it asked about Belize's Representation of the People Act which disqualifies from registration to vote persons "certified to be insane or otherwise adjudged to be of unsound mind" or "a patient in any establishment maintained wholly or mainly for reception and treatment of persons suffering from mental illness of mental defectiveness by virtue of or under any law in force in Belize" (Article 7). There are also provisions in the Constitution which

stipulate the same disqualifications which were not raised during this "dialogue". The Committee asked in particular why being found to suffer from any variety of mental illness under any law in force in Belize is the appropriate standard for deciding if someone should be entitled to exercise the right to vote under Article 25 of the ICCPR. Naturally, no answers were provided to these questions.



The Human Rights Committee reviewed Belize in the absence of a State report and in the absence of a delegation © 2013 CCPR Centre

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### Macao

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The review of Macao by the Committee did not address the issue of exclusions from the right to vote by persons with disabilities because there is no such legal provision in Macao. In fact, the Chief Executive Election Law provides for voter assistance for persons with disabilities in Macao.

It should be noted that most of the countries up for review during this session of the Human Rights Committee, and many other countries, also have voter assistance provisions in their laws alongside the laws which exclude categories of persons with disabilities from the right to vote. The laws of Angola, Belize, Paraguay and Peru all possess voter assistance provisions, whilst Hong Kong does not.

### Peru

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The list of issues adopted on Peru had the following question:

*Please describe the restrictions placed by the State party on the civil and political rights of persons with disabilities, particularly on the right to vote and the right to marry. Please state the aim of those restrictions and outline how they are compatible with the Covenant. (CCPR/C/PER/Q/5, para 8)*

The Committee asked for more elaboration on the restrictions in place on the right of persons with disabilities to vote and marry with respect to the Civil Code. In addition, it asked: given the compulsory requirement of voting in Peru, what are the consequences for persons with disabilities who are not able to vote? And what steps have been taken to establish a working group on this issue as envisaged by the State? Finally, what is the situation of persons with disabilities in institutions who are not registered and who are denied the right to a name?

In response, the Peruvian delegation referred to the General Act on Persons with Disabilities, Law No. 29973 of 2012, stating that this law repealed several restrictions on the rights of persons with disabilities put forward in the Civil Code, in particular for “deaf mutes” and “blind mutes” to carry out legal acts without restrictions.

The inconsistencies in the laws were not addressed: the fact that the Civil Code and Constitution continue to permit the legal incapacitation of persons with disabilities which deprives them of the right to marry, to vote, to stand for election etc. Besides reference to the creation of a multi-sectoral Commission, the Peruvian delegation did not comment on what concrete steps are being taken to restore the 23,430 persons with intellectual or psychosocial disabilities who were excluded from the voter registry by the National Registry for Identification and Civil Status (RENIEC), and who, as a consequence, are denied the right to vote and perform other administrative acts.

**Issue 1****Concluding Observations**

The Human Rights Committee will meet in closed meetings this week to adopt its recommendations on each of the States under review, which will be made public at the close of its 107th session.

The Committee's Concluding Observations have very strong potential to put pressure on governments to carry out necessary reform for compliance with the ICCPR, which are all the more reinforced by the Committee's focused work on follow up. The recommendations also act to leverage the advocacy of civil society groups in the countries concerned as well as beyond their borders given that the Concluding Observations form part of the Committee's jurisprudence and may elaborate on interpretation of the ICCPR's provisions.

The disability movements in those countries, around the world, and at the global level await the outcome of these reviews for greater insight into their rights, including non-discrimination, the enjoyment and exercise of their legal capacity and right to political participation, as enshrined in the Covenant and viewed by the Human Rights Committee.

The Human Rights Committee has a significant role to play in promoting the participation in public and political life of persons with disabilities along with all marginalised groups in society, in conjunction with the CRPD Committee, other sister treaty bodies and UN mechanisms. The Human Rights Committee is encouraged to continue posing questions on the right to vote of persons with disabilities and to continue to seize and explore its mandate with respect to the full range of civil and political rights of all persons with disabilities, including women, children, older persons, persons with disabilities living in rural areas, persons with disabilities belonging to ethnic minorities, indigenous persons with disabilities, institutionalised persons with disabilities, prisoners with disabilities, asylum seekers, refugees and migrants with disabilities, LGBTI persons with disabilities, persons with intellectual disabilities, persons with psychosocial disabilities, persons who are blind, deaf and deafblind, among other diverse intersections - for whom full inclusion in society on an equal basis with others begins and ends with the recognition of their right to political participation.

<sup>1</sup> The Human Rights Committee, and all other treaty bodies except the Committee on Migrant Workers, have established procedures of last resort to proceed with the consideration of a States Party's implementation of the respective treaty in the absence of a State report. Generally, the procedure is invoked where reports are long overdue. For more information on this practice, see Report on the working methods of the human rights treaty bodies relating to the State party reporting process, HRI/ICM/2011/4, 23 May 2011, paras 90-92.

Victoria Lee is the Human Rights Officer on UN treaty bodies of the [International Disability Alliance](#).

**Issue 1****The Right to Vote: Beyond the Ballot Box***by Inclusion International***Inclusion**  
international

Despite the recognition of the right to vote in the UN Convention on the Rights of Persons with Disabilities (CRPD), the fight to secure the right to vote continues in many countries. People with intellectual disabilities are too often denied their right to vote.

For some, it is because they live in countries which retain laws or provisions that limit the right to vote on the basis of disability and perceived incapacity; for others it is because they are excluded from political participation due to a lack of accommodation, lack of information provided in plain language, and a lack of awareness on the part of elections officials and volunteers who question an individual's right to vote.

Inclusion International and its members have decades of experience in working to secure the right to vote and, more generally, the right to political participation for people with intellectual disabilities. Throughout the 1990s, Inclusion International, its regional body Inclusion Inter-Americana, and its national members in the Americas focused extensively on building a social movement and shaping public policy, a natural extension of which was centred on citizen participation and engaging in democratic processes. More recently, in Hungary, our member joined with other disability organizations to protest a new law that limits the political participation of persons with disabilities where the individual has been placed under guardianship.

The right to vote is critical for citizens to have a voice in their government and a say in how their country, state or community functions. It is a necessary condition for a healthy democracy. The right to vote is not simply about casting a ballot on election day; its implications and impact reach far beyond the ballot box and cannot be confined to election day. In a 2005 article, Inclusion International leaders, Diane Richler and Roberto Leal Ocampo, affirmed "Including these citizens [people with intellectual disabilities] only on Election Day is an insufficient test of democracy." (R. Leal and D. Richler. Elections: An Opportunity for Inclusion).

Inclusion International's research and efforts in the Americas demonstrated that engaging people with intellectual disabilities in the electoral process built democracies that were more inclusive and reflective of the needs of persons with disabilities. In advance of the 2001 elections in Nicaragua, with support from the International Foundation for Electoral Systems (IFES), more than 200 observers were trained to monitor the elections. The monitors devised a methodology to monitor more than simple participation on election day. They monitored participation of persons with disabilities throughout the electoral process: before (to review and influence party platforms); during (to cast a vote); and, after (to participate in the formulation of public policy and monitor public institutions through social audits and other mechanisms).

In Panama, efforts to promote citizen participation and engagement in advance of the election, including public awareness forums and pre-election forums with Presidential candidates, led to commitments by those candidates to policies that would enhance the full participation of persons with disabilities and their families in all aspects of their communities and to the creation of a National Secretariat for the Social Integration of People with Disabilities (SENADIS).

Voting is an important element of political participation. However, only by supporting people who have an intellectual disability and their families to engage in the electoral process before, during and after elections can they be assured of enjoying "political rights on an equal basis with others" as guaranteed by Article 29 of the CRPD.

**Issue 1****The challenges of voting and standing for election for blind and partially sighted persons***by the World Blind Union*

The right to full citizenship of persons with disabilities in general and blind/partially sighted persons in particular, is one of the major concerns of the World Blind Union. Full citizenship rights includes, inter alia, the right to vote and be elected, to form political parties, affiliate to any existing political party, contest for elections, conduct campaigns for political parties during elections, and participate in the decision making processes of all statutory or conventional decision making bodies.

Full citizenship rights include civil and political rights which should be immediately realised, as opposed to the progressive realisation of economic, social and cultural rights which normally have resource implications for their fulfilment.

Accessibility, inclusion and universal design are pre-requisites which enable persons with disabilities, including blind/partially sighted persons, to enjoy full citizenship rights on an equal basis with others. These pre-requisites do demand resources and unfortunately in some developing countries it is not a priority area for resource investment. Discriminatory attitudes of the state result in the deprivation of full citizenship rights for blind/partially sighted persons.

For example, in India, a blind person in the state of Rajasthan who wanted to participate in the election for Gram Panchayat (Village council) was not given a nomination form by the electoral officer on the basis that he was blind. Another blind person from the Ganjam district of the Indian state of Odisha submitted his nomination for election to Gram Panchayat with a thumb impression as a signature but the nomination form was declared invalid. A blind woman in Sri Lanka was denied the right to cast her vote with the help of an assistant of her choice, and her right was exercised by polling station personnel on her behalf. A partially sighted woman in the Indian state of Jharkhand felt humiliated when polling station personnel peeped through a window while she was casting her vote.

**Challenges and barriers to the right to vote for blind and partially sighted persons:**

1. When blind/partially sighted persons cast their vote, the right to privacy and secrecy of the ballot may not always be strictly respected as polling station staff are often observers in the process;
2. Model ballot paper is not provided in Braille for blind persons and large print for partially sighted.
3. In many developing countries, electronic voting machines are not used, or the machines used do not have Braille markings or auditory instructions.
4. Often blind and partially sighted persons do not have the option of being assisted by a person of their own choice;
5. Inadequate lighting in the polling booth puts a burden on persons who are partially sighted to cast their vote;

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6. In some cases, blind and partially sighted persons have been humiliated by polling station staff with derogatory words and insulting behaviour;
7. Blind and partially sighted women may be discouraged by their families to go and vote because assistance is often only provided by male staff of polling stations;
8. Often the family members, particularly male family members, will cast the vote of blind/partially sighted women without their presence at the polling station ;
9. Entire election campaigns including election manifestos of political parties, written material and other resources are not accessible to blind and partially sighted persons which hinders their access to information on candidates and political parties in order to make informed choices.

**Challenges and barriers to the right to be elected:**

1. Old and outdated statutory provisions at the state, provincial, city, municipal, and local levels banning blind and partially sighted persons from participating in elections on the basis of their disability;
2. Electoral officers may refuse to register the nomination of persons who are blind or partially sighted;
3. In the nomination process, nomination forms may not be available in accessible formats. Signing the nomination form may be a barrier as not all blind persons can sign their signature and a thumb impression is not always accepted, which could lead to the nomination being rejected on the premise that the person is not literate.

**People with vision disabilities denied the right to secret vote in Malta**

*The following is an extract from an interview published in the Times of Malta on 21 January 2013, redistributed by Global Accessibility News.*

*People with vision disabilities are being denied a human right to a secret vote, according to Gordon Cardona, who is calling for changes to the law that forces blind people to disclose their political affiliation to "perfect strangers".*

*Mr Cardona, who is blind, said being forced to vote in front of the Electoral Commission turns his vote into an "open secret".*

*"Members forming part of every electoral commission in each locality are bound by law to keep my vote confidential but, nevertheless, they are perfect strangers. "By being denied the right to a secret vote, I'm also being denied one of my fundamental civil liberties and human rights."*

*The matter persists despite the ratification of the United Nations Convention Rights for People with Disabilities in October last year. The introduction of these rights still requires full adoption.*

*Article 29 of this convention deals with the right of persons with disabilities to take part in political and public life. States must ensure that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use and that the right of people with disabilities to vote by secret ballot in elections must be protected.*

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In order to combat these discriminatory attitudes against persons who are blind or partially sighted and to ensure accessibility and accommodations for the right to vote and to be elected on an equal basis with others, the following suggestions are proposed:

- 1. Abolish all the laws, statutes or policies which do not comply with the Convention on the Rights of Persons with Disabilities (CRPD) with respect to the right to vote and to be elected;**
- 2. Make available accessible election campaign material in Braille and large print, including for ballot papers, information leaflets, election manifestos, etc.**
- 3. Make available auditory instructions or Braille marking on electronic voting machines;**
- 4. Allow blind and partially sighted voters to choose their own assistant to support them in casting their vote, and making available support persons at polling stations for those who are not accompanied by their own support person, in the case of inaccessible environment;**
- 5. Ensure adequate lighting in polling booths;**
- 6. Provide accessible nomination forms and ensure the acceptance of thumb impressions in the place of a signature; make available assistance to complete the nomination form;**
- 7. Ensure the complete accessibility of the proceedings of elected or decision making bodies should be completely accessible to blind/partially sighted elected members including making available material in Braille and large print, personal assistance and other measures;**
- 8. Conduct awareness raising campaigns on full citizenship rights for blind and partially sighted persons and the importance of their active participation in the election and decision-making process through private and public sector media;**
- 9. Conduct awareness-raising and training for electoral officers, polling station staff, members and workers of political parties in order to provide appropriate support and guidance during the nomination and voting process, in particular for blind and partially sighted women;**
- 10. Encourage political parties to render their materials accessible including election manifestos, and to have regard to issues concerning persons with disabilities in their campaigns.**

## Issue 1

### Truly participatory, inclusive democracies require the abolition of restrictions on voting rights for people with disabilities

by Aryeh Neier

In September 2011, during the Conference of States Parties of the UN Convention on the Rights of Persons with Disabilities (CRPD), I had the honor of co-hosting an evening reception at Human Rights Watch themed around the right to political participation of people with disabilities. During this reception, a young Peruvian woman with Down Syndrome, Maria Alejandra Villanueva, recounted her personal story of being excluded from voting based on her disability.

Maria Alejandra's story was compelling. When she was a girl, Maria Alejandra watched with interest as her family members talked about their preferred candidates and went to the polls to cast their ballots. During elections, she painted her fingertip with black pen, saying that she had also voted. At 18, Maria Alejandra began to exercise her civic duty, and voted in every election, always selecting her preferred candidate.



Aryeh Neier © Pamela Chen/OSF

This all changed in 2010, when Maria Alejandra went to renew her national identity document. During the interview, government employees addressed all questions to her mother, ignoring Maria Alejandra. She recounted how she felt invisible and discriminated against. When the employee asked Maria Alejandra's mother to sign for her, she protested, explaining that Maria Alejandra had voted in prior elections. "Now she won't vote," the official responded. Maria Alejandra and her mother objected, and they were sent to a complaints booth where they were told that there was an order that only people with physical disabilities could vote. In addition, they counseled her mother to place Maria Alejandra under guardianship.

With the support of the Peruvian Human Rights Ombudsman's Office, Maria Alejandra filed a complaint with the National Identification Registry charging that the order violated Peru's Constitution and the CRPD, which Peru ratified in 2008. Just before the registration period for the 2011 presidential elections closed, the Ombudsman's office called Maria Alejandra to inform her that she had nine days to reinscribe in the voting rolls.

While Maria Alejandra triumphed in her struggle to regain the right to vote, her initial efforts did little to address the exclusion of more than 23,000 other Peruvians with disabilities whose names had been removed from the voter registration rolls.

Hearing of Maria Alejandra's story, the Open Society Foundations' Disability Rights Initiative invited Maria Alejandra to speak during the plenary session on the right to political participation of persons with disabilities at the CRPD Conference of States Parties. Maria Alejandra's powerful first-person account - on a panel of States' representatives and CRPD Committee members - helped raise governments' awareness of the unlawful policies, based on prejudice and discrimination, which are obstacles to people with disabilities' right to political participation.

Following her return to Peru, the Peruvian Down Syndrome Society launched a media campaign highlighting Maria Alejandra's testimony at the United Nations. Consequently, she was invited to a meeting with the president of the National Identification Registry, who, citing certain provisions of the CRPD, issued an Executive Resolution that all persons with disabilities not under guardianship would be reinstated in the electoral registry.



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We note that, while this was a victory for Maria Alejandra, this is only a partial victory for persons with disabilities in Peru. In its Executive Resolution, the National Identification Registry failed to cite Article 29 of the CRPD, which provides unequivocally that all persons with disabilities have the right to political participation. This right, linked with Article 12 on the right to equal recognition before the law, and the CRPD's general principles of non-discrimination and full and effective participation in society, require that the government remove the caveat that only those not under guardianship may vote. Regrettably, such restrictions on persons with disabilities' rights to vote and to equal recognition before the law - particularly persons with intellectual and persons with psychosocial (mental health) disabilities - is more the norm than the exception in countries around the globe.

The construction of inclusive, vibrant democracies depends upon the active engagement of all citizens in public life. Policies that limit the participation of people with disabilities in political processes are anathema to this goal. In our work to promote open and inclusive societies around the globe, we should be vigilant that our efforts safeguard the right to civic participation of all people in the political process, especially those who are particularly disadvantaged due to State-sanctioned discrimination and prejudice. In this way, we can contribute toward greater inclusion, increased participation, and stronger democracies.

*Further information is available on the Open Society Foundations website.*

Aryeh Neier is President Emeritus of the Open Society Foundations.

## Issue 1

### Opening doors

by the International Foundation for Electoral Systems



Virginia Atkinson © IFES

**“As persons with disabilities, participating in elections is important ... We can really make our own choices – to vote, to be elected and to be election officers. As a citizen, voting opens doors to other rights.”**

Yusdiana, Indonesia Disabled People’s Association

The International Foundation for Electoral Systems (IFES)<sup>1</sup> strives to remove barriers which prohibit full participation of persons with disabilities as voters and candidates in elections. IFES does this by providing support to election management bodies (EMBs) and civil society organizations to ensure an inclusive political process.

Before Election Day, for example, IFES assists EMBs by reviewing election laws and providing feedback on compliance with international standards, such as the UN Convention on the Rights of Persons with Disabilities (CRPD). The most common and overlooked barrier relates to restrictions on the legal capacity of voters with intellectual disabilities.

Once an election law is in place, EMBs begin preparing for elections, including providing access to the voter registration process. Nepal’s first-ever braille voter registration education materials were produced earlier 2012. In May 2012, in the Dominican Republic, voter education materials, such as posters, brochures, and videos with sign language interpretation, led to a high turn-out of the nation’s citizens with disabilities.

DPOs in Guatemala have also actively influenced political campaigns. They developed a platform and advocated for presidential candidates to promote inclusiveness in political parties and public policies.



Voters using braille in Nepal © IFES



Tactile ballot guide in Kosovo © IFES

On election day, persons with disabilities frequently encounter inaccessible polling stations and lack the ability to vote in secret. In Armenia, ramps were built at the most inaccessible polling stations and an information campaign sensitized the public to the rights of citizens with disabilities. In Kosovo, IFES assisted in designing tactile ballot guides so voters who are blind or who have low vision could vote independently and in secret.

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Unfortunately, election observers often do not assess the accessibility of elections. IFES has worked to include election access questions on mainstream observer checklists and developed a checklist focused solely on election access. In Cambodia, 100 observers, including 50 persons with disabilities, monitored the accessibility of the June 2012 elections. They will use their observation reports to advocate for increased accessibility in the next elections.

Whether in an election year or not, international cooperation can make the political process more accessible. The General Election Network for Disability Access (AGENDA), a coalition of DPOs, election observers and IFES, aims to improve access to political life for people with disabilities in Southeast Asia. The coalition held its first regional dialogue in February 2012. The event highlighted important regional processes underway that could better allow persons with disabilities to exercise their rights.

In addition to international cooperation, national-level education is critical. In order to strengthen students' understanding of civic responsibility and encourage their participation in public life, IFES partnered with six Georgian universities to develop a class on government, human rights, and civic participation. The students are recording courses onto audio files, which will be used to increase access to university-level civic education.<sup>2</sup>

After taking the course, one student commented, *"We don't see persons with disabilities. Before we hadn't thought about these people, now we see they deserve the same social rights, rights to education and the electoral process. We shouldn't have a society where people are separated."*



Armenian information campaign poster which reads: An equal society is a healthy society © IFES

Societies are strengthened when persons with disabilities are equal participants as citizens, voters and candidates, in the political process. With this in mind, EMBs and citizens need to work together and take an active role in ensuring the effective implementation of Article 29 of the CRPD which guarantees "... that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others."



Cover page of the course book developed with Georgian universities © 2012 IFES

### Issue 1

## Democracy Delivered: Universal Suffrage without Exceptions

by *Shantha Rau Barriga and Rebecca Schleifer*



Shantha Rau Barriga © 2011  
Human Rights Watch

Persons with disabilities are often treated as second-class citizens. Betty, for example, registered to vote in the 2009 election in Uganda, but a local government official told her not to go to the polling place, claiming that she would “spoil the election.” Why? Betty is blind.

Or take Maria, a woman with a psychosocial disability in Peru. Maria had voted in national and local elections. But when she went to cast her vote in 2010, she discovered that her name was no longer on the voter registry. The election officials told her, “Schizophrenics don’t have the right to vote.” When she went to the government office to ask to be put back on the electoral registry, Maria was told that her name had been excluded because of her disability. “They said, ‘Your type cannot vote.’” She told us, “I don’t exist as a citizen anymore.”



Rebecca Schleifer © 2011  
Human Rights Watch

Persons with disabilities are often stripped of one of the most fundamental components of democracy—the right to vote—under the guise that they can be manipulated or are incapable of making informed decisions. Not too long ago, people had similar concerns about the right to vote for women – or their ability to run for office. But now it seems absurd to argue in modern democracies that women cannot exercise their civil rights. The Convention on the Rights of Persons with Disabilities (CRPD) compels us to start with the premise that persons with disabilities have the same rights and equal recognition under the law as all others – instead of presuming that certain people lack capacity. It specifically guarantees the right to vote and run for office. The Convention also acknowledges that persons with disabilities may, in certain situations, need support in exercising their rights.

Many countries support the right to vote for persons with disabilities, at least as a matter of law. The United Kingdom, Ireland, New Zealand and Canada all do. Both the Netherlands and Italy have repealed laws restricting the voting rights of people under guardianship and now place no limitations on their political participation. South Africa’s Constitution guarantees the right to vote for every citizen. Sweden also has universal suffrage and eliminated the guardianship system to protect the right to vote, among other reasons.

These examples are encouraging, but it takes more than legal reform to ensure the right to political participation for persons with disabilities. Even more challenging, the CRPD requires us all to shift our thinking about persons with disabilities – to recognize them as equal citizens deserving dignity and autonomy to make their own decisions. Fortunately, we have a wealth of experience and knowledge to guide us - disabled peoples’ organizations (DPOs) and persons with disabilities, who were key actors in advocating for and drafting the treaty. This is not just good practice, but an obligation: the CRPD itself requires countries to involve DPOs and experts with disabilities in implementing and monitoring the treaty.

These steps can go a long way in addressing stigma and discrimination in the community, and making sure that people like Betty and Maria will not be turned away again at the polls.

Additional related information is available at:

“I Want to be a Citizen Just like Any Other”: Barriers to Political Participation for Persons with Disabilities in Peru, 2012

“As if We Weren’t Human”: Discrimination and Violence against Women with Disabilities in Northern Uganda, 2010

Shantha Rau Barriga is the Disability Rights researcher and advocate at Human Rights Watch. Rebecca Schleifer is the advocacy director for Health and Human Rights at Human Rights Watch.

### Issue 1

## Benin: From the law to the voting booth - the right to vote in action

by *Rebeca Alamo and Guilaine Thébault Diagne*

Visually impaired since the age of 9, today Boniface Gnonlonfoun votes in Benin assisted by a person of his choice. He acknowledges the progress made by the country in terms of the voting rights of disabled people, although much remains to be done.

Boniface is the Chairman of the Association for the Promotion and Social Integration of the Blind and Partially-Sighted persons of Benin (APISAAB). APISAAB is a member of the Network of Associations of Disabled Persons of the Atlantic Coast (Raphal), a Handicap International's partner in Benin. In 2007, he participated in DPO-led lobbying towards the Head of State, which culminated in the creation of a support fund for rehabilitation and integration of disabled people. According to Boniface, this initiative is telling of the commitment of political leaders to support the rights of persons with disabilities in Benin, although he admits that some sluggishness persists.



Rebeca Alamo and Guilaine Thébault Diagne © 2012 Handicap International

### Recent legislative progress

The Beninese Parliament ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) on 23 August 2011. However, disabled peoples' right to vote and to be elected had already been enshrined in national law in the Constitution of Benin of 11 December 1990. New provisions of the electoral law have subsequently contributed to the promotion of this right. Thus, in its article 33, the Advanced National Electoral Census (RENA) Act 2009-10 of 13 May 2009 relating to the Establishment of the Computerized Permanent Electoral Roll (FISA) stipulates the requirement of an electoral card. According to this law, a biometric electoral card shall display the voter's photo and left thumbprint. For voters who cannot provide their thumbprint due to disability, their electoral card shall now only display their photo. Article 68 of Act 2010-33 of 7 January 2011 stating general rules for elections in the Republic of Benin makes provisions for assistance to disabled people during voting.

While the effectiveness of these laws is sometimes problematic, Boniface believes that their adoption is a major achievement, exercised in the voting booth. He now has the opportunity to be accompanied in the voting booth by someone who will read out the instructions and put his voting stamp on the ballot paper according to his choice.

### The importance of awareness-raising



Boniface Gnonlonfoun © 2012 Handicap International

Boniface believes that more awareness is needed to facilitate the enforcement of Article 29 of the CRPD in the field. After the ratification of the Convention, too little advocacy was undertaken despite the obligation of the State to engage in awareness-raising, as per Article 8. While urban populations may have the habit of voting, this is unfortunately not the case for rural areas. For Boniface, the low participation rate is not specifically related to disability, but rather to illiteracy and thus it concerns everyone. Awareness-raising about the importance of voting must be open to all and should focus on specific messages aimed at disabled people.

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Political participation encourages inclusion into society and reduces the social marginalization of disabled people. Boniface also points out the need to educate communities and authorities on disabled people's eligibility for office. To date, Benin has only one disabled person among local elected officials.

*Rebeca Alamo is the Technical Advisor of Handicap International's Civil Society Support Unit and Guilaine Thébault Diagne is the DECISIPH Communications Officer of the West Africa Region.*

## Issue 1

### Mali: The man who wasn't looking for politics

by *Rebeca Alamo and Guilaine Thébault Diagne*

Amadou Diarra never thought about getting involved in politics. Rather it was politics that came to him in Mali. Amadou acquired a physical impairment after contracting polio at a young age. He was always more engaged with civil society, particularly with the Malian disability movement, than party politics. By 1992, he got involved with the Malian Association for the Promotion of Physically Disabled Persons (AMPPH), where he held various management positions.

In 1996, he founded the Malian Association of Paralyzed Persons (APM) with one of his colleagues, to address the lack of organizations in his neighborhood in District V of the city of Bamako. While continuing as chair of the APM, he joined the board of the Malian Federation of Associations of People with Disabilities (FEMAPH), of which the APM is a part. Through these two organizations, Amadou acts as Handicap International's partner, involved in organizing conferences on disability rights in Mali, among other activities.



Amadou Diarra © 2011 Handicap International



### Wooed by political parties

Amadou Diarra's political career is a not typical one. It was the political parties in Mali that approached him because of his interesting profile. He talks about how he was approached by the Party for Solidarity and Progress (PSP) that was searching for a disabled person to run as a candidate in the 2007 parliamentary elections. Created in 1946, the party is one of the oldest in Mali. Amadou reports that, due to a weakened position, the leaders reached out to disabled people as well as to craftsmen, in order to get their support and enlarge the voter pool. Amadou was successfully appointed as candidate in District V of Bamako.

His candidacy was supported by strong local and national mobilization. Celebrities such as the visually impaired singers Amadou and Mariam supported his candidacy, as well as other artists and sports heroes. Though Amadou did not win enough votes to qualify for the runoff election, he had gained weight politically and the more successful candidates wooed him hoping for his endorsement.

**Issue 1****Exercising the right**

Asked about his campaign, Amadou rarely mentions disability rights. He sees himself foremost as an ordinary citizen and believes that if he were to be elected, he would be able to achieve a lot for the benefit of his entire community. He does not portray himself as the candidate of disabled people, but he is nevertheless aware that the status of Member of Parliament would offer more opportunities to DPOs.

Amadou says that while he did not experience any particular discrimination during his campaign, he had to work hard to convince people of the strength of his candidacy, and that several campaign events allowed him to convince the most skeptical voters.

On 7 April 2008, Mali ratified the UN Convention on the Rights of Persons with Disabilities. According to Amadou, Mali is a country where the right to be elected should be exercised even if disabled people sometimes face negative stereotypes, as people confuse voting capacity with one's physical and health condition, and the exercise of voting rights remains a major challenge. Amadou believes that the accessibility of voting sites and the training of election observers have yet to be improved.

*Rebeca Alamo is the Technical Advisor of Handicap International's Civil Society Support Unit and Guilaine Thébault Diagne is the DECISIPH Communications Officer of the West Africa Region..*



### Issue 1

## Niger: from the right to run for election to the right to vote

by *Rebeca Alamo and Guilaine Thébault Diagne*

Visually impaired since adolescence, Mahamadou Oumarou was a candidate in the 2009 parliamentary elections in Niger and intends to run again in the 2016 elections. While Mahamadou did not face any particular difficulties in exercising his right to be elected, he emphasizes the physical barriers a disabled person would face exercising his or her term in office.

A member of different disabled people's organizations (DPOs) and a political activist, Mahamadou is a Braille transcriber at the Soly Abdourahamane School for blind children in Niamey, and he is very involved in protecting the rights of disabled children in Niger. As national coordinator of the NGO, Mouna Yarra, whose mission is to sponsor disabled children through their education, he is a member of the Coalition of African NGOs for Children (CONAFE)

and in charge of the promotion and protection of the rights of children with disabilities. Mahamadou is also the Secretary for Education and Training of the Niger Federation of Disabled Persons (FNPH), Handicap International's partner, for which he is a national trainer in Niger.



Mahamadou Oumarou © 2012 Handicap International

## Accepting candidacy



A man casting his vote © 2011 Handicap International

Niger ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) on 26 June 2008. According to Mahamadou, this has improved the rights of disabled people in Niger, particularly with regard to their political participation. The State has been trying to further integrate disabled people and recognize the challenges they are facing. His own political experience to date has been very positive. Originally a member of the Union of Independents Nigeriens, and then member of the LUMANA party, he never felt particularly challenged as a result of his political commitment. Selected as a candidate by his party, he did not experience any discrimination during his candidacy, but rather aroused a certain curiosity. His campaign received extensive press coverage by the international media (BBC, RFI, etc.) and benefitted from the support of a number of civil society organizations.

However, if he were to be elected, for example in the 2016 elections, it is clear that as a disabled person, he will face more challenges than a non-disabled person. At both local and national levels, no provision has been made to enable access by persons with disabilities to state bodies or local authorities, on an equal basis with others.

**Issue 1****Act No birth certificate, no vote**

According to Mahamadou, it is more difficult to exercise the right to vote, than the right to run for election. Although visually impaired people do not face any specific challenges in accessing polling stations, he believes the major challenge is not physical. Like many people in Niger, disabled people are not likely to be issued a birth certificate. A national census is planned in November 2012 and DPOs will mobilize around this occasion and seize this opportunity to promote disabled people's right to a birth certificate, to vote, and to participate in public life. A major requirement for facilitating the right to vote, involves raising awareness. Mahamadou believes disabled people do not vote mainly because they have not been sensitized to the importance of exercising their right to vote. Thus, he emphasizes the need to raise awareness on this issue and makes reference to the CENI (Independent National Commission for Elections) initiative. On the occasion of the last local elections held in 2011, the CENI, together with a DPO leader and other disabled persons, it produced an awareness raising clip to encourage people with disabilities to vote.

*Rebeca Alamo is the Technical Advisor of Handicap International's Civil Society Support Unit and Guilaine Thébault Diagne is the DECISIPH Communications Officer of the West Africa Region.*

### Issue 1

## Sierra Leone: Getting involved in electoral processes - from local to national

by *Rebeca Alamo and Guilaine Thébault Diagne*

For Paul Osman Kabia, activism started at the grassroots level. Being physically disabled due to infantile paralysis, he started advocating for the rights of disabled people in his community from a very young age. Together with other youth, one of his first achievements was convincing community elders to grant a piece of land where a vocational center was set up to provide training to youth with disabilities in metal work, carpentry, tailoring, soap making, weaving, auto- mechanics, basic computer training and hardware maintenance.

Today Paul is the chairman of the United Polio Brothers and Sisters Association (UPBSA) which is a disabled person's organization (DPO) based in the Western Urban District in Freetown, the capital city of Sierra Leone.

UPBSA is registered with the Sierra Leone Union of Polio Person (SLUPP), Sierra Leone Union on Disability Issues (SLUDI) and the Ministry of Social Welfare Gender and Children's Affairs (MSWGCA). He runs several positions in these DPOs and others. Among them, he is the administrative officer of SLUPP and is executive member of SLUDI. As such, he is Handicap International's partner.



Paul Osman Kabia © 2012 Handicap International

### Nominated as voter educator

From 2002 to 2012, Paul was involved in electoral processes and awareness-raising activities. His work began in 2002 as an assistant register and polling agent. In 2007, he worked with the Disability Awareness Action Group (DAAG) as an advocacy and lobbying officer, to carry out a series of trainings aimed at stakeholders and leaders, as well as supporters of political parties. DAAG is an alliance of DPOs and acts as focal point for disability issues. Its goal is the mainstreaming of disability issues into the National Development Programme. In the 2007 general election process, DAAG worked with the National Democratic Institute (NDI) to increase access to, and participation in, the elections for persons with disabilities, through a strategy called MAP- Mainstream, Accessibility and Participation, meaning all citizens have a role to play and are enabled to fulfil those roles. As a result of these efforts, two disabled people have become elected officials. Paul was also nominated as one of the voter educators during the National Electoral Commission (NEC) Biometric registration in Sierra Leone in preparation for the General Elections held last year on 17 November 2012.



### Towards the implementation of the Disability Act

Sierra Leone ratified the Convention on the Rights of Persons with Disabilities (CRPD) in June 2009 and established the national Disability Act in March 2011, following which the government was obliged to form the Disability Commission to implement the Disability Act. In January 2012, SLUDI issued a ninety-day ultimatum and called on the government of Sierra Leone to set up the National Disability Commission. They threatened to boycott the Biometric Voter Registration unless this measure was taken. The ultimatum was finally withdrawn as a Technical Committee was established to develop an action plan to pave the way towards the future Disability Commission.

Paul Osman Kabia's experience shows that associative commitment and involvement in facilitating electoral processes can be an effective way of exercising influence and participating in political and public life.

## Issue 1

### Accessible elections for persons with disabilities in Cameroon

by Joseph Enyegue Oye

The participation of persons with disabilities in political life in Cameroon has been insignificant over the years. Data from a 2010 study conducted by the National Association of Youth of Cameroon (ANAJEHCAM) revealed that only 32.2% of persons with disabilities voted in elections which was less than half of the figure of the general population of voters. This situation can be attributed both to societal barriers and the general marginalisation of persons with disabilities which exclude them from participating in many important aspects of society.

Under the initiative of Sightsavers Cameroon, the 'Accessible Elections for Persons with Disabilities Project' (AEPD) was launched in 2010, in view of the Presidential elections of 2011, together with organisations of persons with disabilities (DPOs), in particular blind persons' organisations, and other key partners such as the UN Centre for Human Rights and Democracy in Central Africa (CNUDHD), UN Elections, the Institution for Referendums and Elections of Cameroon (ELECAM) and the National Commission on Human Rights and Freedoms.



Joseph Oye © 2011 Sightsavers

Project AEPD began with a series of workshops with key stakeholders to elaborate a plan of action on advocacy for policy change and to raise awareness amongst persons with disabilities themselves to be key players in the electoral process in order to ensure that their input and views are included in the development agenda of Cameroon.



Participants of the workshop © 2011 Sightsavers

Under this project, awareness-raising campaigns were carried out by DPOs via media, door to door visits, mobile vans, and the dissemination of posters and flyers to mobilise persons with disabilities to register to vote. Capacity building workshops were organised to train DPOs on the laws governing elections in Cameroon in relation to their rights and obligations. Thirty-six persons with disabilities from selected DPOs, in particular members of blind persons' organisations, were trained as elections observers, and for the very first time, officially observed the election across the country.

Twelve pilot polling stations were identified in five of the ten regions in Cameroon and were refurbished to accommodate all kinds of disability through the construction of ramps, improved lighting systems, provision of elections guidelines in Braille and sign language interpretation.



A blind man walking down a ramp with another man showing him the way © 2011 Sightsavers

Despite certain shortcomings, such as the absence of tactile ballot papers mostly due to the large number of presidential candidates, and the absence of sign language interpretation resulting in inaccessible campaigning, the initiative achieved positive outcomes. With the support of the project by ELECAM, and thanks to advocacy carried out by DPOs and other partners, the processes of registration, voter card collection and voting, greatly facilitated participation in the elections by persons with disabilities.

## Issue 1



A man wearing a shirt which reads: "Person with disabilities - Register yourself on the electoral list because your voice counts" © 2011 Sightsavers

The official Elections Procedural Guide by ELECAM highlighted special considerations for persons with disabilities and other vulnerable groups in the entire electoral process. A field on disability was introduced in the voter registration software which led to disaggregation of data by disability, thus allowing the compilation of concrete numbers of participation of persons with disabilities. At the end of the elections, it was noted that 75% of registered voters with disabilities had participated in the elections. This information is central to evaluate the success of the measures taken in the project and to adapt them for increased participation in future elections.

One of the major impacts of Project AEPD was the massive mobilisation of DPOs which led to the creation, in September 2011, of the platform, 'Inclusive Society for Persons with Disabilities', made up of DPOs and other civil society organisations to promote an inclusive society in Cameroon. No such consensual and functional union of DPOs existed in Cameroon previously.

This platform now carries out advocacy for the social inclusion of persons with disabilities in all areas of life. Recent examples of the platform's advocacy include the recruitment of qualified disabled youth as part of a national recruitment initiative launched by Government, and advocacy for the mainstreaming of inclusive education in public schools.

Through the AEPD Project initiative and ensuing DPO advocacy, ELECAM drew inspiration and demonstrated will and commitment to promote the participation of persons with disabilities in public and political life, and many more stakeholders are enthusiastic to join together with DPOs for the establishment of a more inclusive society in Cameroon.

*'For the first time, I saw women with disabilities vote in the Adamawa. Before, husbands did not allow their wives to vote and even hid their wives who were disabled. For the first time, I read the election laws in Braille. I hope that the voting cards will also be in Braille for the blind!'*  
-Amina Baba, Meiganga

*On 9 October 2011, the presidential election day, I went to my polling place. I voted along with several other persons with disabilities in a kindergarten in Ekié. The reception was great, because we had been made aware through the Project Accessible Elections on how to exercise our right to vote. Further, the police were also aware about our rights and they guided us to the main room. For the sake of discretion, my guide accompanied me inside the voting booth. He read the ballots of all candidates for me to choose freely. I had taken care to put the ballot papers in my pockets. I chose one that corresponded to my preferred candidate. When my guide finished and went out, I took the ballot which corresponded to my candidate, put it in the envelope and my guide led me to the ballot box. I put my vote in the ballot box with confidence.*  
-Léopold Assié, Ekié.



A polling booth for wheelchair users © 2011 Sightsavers

**Issue 1**
**The right to vote of persons with disabilities in Chile: Law no 20.183 as a factor of progress for inclusive democracy**
*by Maria Soledad Cisternas Reyes*


A man wearing a shirt which reads: "Person with disabilities - Register yourself on the electoral list because your voice counts" © 2011 Sightsavers

## Introduction

This article describes the process of adoption of Law 20.183 of 2007, which recognizes the right of persons with disabilities to have support in the act of voting. The process began with a lawsuit which inspired legal research conducted at the national level. A project of civil society advocacy was subsequently developed and implemented to promote the right to vote of persons with disabilities. The process resulted in a legislative initiative and culminated in the adoption of the 2007 Constitutional Act on voting and elections which recognized the right to support in the act of voting for persons with disabilities.<sup>1</sup>

## First phase: Lawsuit

In 2001, an election was held at the parliamentary level. The ballot paper contained many lists of candidates and a woman with visual disabilities asked the president of the polling station if she could have the help of her assistant and whether the latter could accompany her into the polling booth. The president of the polling station told her that it was not authorized as the Constitution and the Law on Voting and Elections prevented it. The voter with disabilities argued that she was being denied equal opportunities and it was proposed that she should register that she refused to vote. The voter opposed this, saying that at no point had she refused to vote but that she had been "prevented to exercise her right to vote freely, equally and effectively."

Following this incident, this citizen lodged an action in court claiming that her right to vote had been violated. The court declared itself incompetent to adjudicate the issue, and this decision was confirmed by the Court of Appeals.

These court decisions produced a strange situation: there was no tribunal competent in Chile to review this issue. Yet, the court had jurisdiction under two Chilean laws: the Law on Social Inclusion of Persons with Disabilities and the Electoral Law. This impasse was at the origin of the following actions by the disability movement in Chile.

## Second phase: Legal research

The unresolved case and the helplessness of the citizen with visual disabilities motivated the development of a legal study entitled "Disability versus the necessity of a more democratic electoral process", which was published by the University of Diego Portales in 2002. This study provided clear guidance on the changes to be made to the Law on Voting and Elections in order to facilitate the exercise of voting by persons with disabilities, in an effort to overcome the high abstention rates of this group in the electoral process. This research was widely disseminated throughout civil society and to the authorities, in particular to the Executive and the Parliament, through the organization of seminars, roundtables, workshops, among other activities.<sup>2</sup>

**Issue 1****Third phase: Advocacy project**

The legal study and research served as the basis for the elaboration of a legal and social project to promote voting by persons with disabilities, which had three main components:

- a) *Awareness raising of civil society on the importance of their political participation through anticipation teshion Reyes, avoting, and facilitating voting by voters with different kind of disabilities.*
- b) *Awareness raising of the electoral body on the importance to train officials and other actors in election processes about the right to vote of persons with disabilities and the importance of removing barriers and facilitating the exercise of this right.*
- c) *Production of a TV spot to promote the right to vote of persons with disabilities. This spot was fully produced, directed and performed by persons with different disabilities. It was broadcast on a number of channels on television, cable and satellite transmissions that accepted to disseminate it free of charge, as well as the channel of the Chamber of Deputies, the channel of the Senate and on websites of Ministries and public offices. It is noteworthy that the UN Ad-hoc Committee, which drafted the Convention on the Rights of Persons with Disabilities (CRPD), screened this spot to the public as part of the session in which Article 29 of the CRPD was adopted on public and political participation of persons with disabilities.*

**Fourth phase: Legislative initiative and promulgation of the Law 20.183<sup>3</sup>**

The work described in the previous phases boosted legislative initiative and subsequent approval of the Law 20.183 amending the Law of Voting and Elections of 1988. The principal advances of the new Law are:

- a) the possibility to have assistance in the act of voting upon request by a trusted person chosen by the voter with disabilities;
- b) extension of the time allowed in the voting booth for voters with disabilities to cast their vote;
- c) the possibility for the voter with disabilities to request the assistance of the President of the table to fold and close the ballot paper when this person is not assisted by a trusted person;
- d) prompt and adequate access for voters with disabilities to the polling station;
- e) sanctions for members of a polling station when preventing, obstructing or hindering maliciously, the exercise of the right to vote of persons with disabilities;
- f) sanctionsforanyonecaughtharassingavoterwithdisabilitiesortheirassistant.

The law was adopted in 2007 and has been widely disseminated. It has been successful in facilitating the exercise of the right to vote of persons with disabilities leading to a marked decrease in abstentions by persons with disabilities.

<sup>1</sup> *LeyOrganicaConstitucional sobreVotacionesPopularesyEscrutinios, conelobjetodereconocerelderechoalaasistenciaenel acto de votar para las personas con discapacidad.*

<sup>2</sup> *Promotionalvideocanbeviewedatwww.youtube.com/watch?feature=player\_embedded&v=JuYF\_X3S7WU*

<sup>3</sup> *FurtherinformationcanbefoundattheNationalServiceofPersonswithDisabilities (SENADIS)*

## Issue 1

## A Rights-Based Approach to Philippine Electoral Rights

by Commissioner Rene V. Sarmiento

The right to political and public life has been regarded by the international community as one of the basic human rights. The Philippines is one of the Asian countries with a strong Electoral Management Body (EMB) - the Commission for Elections (COMELEC),<sup>1</sup> and must ensure the promotion and protection of the right to vote of all individuals for the maintenance of a healthy democracy.



A review of the primary election law of the Philippines raises a question about its treatment of persons with disability.

Pursuant to Section 118 of the Omnibus Election Code, the following are disqualified from voting:

*“(a) Any person who has been sentenced by final judgment to suffer imprisonment for not less than one year xxx*

*(b) Any person who has been adjudged by final judgment by competent court or tribunal of having committed any crime involving disloyalty to the duly constituted government xxx*

*(c) Insane or incompetent as declared by competent authority.”*

On the basis of the above provision, it is observed that persons classified in paragraphs (a) and (b) differ from that described in paragraph (c) because the former committed acts which are criminal in nature under the penal laws, while the latter have not.

There appears to be a deficiency in the law because it fails to provide for a justification for the exclusion of persons indicated in para (c), nor does it set out who is to be considered to be “insane” or “incompetent”, which are the “competent authorities”, and what are the procedures for such a determination. As a result of this provision, discrimination is exercised against persons with mental or intellectual disabilities and they are denied the exercise of their right to vote.

In the Philippines, the laws allow assistants to help individuals who are illiterate or those who cannot fill out the ballot paper due to their disability. If the laws allow for such positive measures and mechanisms, then the same should equally be extended to those who have mental and intellectual disabilities, rather than imposing the restriction of their rights. There should be no reservation about the right to vote of any individual with any kind of disability.

A rights-based approach recognizes that every human being is a rights-holder and that they are entitled to exercise their own rights, not as a privilege, favour or benefit, but as a matter of principle. The rights-based approach places the burden on the Government to take active steps to respect, protect and fulfill the rights of every individual, including by the elimination or amendment of laws which continue to violate rights.

A review of the existing election laws is therefore imperative upon our law-making bodies and within the EMB to bring them up to speed with the latest international human rights standards of the rights of persons with disabilities. As mandated by the CRPD, the barriers in society must be addressed and new attitudes, procedures and technology introduced to ensure the right to political participation of persons with disabilities on an equal basis with others.

*The COMELEC is the principal Philippines' government agency tasked by the Constitution to enforce and administer all laws and regulations concerning the conduct of regular and special elections. It is a body that is designed to be constitutionally independent from the executive, legislative and judicial branches of government to ensure the conduct of free, fair and honest elections.*



**Issue 1****Political participation for everyone: Disabled people's rights and the political process***by Paul Gibson and Victoria Manning*

Paul Gibson © 2012 New Zealand  
Human Rights Commission

The 2012 report of the New Zealand Human Rights Commission (the Commission) entitled *Political participation for everyone: Disabled people's rights and the political process*, recognises the importance of ensuring disabled people's right to vote and to participate in political and public life.

By exercising the right to vote, disabled people assert their individual autonomy and legal personhood on an equal basis with other citizens, including the freedom to make one's own choices. Through involvement in political activity, law and policy reform, disabled people and their representative organisations can exercise influence and advocate for improvements in governance and access to health, rehabilitation, education, employment and access to goods and services which affect the daily lives of persons with disabilities.

The report recognises that New Zealand's existing voting and political systems are not designed for everyone. Disabled New Zealanders experience barriers to exercising their rights to vote and participate politically such as inaccessible information and voting papers, limited voting methods, and a lack of accessible buildings and services enabling engagement with politicians. For instance, MPs' offices are often placed in inaccessible buildings and there is a lack of funding to pay for sign language interpreters in order to allow deaf people to meet with their MPs, follow their speeches and exchange with them at events.

A few different factors led to the Commission preparing this report on the political participation of disabled people. The Commission was made aware of the challenges facing disabled people through the complaints it received about inaccessible voting procedures and barriers to political participation. In addition, the 2010 national review of human rights in New Zealand which identified barriers for disabled people in the political system also fed into the decision of the Commission to prepare this report.

In December 2011, the Commission released the "Wider Journey Discussion Document" which raised issues for public consultation relating to the right to vote, accessibility of the built environment and access to information. The discussion document was made available in different accessible formats, including Easy Read and New Zealand Sign Language, and was distributed widely to disabled people. Feedback on the discussion document was received from a range of disabled people and representative organisations of disabled people. The collected feedback was incorporated into the Commission's final report "Political participation for everyone: Disabled people's rights and the political process".



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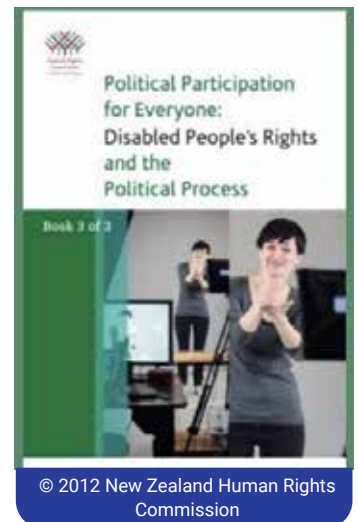
This report outlines the Commission's experience and research, international human rights standards and New Zealand legislation, good practices from overseas and recommendations, to ensure disabled people can fully exercise their right to vote and participate in political life.

The report includes information on:

- a) The need to render election and referendum information accessible in a range of different formats;
- b) New Zealand law which provides for some disabled people to be assisted when marking ballot papers;
- c) The reality that many disabled people are prevented from voting independently and confidentially;
- d) The practice that some disabled people are denied the right to vote, including "people with serious mental health conditions" who have been detained for three years or more;
- e) The reality that being involved in political parties is largely inaccessible to disabled people;
- f) The reality that Parliament and parliamentarians are inaccessible to many disabled people.

The report's recommendations call for the improvement of data collection of disabled voters, and the implementation of electronic and telephone voting options in New Zealand to enable blind and vision impaired people to vote independently and in secret. Further, the Commission proposes that section 80 of the Electoral Act (1993) be reconsidered; this provision disqualifies certain categories of people from voting, including "people who have been detained for three years for criminal offending but not been convicted due to serious mental health conditions".

*Paul Gibson is the Disability Rights Commissioner and Victoria Manning is the Policy Analyst on Disability of the New Zealand Human Rights Commission.*



## Issue 1

### A Chosen Message

by *Chosen Power (People First Hong Kong)*



Chosen Power representatives and allies in front of the headquarters of the High Commissioner for Human Rights in Geneva  
© 2012 Chosen Power

*Together with mainland China, Hong Kong was reviewed by the Committee on the Rights of Persons with Disabilities at its 8th session in September 2012. A group of self-advocates from the organisation Chosen Power attended both the 7th and 8th CRPD Committee sessions to provide information on how their Government was upholding their rights, and used this experience to fuel their advocacy for the realisation of their political rights in Hong Kong.*

Chosen Power (People First Hong Kong) is a self-help organisation founded in 1995. It is the first self-advocacy and self-help organisation run by persons with different learning abilities in Asia.

In 2004, we were informed by the Company Registry that persons with intellectual disabilities could not be appointed as directors under Hong Kong Company Law. We amended our Constitution and were able to expand our membership to persons with other learning abilities. On 1 July 2006, we registered as a non-profit organisation, and in January 2008, registered as a company limited under Hong Kong Company Law.

The organisation is governed by 15 executive members with different learning abilities. It advocates for 'Liberty for All', 'Self Advocacy and Independence' and 'Inclusive Community with Respect to all walks of life'. Members live their lives with joy and dignity. Members are visible in the community. Members enjoy expressing their artful talents to tell their stories and make friends. The organisation now has over 100 members of different learning abilities and also established its parents' network in order to gain direct access to talk to the Government because the Hong Kong Government only provides consultative meetings with our parents and not directly with us!

Chosen Power is involved in promoting the Convention on the Rights of Persons with Disabilities (CRPD) since January 2007 through workshops and interactive drama touring in community and schools.

After attending April 2012, the 7th session of the Committee on the Rights of Persons with Disabilities, members of Chosen Power partnered with members of the Hong Kong Blind Union to lodge a complaint against the Registration and Electoral Office of the Hong Kong Government to the Equal Opportunities Commission (EOC) in June 2012. The points of the complaint were:

1. Documentation for elections is not accessible to persons with visual disabilities and intellectual disabilities, and
2. Support persons provided at the voting stations to assist us in voting are not of our choice.



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Chosen Power representatives at the Registration and Electoral Office holding signs which read: "The voting system violates the Anti-Discrimination Law"  
 © 2012 Chosen Power

In response to the complaint, we met with the staff of EOC who explained to us the Anti-discrimination Law. However, it was not easy for we self-advocates and parents to understand the specialised jargon and procedure of anti-discrimination law, the process of lodging a complaint, and how to fill in the complaint forms.

The staff also had difficulty to explain it to us in simple language and cite easy to understand examples. EOC staff informed us that our complaint was not covered by the existing Anti-discrimination law and suggested that they arrange a meeting for us with the Registration and Electoral Office. Two separate meetings were held with the Registration and Electoral Office: one with our group of self-advocates, parents and support persons, and the second with blind and visually impaired persons.

The meeting with the officials of the Registration and Electoral Office took place on July 2012. It marked Chosen Power's first meeting with government officials since 1997 (when members attended annual Summit Meetings for persons with disabilities, chaired by the Governor and different policy and service bureau officials). Eleven self-advocates, four parents and two support persons attended the meeting. Our key concerns were about our political rights, information accessibility and our freedom to choose a support person at the voting stations. We supported our points by making references to the CRPD.

In particular, we raised the following issues:

1. All information issued by Registration and Electoral Office is not available in accessible formats.
2. Consultative papers, voter registration forms and letters are neither available in Braille text nor in easy-read materials. We need easy-read promotional materials and accessible forms for us to fill in.
3. Many of our friends living in hostels or institutions are not able to register as voters, neither their parents nor institution staff help our friends to register as voters! And even if they are registered voters, some of them are not able to vote due to a lack of transportation and staff support.
4. We are also troubled by the law that we are not able to have a supporter of our choice to assist us at the voting station!
5. People defined by the Mental Health Ordinance and the Guardianship Board as "mentally incapacitated" are deprived of their voting rights.



Meeting with the officials of the Registration and Electoral Office © 2012 Chosen Power

The Registration and Electoral Office scheduled the meeting in the evening of 24 July 2012. It was a historical moment: it was the first time the staff of the Registration and Electoral Office officially met voters of different learning abilities. We had a constructive dialogue, and a letter highlighting our concerns was submitted to the Electoral Office at the close of the meeting.

Since then, the Office has sent us a formal reply which has been disappointing; while noting our concerns, they said that the existing law is acceptable and they had no intention to review it. As for the provision of materials in accessible formats, they explained that they still needed to look into this and explore the demands and needs of voters. Our feedback was also shared with the Governor's Office and the EOC.

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Meeting with the officials of the Registration and Electoral Office ©  
2012 Chosen Power

To date a formal complaint has not yet been lodged; we have been informed by the EOC that we need to concretely show how we have suffered loss with respect to the restriction of our political participation due to the lack of accessible information and materials.

In September, we had the chance to test out the voting practice stations, and the 'so-called' accessible web-site. On the day of the Legislative Council elections, some of our members had difficulties finding the easy-read voting guide on site or they needed to wait for more than 45 minutes to receive it and then to vote!

The polling station staff were willing to help, yet at times were excessive in their assistance and made some of our members feel like prisoners being physically escorted on either side to vote while a third staff member acted as observer/witness. Though the Electoral Office told us they had trained their staff and volunteers on how to guide persons with disabilities to vote, we observed that there is still a lot of room for improvement.

Our advocacy did not stop at meetings and letters. Our second attempt to sensitise the Government took place on 17 December 2012 at the Legislative Council where we shared our concerns at the open hearing of the Concluding Observations on the initial report of China, as adopted by the Committee at its 8th session (17 – 28 September 2012). We gathered more than ten advocates of persons with disabilities to share our observations and recommendations after attending the CRPD Committee's 8th session. Five of our self-advocates took time off from their work and again voiced our rights to political participation.



Chosen Power representatives at the Equal  
Opportunities Commission © 2012 Chosen Power

We raised the CRPD Committee's recommendations, in particular its concern about "the inaccessibility of some polling stations for voters with disabilities" (para 81) and its call to the Hong Kong Special Administrative Region "to ensure the accessibility of all voting stations." (para 82). It seemed that the government officials were showing concern and hearing our voices. In response to the CRPD Committee's recommendations, they told us how much they spent on rehabilitation services and that they set up a working group promoting sign language in the past year. Yet they told us nothing about the timetable for producing easy-to-read policy documents and for harmonising the different laws in line with CRPD!

We have learned through these experiences that it will be a continuing process for us to sensitise government officials, Legislative Council members, and even our parents, on our rights and needs. Our advocacy is being taken both nationally and internationally.

We feel strongly that the CRPD should not remain on paper for discussion, but become action. We need to live the lives of our choosing. Our action and our participation in the community is the key to realising all our rights.

## Issue 1

### Deprivation of voting rights ruled unconstitutional in Japan

by Nagase Osamu



Ms Nagoya outside the Tokyo district court- the banner reads: I have won the case © 2013 Shima Keiko

The Tokyo District court ruled on 14 March 2013 that it was unconstitutional for the Election Law to deprive persons under guardianship of their right to vote. This is the first time a court has made such a decision in Japan.

Ms Nagoya Takumi, the plaintiff, sued the government in February 2011. Ms Nagoya, a 50 year old woman with Down syndrome, voted in almost every election since she turned 20, until her father, Mr Nagoya Seikichi, was appointed by a local family court as her legal guardian. Japanese Election Law deprives people under the specific category of guardianship (the “koken”<sup>1</sup> category) from their right to vote. Encouraged and represented by her father, Ms Nagoya asked the court to restore her voting right for the coming elections for the House of Representatives, the lower house, and the House of Councillors, the upper house.

The summary of the ruling is as follows; the right to vote and to run for elections is a fundamental right that is the basis of parliamentary democracy and is guaranteed in different articles of the Constitution. The restriction of this right can be admitted only in exceptional cases when unavoidable circumstances require it, otherwise the restriction is unconstitutional. The deprivation of this right from persons who lack the capacity to make judgment cannot be unreasonable. The Civil Code, however, does not define people under koken to be persons who lack capacity to make judgment. In fact, the Civil Code assumes that people under the koken category of guardianship have capacity, at least from time to time. People under koken can buy daily items, get married, get divorced and leave a will, on their own. The purpose of adult guardianship is to protect the rights of persons who lack the capacity to manage their properties. Capacity in the context of adult guardianship is different from capacity in the context of election and voting. People under adult guardianship are citizens and are entitled to have their voices heard- such as what makes them happy- through elections, which form the basis of parliamentary democracy. As for the concern that if people who lack the capacity are allowed to vote, the election might be subject to interferences and be unfair, as claimed by the government, there is no evidence to prove that this happens often enough to harm the fairness of the election. The blanket deprivation of voting rights based on the use of adult guardianship, therefore, cannot be considered “unavoidable”.

Adult legal guardianship was introduced based on the philosophy of respect for self-determination, use of remaining capacities and making a society in which people with disabilities can lead a normal life. In a number of foreign countries, including the UK and Canada as well as France, Austria and Sweden, restriction of voting rights based on intellectual disabilities and the lack of capacity has been eliminated or reduced. The Convention on the Rights of Persons with Disabilities, which Japan as a signatory has been working on domestic harmonization, promotes the revision of across-the-board deprivation of voting rights of people under guardianship. That is why the provision of the Election Law which deprives people under the koken category of adult guardianship from voting is unconstitutional and Ms Nagoya has the right to vote in the next of elections of both houses.



Ms Nagoya speaking at the Diet © 2013 Nagase Osamu

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While the ruling does not deny capacity as a requirement for the right to vote, it does not recognize the reasonableness and the logic of linking guardianship to voting rights. It also does not question the legitimacy of the guardianship system, which needs to be reconsidered and repealed in accordance with Article 12 (equal recognition before the law) of the UN Convention on the Rights of Persons with Disabilities (CRPD).

The ruling, however, does promote the right to vote regardless of guardianship and is a clear milestone in recognizing the legal capacity and political right of persons with disabilities, as required by the CRPD in Article 5 (non-discrimination), Article 12 (equal recognition before the law) and Article 29 (right to participation in political and public life), among others. Ms Nagoya was represented by a team of eight dedicated lawyers active in the promotion of the rights of persons with disabilities, who proved to be very effective in supporting her and her family throughout the proceedings. The lead lawyer, Ms Sugiura Hitomi, welcomed the fact that the presiding judge, Judge Jozuka Makoto, spoke using plain language in an easy-to-understand way and that his court was conscious not to discriminate against persons with disabilities.<sup>2</sup>

Inclusion Japan<sup>3</sup> as well as Inclusion International, a founding member of the International Disability Alliance (IDA), supported Ms Nagoya who is a member of Inclusion Ibaragi. Inclusion Japan collected more than 410,000 signatures in support of her case. During the proceedings, the courtroom was almost always packed by supporters and sometimes there was a lottery to get into the courtroom.

Upon delivering the ruling, Judge Jozuka Makoto imparted the following instructions to Ms Nagoya: "Please use your political rights and take part in society. Be proud and lead a good life". The courtroom was filled with cheer and applause. In the press conference which followed the close of the District court case, Ms Nagoya exclaimed "I am happy to vote again".

On 18 March 2013, in response to the ruling, the government indicated it is going to revise the Election Law to repeal the provision that deprives people of their voting right under adult guardianship during the current regular session of the Diet (Japanese Parliament), which ends on 26 June 2013.<sup>4</sup>

<sup>1</sup> *Koken guardianship provides the widest and most restrictive coverage of the rights of persons placed under it; annually about 30,000 people are placed under adult guardianship and 24,000 are placed under the koken category.*

<sup>2</sup> *Tamura, T & Tanaka, (2013) "Matasenkyoniikeru" (I can vote again) Asahi Newspaper, 15 March 2013 morning edition, p39.*

<sup>3</sup> *Inclusion Japan is a non-profit and non-governmental organization that advocates for equal rights for persons with intellectual disabilities and pursues an inclusive society where people with intellectual disabilities enjoy community living with necessary support.*

<sup>4</sup> *Updates by the Group on Guardianship and Political Rights (in Japanese).*

**Issue 1****Disability votes count! An overview of applicable EU legal standards on the right to vote***by the European Disability Forum*

Persons with disabilities have the right to participate fully in the political process on an equal basis with other citizens. However, many obstacles to their right to vote prevent them from having an impact on decision makers. It is therefore crucial that persons with disabilities and their representative organisations raise awareness about their electoral rights and the manner in which they can exercise their right to vote.

In doing so, organisations of persons with disabilities (DPOs) can refer to the international and European standards to which their governments have signed.

First, Article 29 of the UN Convention on the Rights of Persons with Disabilities (CRPD) guarantees the right to full participation in political and public life of persons with disabilities, which includes the right and opportunity to vote and be elected. Article 12 of the CRPD recognizes the full legal capacity of all persons with

disabilities and requires States to take appropriate measures to enable people to effectively exercise their legal capacity. In other words, the CRPD promotes the right to political participation of all persons with disabilities without exception.

Secondly, European Union (EU) and Council of Europe law and policies reflect the CRPD's core values. Reference can be made to:

- a) Articles 21, 26 and 39 of the Charter of Fundamental Rights of the European Union;
- b) The Disability Action Plan 2006-2015 of the Council of Europe has of which Action Line No. 1 is on participation in political and public life;
- c) The Revised Interpretative Declaration to Venice Commission's Code of Good Practice in Electoral Matters on the participation of people with disabilities in elections.

Last year, the European Disability Forum (EDF) expressed its concerns regarding the Venice Commission's Code of Good Practice for not being in line with the CRPD's core values. Following advocacy before the Venice Commission, the Revised Interpretative Declaration now explicitly refers to Article 29 of the CRPD.

In addition, the European Court of Human Rights decided for the first time in *Alajos Kiss v Hungary* that the automatic denial of the right to vote of a person with a disability deprived of their legal capacity violates the European Convention on Human Rights.

Finally, the non-binding Bill of Electoral Rights for people with disabilities promotes an equal and secret voting right for all people with disabilities. In addition to the Bill, Standards of Electoral Access for Citizens with Disabilities give advice on what to do before the elections, how to ensure independent access during voting, assisted voting, and off-site voting.



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A young man in a queue waiting to cast his vote © EDF 2009

In 2014, the European Parliament will hold its elections and DPOs should take the opportunity to mobilise Europeans with disabilities to exercise and assert their right to vote. DPOs can consult the EDF campaign 'Disability votes count' of the 2009 European Parliament elections.

It should be reminded that EU citizenship rights do not only cover European Parliament elections, but also local elections to address cases where EU citizens live in another EU country.

Alongside these voting opportunities, 2013 has been designated as the European Year of Citizens and the European Commission will present a report covering the right to vote.

### 3rd European Parliament of Persons with Disabilities

*On 5 December 2012, the 3rd European Parliament of Persons with Disabilities was in session, gathering more than 450 delegates from organisations representing persons with disabilities (DPOs) from across Europe together with European Parliament leaders, Members of European Parliament (MEPs) and European Union (EU) decision-makers. The discussion centred on how Europe can ensure the protection of the rights of persons with disabilities in this time of economic crisis.*

*Following the 1st and the 2nd meetings in 1993 and 2003 respectively, the 3rd European Parliament of Persons with Disabilities (EPPD) took place at an important time for Europeans with disabilities. This year, the EU will present its initial report on the progress it has made in implementing the UN Convention on the Rights of Persons with Disabilities (CRPD) for its 80 million citizens with disabilities to the UN Committee on the Rights of Persons with Disabilities. The EU's accession to the CRPD in December 2010 marked the first time that the EU, or any intergovernmental organisation, became a party to a human rights treaty.*

*During the EPPD, DPO delegates voted a resolution calling on European institutions, consultative bodies, EU member states, social partners, civil society, and other stakeholders to take appropriate steps towards the implementation of the rights of persons with disabilities in Europe.*

*Yannis Vardakastanis, President of the European Disability Forum, highlighted the importance of the event: "The 3rd European Parliament of Persons with Disabilities is a way to show EU leaders that there is just one response to face the crisis that is striking Europe: more democracy, more participation and a more unified voice. Here, today, we are more, we are stronger, we are louder and we are in the house of European democracy."*

Read more on EDF's website

The analytical agenda of the meeting (in Word)

The resolution on the implementation of the rights of persons with disabilities (in Word)

For more information, please also consult the EU Fundamental Rights Agency's study on the right to political participation of persons with mental health problems and persons with intellectual disabilities.

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### Access to Elected Office for Persons with Disabilities in the United Kingdom

by *Diane Mulligan*

In October 2010, the UK Government introduced the Equality Act 2010 (EA 2010) that updates, simplifies and strengthens previous anti-discrimination legislation. The EA 2010 permits registered political parties to take certain steps in their selection of election candidates to reduce inequality in their party's representation. This applies to the selection of candidates standing for registered political parties in UK Parliament, European Parliament, Scottish Parliament, National Assembly for Wales, and local government elections. Therefore, political parties can, if they choose, adopt positive action measures in their selection arrangements for the purposes of encouraging more disabled candidates to come forward. Further, the EA 2010 allows reserved places on political party candidate shortlists for disabled people where there is inequality in the party's representation.



Diane Mulligan ©  
CBM/Maryon

A Speaker's Conference was set up in late 2008 to 'consider and make recommendations for rectifying the disparity on the representation of women, ethnic minorities and disabled people in the House of Commons and their representation in the UK population at large'. Speaker's Conferences are a rarely used form of inquiry into the arrangements governing elections – the last one was held in 1977 and there have been only five in the last century. They have sometimes led to significant constitutional change, such as the widening of the franchise in the early part of the twentieth century.

The 2008 Speaker's Conference identified three key barriers for disabled people seeking elected office: attitudes, financial constraints and accessibility. The Government recognised that addressing these barriers was crucial, so conducted a process of consultation on their proposals to provide additional support for disabled people to become Members of Parliament (MPs).

In September 2011, the Government published the findings of the consultation, which involved all the political parties represented at the Palace of Westminster, disability organisations and the National Human Rights Institution. The following six proposals, directed to the Government, were consulted upon to address the barriers:

**Proposal 1.** Work more closely with political parties, the Local Government Association (LGA), and disability organisations to develop focused awareness raising.

**Proposal 2.** Work with political parties, the LGA and disabled people's organisations to develop a cross-party Ambassadors programme.

**Proposal 3.** Provide training and development opportunities aimed at supporting disabled people through the route to political participation.

**Proposal 4.** Establish an Access to Elected Office fund to support disability related costs.

**Proposal 5.** Work with political parties to analyse their existing disability access policies and cascade and promote any good practice.

**Proposal 6.** Promote and explain legal obligations that apply to political parties, e.g. develop a short guide, website materials and/or toolkit to support local authorities and political parties to fulfil their duties under the Equality Act.

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The Government took account of the responses and worked in close collaboration with disabled people and their representative organisations in deciding which of the six proposals to take forward as part of its Access to Elected Office Strategy. The Government decided to take forward all of the proposals, with the exception of the cross-party Ambassadors programme (Proposal 2).

The bulk of the funding will be directed towards delivering Proposal 3 (training and development opportunities) and Proposal 4 (establishing a fund for disabled people who are seeking elected office). The Government will seek to deliver Proposal 1 (awareness raising), Proposal 5 (disability access policies) and Proposal 6 (promoting legal obligations) in a proportionate way to ensure that the funding is prioritised for the proposal with the highest levels of support.

The official launch of the Access to Elected Office Strategy took place in July 2012. The launch was a celebration of the extra support on offer for disabled people who want to become elected representatives. The next steps are to spread the word and encourage disabled people to consider a career in politics. Resources for raising awareness of the fund have been developed, and £2.6 million have been allocated to help disabled people become MPs. In addition, a placement scheme has been opened to help individuals gain the critical experience needed to work in parliament.

The first enquiry about the fund was received on the day of the launch from the disabled people's umbrella organisation, 'Disability Wales', which indicates the excitement and demand by disabled people to actively engage in political careers.

Additional related information can be found at:

[homeoffice.gov.uk/equalities/](http://homeoffice.gov.uk/equalities/)

[www.homeoffice.gov.uk/access-elected-office](http://www.homeoffice.gov.uk/access-elected-office)

[www.access-to-elected-office-fund.org.uk/resources/](http://www.access-to-elected-office-fund.org.uk/resources/)

[www.socialmobility.org.uk/speakers-parliamentary-placements-scheme](http://www.socialmobility.org.uk/speakers-parliamentary-placements-scheme)

*Diane Mulligan is the Coordinator of Advocacy and Alliances for Inclusive Development for CBM, and member of the CRPD Committee since January 2013.*

**Issue 1****The role of Germany's National CRPD Monitoring Body in implementing Article 29***by Leander Palleit*

This article aims to briefly describe the actions taken by the National CRPD monitoring body in Germany (Monitoring-Stelle zur UN-Behindertenrechtskonvention) in order to promote the implementation of Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD). The German Institute for Human Rights was appointed as Germany's CRPD monitoring body; its mandate is based on the wording of the Convention, in particular Article 33(2) of the CRPD. The German Institute for Human Rights is consequently charged with promoting the Convention, protecting the rights therein, and monitoring its implementation. It monitors implementation at both the federal and the Länder (state) levels.



Leander Palleit © 2010  
German Institute for  
Human Rights/S.  
Pietschmann

Following stakeholder consultations, a public conference on political participation of persons with disabilities held in 2010, and a hearing of organisations of disabled persons (DPOs) held in

July 2011, the German Institute for Human Rights published a policy paper in October 2011 on the right to vote and to be elected of persons with disabilities in Germany. Following a legal analysis, the policy paper contains recommendations on the first steps to be taken in order to render German electoral law and practice compatible with the CRPD. Under the current legislation, which dates back to the pre-CRPD era, there are two issues regarding the right to vote and to be elected which remain to be addressed in Germany, both at the federal and regional levels:



First, the principle of universal suffrage has not yet been fulfilled. The German Federal Election Act - as well as corresponding laws at the Länder-level - continue to automatically deny certain persons with disabilities of their right to vote, namely those for whom a guardian or custodian is appointed to manage their affairs, and those who have been placed in a psychiatric hospital based on a placement order under provisions of the Criminal Code. According to an assessment conducted by the German Institute for Human Rights, these laws are based on prevailing disability stereotypes and are thus discriminatory. The Institute argues for their immediate abolition and continues advocacy work in this direction, which is supported by DPOs.

The second issue which is of concern is that voting procedures, facilities and materials have not been made accessible and easy to understand and use, as required by Article 29 and other provisions of the CRPD. Apart from some progress made following reforms in 2002 when certain provisions were inserted into the election ordinances addressing elements of accessibility, such as accessible polling stations, supported voting, and voting templates for blind voters, a large part of polling stations are still not yet accessible, nor have materials and procedures been made available in plain language. On a positive note, election authorities are increasingly aware that improvements need to be made in this domain.

According to the National CRPD Action Plan, the federal government is planning to conduct a survey on existing barriers which persons with disabilities face in practice in exercising their right to vote and to be elected. Based on the findings of this survey, which is scheduled for this year, the government appears to be prepared to evaluate and, where necessary, amend existing laws.

In order to facilitate efficient reform and to enhance cooperation between relevant actors, the German Institute for Human Rights organised a workshop in April 2012 on practical problems regarding voting materials, facilities and procedures. This workshop was attended by DPOs and various stakeholders such as MPs, ministry officials and election officers. The workshop will serve as a starting point for setting up a constructive working process leading to significant legislative and administrative reform within the next years.

*Dr Leander Palleit is Legal Research and Policy Advisor at the German Institute for Human Rights.*

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**Engaging MPs in Law Reform to Secure the Right to Vote in Germany**

*by Klaus Lachwitz*

In 1992, Germany abolished its old-fashioned guardianship law and replaced it with a law on custodianship. Under the custodianship law, people with disabilities do not automatically lose their legal capacity or decision-making authority in all aspects of their life. Custodians can be appointed only for certain types of decisions (i.e. financial) while the individual retains decision-making authority for all other decisions (i.e. personal and health). Further, the law limits the decision-making authority of custodians to specifically determined decisions.

While the custodianship law is an improvement from the previous guardianship law, it is still problematic; though there are exceptions, the custodianship court may, by a special court order, decide that the person under custodianship requires the permission of the custodian to conclude legally binding acts (e.g. signing a contract). This substitution of legal capacity infringes Article

12 of the Convention on the Rights of Persons with Disabilities (CRPD) which enshrines the right to enjoy and exercise legal capacity.



Klaus Lachwitz © 2011  
Inclusion International



The limitations to the exercise of one's legal capacity also extends to the right to vote. For individuals for whom it is deemed necessary to have a custodian for all their affairs, they are automatically barred from voting in Federal elections.

On 12 March 2013, Bundesvereinigung Lebenshilfe,<sup>1</sup> an independent association for people with intellectual disabilities, their families, experts and friends, which is the German member of Inclusion International, hosted a meeting in Berlin for members of the Bundestag, the German national Parliament with the objective of advocating for legal reform to guarantee the right to vote of persons with disabilities. Over 100 members of Parliament attended, alongside about another 100 persons representing local, regional and federal branches of Lebenshilfe.

**Three adults with intellectual disabilities took the floor**

First, Martin Schübbe, a 54 year old self-advocate shared in plain language that some years ago he could take part in elections, but was now no longer allowed because the custodianship judge had decided that he requires support with respect to all his affairs. He remarked: "This is stupid- I want to vote for all of you and in particular I want to support Angela Merkel with my vote!"

Second, Jan Zurek, a 24 year old self-advocate and his mother explained to the audience that Jan took part in the 2008 federal elections and that he had trained together with his father on each step to take when casting his vote. He knew that he was entitled to make two crosses on the ballot list behind the curtains in the polling booth; he told the audience that he would vote for another party than his parents.



Self-advocate, Martin  
Schübbe © 2013  
Lebenshilfe

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The final speaker was Joachim Busch, a well known self-advocate who represents self-advocates in the committee of persons with disabilities which advises the German Ombudsman on disabilities and the government focal point under Article 33(1) of the CRPD. Joachim argued that German law prevents about 12,000 persons with intellectual or psychosocial disabilities from taking part in elections and that this violates the German Constitution (Art. 3(3): No one may be disadvantaged due to his or her disability) and the CRPD.

Judge Peter Masuch of the Supreme Court on Social Affairs (Bundessozialgericht) also spoke in support of the legal reforms proposed by previous speakers.



From left to right: Self-advocate Joachim Busch, Lebenshilfe President, Ulla Schmidt, Self-advocate, Jan Zurek and former Federal Minister for Justice, Brigitte Zyprie © 2013 Lebenshilfe

As a result of this meeting, a political initiative, led by the Green Party with anticipated support from the Social Democrats and the LINKE (Left), is being developed to reform the laws to ensure that all persons, irrespective of their disability or support needs, are able to exercise their right to vote. In particular, a formal application has been lodged by the Green Party to repeal section 13 of the Federal Elections Act.<sup>2</sup> It is expected that hearings will be held in the Bundestag over the summer and that the government will invite experts to provide input before a final political decision is made. The initiative aims to have the laws changed in advance of the next federal elections in September 2013.

<sup>1</sup> Bundesvereinigung Lebenshilfe is the biggest association representing the interests of people with intellectual disabilities and their families. It is committed to ensuring that disabled people can live as normally and independently as possible from childhood to mature age and that they are given the aids and support they need to do so.

<sup>2</sup> Section 13 states, "A person shall be disqualified from voting if..."

1. He or she is not eligible to vote owing to a judicial decision;
2. A custodian has been appointed not long through a restraining order to attend to all his or her affairs; this also applies when the custodian's sphere of duties does not include the affairs set forth in Section 1896 paragraph (4) and Section 1905 of the Civil Code;
3. He or she is accommodated in a psychiatric hospital under an order pursuant to Section 63 of the Penal Code in conjunction with Section 20 of the Penal Code

*Klaus Lachwitz is a lawyer and was Managing Director of Lebenshilfe. Since 2012, he is President of Inclusion International.*

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### At least 16,355 people with disabilities in Croatia have their right to vote restored: a victory for democracy

by *Kristijan Grđan*

It is undeniable that the right to vote is essential to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law. Until 29 December 2012, at least 16,355 Croatians with disabilities fully deprived of legal capacity were denied their right to vote at elections for representatives of local governments, the Parliament, the Croatian President, and to vote at referenda. Through the passing of a historical decision, however, the right to vote has been recognised and restored for people with disabilities and deprivation of legal capacity no longer an obstacle to the exercise of this fundamental political right.



Press conference at the Centre for Human Rights.  
 At the center, Kristijan Grđan © 2012 Shine

The decision of the Croatian Parliament did not come about without struggle.

In 2011, the Association for Social Affirmation of People with Psychosocial Disabilities (Shine) lodged a complaint to the Constitutional Court of the Republic of Croatia<sup>1</sup> seeking repeal of the provisions that allow removal of the names of certain persons with disabilities from the Registry of Voters which result in the denial of their right to vote. The petition was joined by the Disability Ombudsperson.

In May 2012, Shine brought another complaint to the Constitutional Court seeking repeal of provisions in the Act on Elections to Croatian Parliament that deny the passive and active right to vote of people deprived of legal capacity, which means that they were expressly denied the right to vote and to stand as candidates in elections, based on the removal of their legal capacity. This petition was again joined by the Disability Ombudsperson and seven civil society organisations.

In October 2012, the Croatian Government proposed legislation concerning the Register of Voters with some new measures regarding people with disabilities, however, such improvements remained contrary to the United Nations Convention on Rights of People with Disabilities (CRPD). Namely, following the judgment of the European Court of Human Rights in the case of *Kiss v Hungary*, the legislator intended to implement an individualised approach for the deprivation of right to vote. In criticism of this proposed law, together with the Disability Ombudsperson, and local partners - the Association for Self-Advocacy, a DPO made up of persons with intellectual disabilities which advocates for their equal rights, and GONG, an NGO which promotes active civic engagement in political processes, Shine participated in the parliamentary procedure.

The group of advocates raised the fact that the UN Committee on Rights of Persons with Disabilities concluded in their reviews of Spain and Hungary that an individualised approach to depriving persons with disabilities of their right to vote continues to violate the CRPD and that the Committee had urged those countries to amend their legislation to uphold the right to vote of persons with disabilities. The group also urged the Ministry of Social Policies and Youth to provide a support to their initiative, given the Minister of Social Policies and Youth was the Vice-President of the Government and therefore held significant political power in formulating government policies. The Ministry of Social Policies and Youth responded positively and provided full support to this initiative. As a result, the Government changed its proposition to allow people

fully deprived of legal capacity to be recognised as voters without restrictions.



Mad Pride in the Flower Market, Zagreb © 2010  
 Shine

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At least 16,355 people had their voting rights restored and will be able to vote at the next elections for local government in 2013. Yet the struggle for political participation of people with disabilities is not over. There remain specialised legal instruments which regulate different types of elections which continue to deny the right of people with disabilities to vote, such as in the case of Parliamentary elections. More steps need to be taken by the Government, and therefore more advocacy on the part of DPOs and civil society, to harmonise electoral legislation in its entirety. Furthermore, people with disabilities have passive right to vote, which means that no restriction of legal capacity should deprive them of the right to hold a public office. The Constitutional complaint brought by Shine and its partners in 2012 also challenges legislation that denies the passive right to vote to persons with disabilities and this complaint will remain at the Constitutional Court until the legislator harmonises laws with the CRPD completely.

Recognising and restoring the right to vote of persons with disabilities is a first step forward in harmonising Croatian legislation with the CRPD and ensuring an effective and active democracy. Shine continues to advocate<sup>2</sup> for this by calling for legal reform to ensure the equal recognition before the law of people with disabilities with the equal exercise of their rights for their full and meaningful participation in democratic society.

<sup>1</sup> General news about the complaint (only in Croatian)

<sup>2</sup> With its partners from Ireland, Serbia, Bosnia and Herzegovina, Kosovo and Turkey, Shine started a two-year project funded by the European Commission entitled "PERSON Project", aimed at enhancing the participation of civil society in legislative and policy reform on legal capacity to ensure CRPD implementation.

*Kristijan Grđan is the Coordinator of the Human Rights Programme of Shine.*



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### Campaigning for the restoration of the right to vote

by *Branka Meić*

On 14 December 2012, the Croatian Parliament adopted the Act on Register of Voters, to restore to people deprived of their legal capacity their right to vote - a universal right as stipulated in the Constitution and the UN Convention on the Rights of Persons with Disabilities (CRPD).

Despite the fact that the Constitution recognises the right to vote for all Croatian citizens of age, in the previous electoral act, persons with disabilities who were placed under guardianship were struck from the electoral register. Adopting the Act on Register of Voters was the result of a campaign led by the Disability Ombudsperson in cooperation with associations of persons with psychosocial disabilities, self-advocates and the association for the promotion of a more active participation of citizens in elections.

The activities which led to aligning the national legislation with the CRPD, ratified by Croatia in 2007, started in December 2010. The Disability Ombudsperson brought to the public's attention the barriers and challenges encountered by persons with psychosocial and intellectual disabilities in exercising their right to vote. Further awareness raising activities on the right to vote for persons with disabilities were carried out over a series of meetings with relevant ministries and the state election committee in the wake of the Parliamentary elections in December 2011.

Government officials were surprised to discover that the electoral act failed to regulate the voting of these persons with disabilities while at the same time stipulating

how persons in prisons could exercise their right to vote. In the draft proposal on the amendments of the Act on Register of Voters, the government acknowledged the fact that the CRPD is a legally binding document placed above national laws, and proposed what in their view was a major step forward: the removal of blanket divestment of the right to vote and the introduction of a court proceedings for the individualised assessment of one's voting capacity

Drawing on the Concluding Observations of the Committee on the Rights of Persons with Disabilities with respect to Spain and Hungary, the Disability Ombudsperson emphasised that the individualised assessment of one's capacity to vote would be discriminatory, and demanded the full right to vote for all persons with disabilities, as stipulated by Article 29 of the CRPD. The support of the Ministry of Youth and Social Policy was crucial to change this initial proposal to one requiring that all persons who had been previously struck off the register be re-entered on the electoral roll.

However, the battle is not yet over. To ensure that persons with psychosocial and intellectual disabilities can indeed exercise their right to vote, adequate supports before and during elections will have to be provided. The new act will be put to the test in the forthcoming elections for Croatian members of the European Parliament which will take place in May 2013.



Branka Meić © 2012 Office of the Disability Ombudsperson



The Disability Ombudsperson, Anka Slonjšak, and Branka Meić during a training © 2012 Office of the Disability Ombudsperson



Press conference at the Centre for Human Rights © 2012 Office of the Disability Ombudsperson

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## Voting Rights and Guardianship: Hungary, Czech Republic and Slovakia

*by Sándor Gurbai, Gábor Halmai, Lycette Nelson, and Maroš Matiaško*

Article 29 of the UN Convention on the Rights of Persons with Disabilities (CRPD) requires States parties to guarantee to persons with disabilities, inter alia, the opportunity to exercise their right to vote on an equal basis with others. Article 12 of the CRPD recognises that “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”, and 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.”

The United Nations Committee on the Rights of Persons with Disabilities in its Concluding Observations to Spain addressed the link between deprivation of legal capacity and the right to vote by noting 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.”

This article gives an overview of how the right to legal capacity and the right to vote are linked together by briefly analysing current developments in this field in Hungary, Czech Republic and Slovakia.



Authors, from left to right: Gábor Halmai, Lycette Nelson, Maroš Matiaško, Sándor Gurbai © 2013 MDAC



## Hungary

Until 31 December 2011, persons placed under guardianship in Hungary were indiscriminately stripped of their electoral rights. The landmark judgment of the European Court of Human Rights (ECtHR), *Kiss v Hungary*, handed down in 2010, arguably led to the change of approach of state authorities which sought to implement the judgment of the ECtHR, but overlooked their obligations stemming from the CRPD. Although Article 29 of the CRPD “does not foresee any reasonable restriction, nor does it allow any exception”<sup>1</sup> with regard to political rights, since the start of 2012, courts are required to individually assess the faculties and capacity to vote of the person concerned as part of the procedure to place them under guardianship (or in a proceeding to review one’s placement under guardianship).

Although there is a coherent adjusted legal system, the reform has in fact been very superficial. For instance, there are no clear guidelines for judges to assess a person’s voting capacity: current psychiatric tests do not extend to such areas, nor are personnel trained to carry out such testing. Psychiatric opinions for any type of restriction on legal capacity are often limited to assessments of diagnoses and not informed by principles of autonomy.

People already under guardianship at the time of the judgement, however, remain stripped of their voting rights. Their voting capacity is evaluated only at the forthcoming guardianship review; so in case there is an election and their voting capacity has not yet been assessed, their right to participate in the political process will be violated.<sup>2</sup>

Obligations of the State as set out in Article 4(3) of the CRPD have also been ignored in Hungary: NGOs, DPOs and other stakeholders were all left out of the process of writing the new Constitution as well as the new electoral law.

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This evaluation of the current system as non-compliant with the CRPD was corroborated by the UN Committee's Concluding Observations released after their September 2012 review of Hungary:

*"The Committee is very concerned about the provision in the State party's new Fundamental Law which permits a judge to remove the right to vote from those with "limited mental ability", and that legislation allows for the right to vote of persons with intellectual or psycho-social disabilities to be restricted if the person concerned has been deprived of his or her legal capacity. The Committee recommends that all relevant legislation be reviewed to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote, and that they can participate in political and public life on an equal basis with others."*<sup>3</sup>

## Czech Republic

In July 2010, a Czech Constitutional Court decision on voting rights of persons under plenary guardianship followed the European Court of Human Rights Kiss judgment by introducing a requirement similar to new Hungarian law.<sup>4</sup> The case was brought before the Constitutional Court by an applicant deprived of legal capacity, including the right to vote in parliamentary elections. He challenged the constitutionality of the provision of the Code on Parliamentary Elections, which bars persons deprived of legal capacity from voting through special notations on voting lists. The Court controversially stated that while the provision is not per se unconstitutional, any general court deciding on guardianship must assess capacity to vote. The Court held that if the person concerned can understand the meaning, purpose and consequences of the elections, they cannot be deprived of their legal capacity. The Mental Disability Advocacy Centre (MDAC) and other NGOs and academics submitted an amicus curiae brief which highlighted that denying the right to vote to a group of people on the basis of an actual or perceived disability, even if it is based on individual assessment, serves no legitimate aim, is arbitrary and amounts to discrimination, and while the Constitutional Court made direct references to it in its decision, the Court failed to follow the legal arguments presented.

In November 2012, the Ministry of Interior put forward a new comprehensive Election Act. In our view, the new legislation fell short of the State's obligations under Article 29 of the CRPD. Despite MDAC and other NGOs advocating for the provision of reasonable accommodation for people with disabilities to ensure all their rights guaranteed in the CRPD, including the right to political participation, the Ministry of Interior refused to take their comments into consideration and invite experts and civil society for broader discussions on this issue.

The new legislation hinders exercise of both the right to vote and the right to stand for elections for people deprived<sup>5</sup> or restricted in legal capacity.<sup>6</sup> Further, it does not recognise the right to reasonable accommodation or put forth any legislative measures that would help people with disabilities to exercise their right to vote effectively.

## Slovakia

In 2010, the Slovak Government expressed its intention to reform the election law and create a single complex code on elections. Different experts, led by the Slovak organisation of persons with disabilities, ZPMPvSR, prepared an analysis of the right to vote of persons with intellectual disabilities, and advanced a set of recommendations on how to implement Article 29 of the CRPD, inter alia that deprivation of legal capacity cannot be an impediment to the right to vote, that there can be no individual assessment of the capacity to vote, and that reasonable accommodation must be ensured. In the expert seminar organised by ZPMPvSR in Bratislava in December 2011, a high level representative of the Ministry of Interior declared their willingness to take these recommendations into account in the process of reform. However, the new social democratic Government's willingness to ensure and fulfil obligations under Article 29 of the CRPD is not yet clear.

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MDAC has also started litigating cases on the right to vote for people deprived of legal capacity in Slovakia. MDAC is representing a man who was barred from voting in the March 2012 elections because he had been deprived of his legal capacity. The case brings attention to the violation of the rights of individuals who are denied participation in the political life of their countries. If the case is not successful in the domestic courts in Slovakia, it may be brought to the CRPD Committee as an individual complaint under the Optional Protocol to the CRPD, which Slovakia has ratified.

The abolition of blanket restrictions of voting rights of people with disabilities is laudable, however, without the meaningful involvement of persons with disabilities in the above countries in the process of legal reform, full emancipation, as set out in the CRPD, remains to be achieved.

<sup>1</sup> 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 (A/HRC/19/36) at para 68

<sup>2</sup> Persons under guardianship have a right to request a review but in the case of plenary guardianship it is not possible to specify the review to voting capacity only

<sup>3</sup> CRPD/C/HUN/CO/1, paras 45-46

<sup>4</sup> Decision no. IV.ÚS3102/08 (English version)

<sup>5</sup> The new Civil Code that comes into force in 2014 no longer allows for deprivation of legal capacity.

<sup>6</sup> The legislation gives authority to the courts to restrict the capacity to vote in guardianship proceedings and a person without full legal capacity is not allowed to stand for any elections.

*Sándor Gurbai is the Legal Officer, Gábor Halmai, Advocacy Officer, Lycette Nelson, Litigation Director and Maroš Matiaško, Legal Monitor of the Mental Disability Advocacy Center.*

**Issue 1****Legal Capacity and the Right to Vote in Denmark***by Pia Justesen*

According to Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD), States must recognise the legal capacity to act of persons with disabilities - that is, their right to make their own decisions. At the same time, the CRPD obliges States to provide support to persons with disabilities who may require assistance in exercising their legal capacity.

In Denmark, the law allows for the implementation of various measures for persons who may be deemed to have difficulty in managing their own affairs. Among these measures is legal guardianship where an individual is appointed a guardian under the presumption that the guardian will ensure the rights of the individual with a disability and protect them against abuse. The Danish Guardianship Act (Værgemålsloven, Act No. 388 of 14 June 1995) allows for assisted guardianship as well as traditional guardianship. Court-imposed guardianship according to section 6 of the Guardianship Act is the most comprehensive form of guardianship. It consists of a deprivation of the legal capacity to act in financial matters including deprivation of financial responsibility.



© 2012 Pia Justesen

While these measures claim to be measures of support under Danish law, guardianship is contrary to the Convention. According to Article 12 of the CRPD, it is a violation of the rights of persons with disabilities to be deprived of their legal capacity. Furthermore, the European Court of Human Rights, with reference to Articles 12 and 29 of the CRPD, affirmed that it is a violation of rights to automatically remove the right to vote of a person with disabilities solely because of the fact that the person is under legal guardianship.

In late 2011 and early 2012, the Danish Institute for Human Rights conducted a study on self-determination and legal guardianship in Denmark.<sup>1</sup> Court-imposed guardianship under section 6 of the Danish Guardianship Act was criticised by the Institute. The study showed that there are very profound consequences for persons subject to court-imposed guardianship, especially as this occurs against the individual's will. Individuals under section 6-guardianship interviewed for the study mentioned their anger over loss of rights and self-determination, and feelings of imposed dependency.

Under the Danish Parliamentary Election Act and other laws governing municipal and regional elections and the election of Danish members to the European Parliament, court-imposed guardianship entails the loss of voting rights. Thus, individuals under section 6-guardianship cannot participate in elections and exercise their right to vote. This is experienced as both degrading and exclusionary and amounts to disability-based discrimination.

It follows from this that the provisions in Danish election laws by which persons with disabilities lose their right to vote constitute breaches of the CRPD. Thus, the Danish Institute for Human Rights recommended that the election laws be changed so that persons with disabilities are not deprived of their right to vote, and, where required, are provided with legitimate supports to exercise their right to vote.<sup>2</sup>

Gerard Quinn, "Legal Capacity Law Reform: The revolution of the UN Convention on the Rights of Persons with Disability" *Frontline*, Vol 83 (2011)

*Pia Justesen is an attorney from Justadvice.*

### Issue 1

## My Right: the Right to Vote

*by the Lebanese Association for Self Advocacy*

The Lebanese Association for Self Advocacy (LASA) is the first self-advocacy organization of persons with intellectual disabilities in Lebanon and the Arab world.<sup>1</sup> LASA was first established through the media project, “Our Voice”, which set up a media resource room run for and by young people in an inclusive setting to provide a platform for children and youth to express their concerns through the media. It was the first project in the Arab world that introduced media as a tool to a group of youth with disabilities and their non-disabled peers. The process focused on promoting self-expression using visual media to showcase their capabilities and expose their voices to the community at large.

In 2005, youth from LASA’s “Our Voice” project joined the Lebanese Physical Handicapped Union (LPHU) and other NGOs to start a campaign called “My Rights” aimed at raising awareness about the importance of voting. The campaign covered all regions of Lebanon. They worked on two levels- first on education, with self -advocates and their families. LASA self-advocates started to train their peers on the right to vote. Second, they worked at the political level, before the Ministry of Internal Affairs. LASA was one of four organizations that worked with the Ministry of Internal Affairs, and its role focused on (i) preparing the amendment to the Electoral Law to allow all Lebanese nationals to vote; (ii) identifying barriers that could prevent persons with intellectual disabilities from exercising their right to vote; and (iii) proposing solutions to overcome those barriers.

LASA found that nothing legally prohibited persons with intellectual disabilities from exercising their right to vote, neither in Lebanese electoral law nor in Law no 220/2000 on persons with disabilities.

After consultation with lawyers and voting officials, it was observed that the main concerns of government representatives and the general population regarding the right to vote of persons with intellectual disabilities were linked to prejudices stemming from the widely held and deeply embedded view in society that persons with intellectual disabilities are not able to vote because they are incapable of making decisions for themselves.

In order to curb these negative stereotypes and to raise awareness, LASA proposed to the Ministry of Internal Affairs a series of training workshops destined to different audiences.

LASA, together with other NGOs, was asked to train electoral officers all over Lebanon on the exercise of the right to vote by persons with intellectual disabilities, including their specific needs for accessibility in the process of voting. Persons with intellectual disabilities were involved in all aspects of the design and execution of the training for self- advocates and parents, and also participated in the meetings with lawyers and roundtables with other actors. Due to a change in government, the activities programmed to train electoral officers were suspended as they were not considered to be a priority by the new Minister of Internal Affairs.



Young members of the Lebanese Association for Self Advocacy © 2009 LASA



Working groups during training of parents and organizations © 2011 LASA



A woman simulating casting her vote © 2011 LASA

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In spite of this, the "My Rights" campaign continues and through its advocacy and activities, LASA is still actively raising awareness of persons with intellectual disabilities and their organizations on their right to political participation, leading up to the elections this year.

## Challenges

Two main levels of challenges were identified during the 'My Rights' Campaign, namely, challenges arising from the Government, and those concerning parents.

Regarding the Government, LASA observed that the traditional medical approach continues to thrive. Government officials refuse people with intellectual disabilities to vote on the basis of their disability. They continue to rely on medical evaluations to validate one's right to vote and to presume that support persons can vote on behalf of an individual with intellectual disabilities.

An additional challenge was the fact that parents actively placed their adult children with intellectual disabilities under guardianship, thus having their legal capacity removed or restricted. Some parents stated that they took this decision as a security measure in order to prevent third parties from taking advantage of them. Parents generally felt that they could make the necessary decisions on behalf of their children for them to have a decent life, even if this meant that the latter could no longer make decisions about their own lives.

LASA frequently heard from parents that it was "God's will" that they have a child with intellectual disability, and it was not up to the parents to change them "if God has created them that way." As a result, most parents followed the norms and took decisions on behalf of their children without efforts to empower them to act on their own.

## Steps forward

Currently, LASA is negotiating with representatives of the Ministry of Internal Affairs to put safeguards into place to effectively and meaningfully ensure respect of the right to vote of persons with intellectual disabilities in Lebanon.



LASA training activities © 2011 LASA



LASA trainers © 2011 LASA

<sup>1</sup>LASA also had the mandate to train persons with intellectual disabilities and their organizations on engaging in the voting process, taking as their base the Convention on the Rights of Persons with Disabilities (CRPD). Members of LASA can be contacted at [ourvoice.lb@gmail.com](mailto:ourvoice.lb@gmail.com)

LASA training activities © 2011 LASA

LASA trainers © 2011 LASA

LASA's mission is to:

- Provide information, training and support for persons with disability and their families so that their voices can be heard and their rights can be respected.
- Give a platform for persons with disabilities to fight for their rights.
- Increase awareness in the community about the rights of persons with disabilities.
- Create a forum to disseminate information about human rights, and to help parents and friends to fight for the rights of persons with disabilities.
- Improve family advocacy skills and create channels of communication at all levels of the local spectrum.

**Issue 1****Voting For All in Israel***by Shirley Galor and Noa Bitan*

On 22 January 2013, General Elections took place in Israel in which the 120 members of the Israeli parliament (the Knesset) as well as the Prime Minister and government were elected for a period of four years.

Israeli law allows every citizen above the age of 18 to vote, including people with intellectual disabilities.<sup>1</sup> Participation in elections is a primary opportunity to exercise one's rights as a citizen in a democratic society. For people with an intellectual disability, the most difficult part about voting is deciding for whom to vote; information about politicians and parties are difficult to understand and not available in plain language or easy to read formats.



In the lead up to the elections and in an effort to enable people with intellectual disabilities to have the same opportunity to take part in elections, AKIM Israel,<sup>2</sup> the National Association for the Habilitation of Children and Adults with Intellectual Disabilities in Israel, developed and published an "easy to read" booklet.

The booklet was conceived by a group of AKIM professionals, together with law students working in the AKIM legal clinic for the rights of people with intellectual disabilities. It consists of two parts: the first part gives a comprehensive explanation of the election process in Israel, from the act of voting up to the formation of government. The second part includes an easy to read description of the 23 political parties and their platforms, accompanied by pictures of the candidates.

The booklet represents an innovation in the history of political participation of persons with disabilities in Israel: it is the first time that information on the elections and information on candidates and their political platforms has been made available in an easy to read format in Israel. It equipped people with intellectual disabilities with the necessary information to make an independent decision regarding the party for which they would like to vote.

The booklet was published on the websites of AKIM, the Ministry of Welfare, and the Central Elections Committee, as well as disseminated across social network sites. It was also distributed throughout Israel to people with intellectual disabilities and their families, and in the schools in which adults with intellectual disabilities (aged between 18-21 years) attend. The booklet received very positive responses from persons with intellectual disabilities and from people working with them. It not only helped individuals with intellectual disabilities to make a free and informed choice, but it has also served as a learning tool for civic education in schools.

It turned out that, in addition to persons with intellectual disabilities, the booklet was very beneficial to other sectors of society with reading and comprehension difficulties, such as immigrants and older persons.

This initiative is a first step in raising awareness of the right of people with intellectual disabilities to take independent decisions about their political representation. It concurrently aims at raising the awareness of the public, government and political parties of the voting power of people with intellectual disabilities. It was indeed successful in triggering discussions amongst lawyers, social workers, and educational professionals, including on the Ministry of Welfare's internet forums, on the right of all people regardless of their disability, and regardless of the degree of their disability, to make their own decisions and vote.



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AKIM Israel will continue to bring attention to this issue and carry out advocacy to ensure that the law obliges political parties to publish their political platforms in easy to read language.



*"The brochure has helped me a lot with my daughter Noy, for whom this is the first time to vote. It helped me explain to her what is a parliament, what is the role of the parliament's members, what are the different parties and how does one vote. Noy has fulfilled her right to vote and have an impact, with great emotion – hers and ours!"*

<sup>1</sup> Israeli law does not have any restrictions on the right to vote, nor for people with any kind of disability or people under guardianship. According to the law, people with disability who cannot physically perform the act of voting may be accompanied to the polling booth. The accompanying person cannot be an employee of the facility where the person concerned lives, and one person can accompany at the most two persons only in an effort to prevent any attempt to take advantage of the role of assistant.

<sup>2</sup> AKIM Israel was founded in 1951 by a group of parents of children with intellectual and developmental disabilities who shared a vision of improving the quality of life for their children and enabling them to live full and worthwhile lives. AKIM Israel operates to improve the quality of life of people with intellectual and developmental disabilities through its 62 branches across Israel, representing 34,500 people with intellectual disabilities and their families. AKIM Israel is a member of Inclusion International. It shares its vision and the leading approaches of inclusion and self-advocacy.

*Shirley Galor is the Deputy General Director of AKIM Israel and Noa Bitan is Legal Adviser and Director of the Information Centre of AKIM Israel.*

**Issue 1****Compulsory voting systems: dilemmas and advocacy solutions***by the International Disability Alliance*

Voting is compulsory<sup>1</sup> in many countries around the world which means that voting constitutes both a right and an obligation for citizens who have reached the legal voting age in those countries.

With respect to persons with disabilities, the compulsory voting system may create a dilemma for States which do not have the measures in place to ensure full accessibility and support for persons with disabilities to exercise their right, and fulfil their obligation, to vote. In these cases, States are generally confronted with two options:

1. Exempt persons with disabilities from their obligation to vote due to a lack of accessibility or support; or,
2. Oblige persons with disabilities to vote on an equal basis with others and equally penalise persons with disabilities who have not cast their vote with: fines, the deprivation of their civil rights (such as the right to contract), denial of public services, or in some cases prison.

**Varied practices and considerations**

Argentina and Brazil apply a compulsory voting excusal system, exempting people with disabilities from voting.

Exemptions are often granted because the systems do not provide the necessary support to make elections inclusive and accessible for everyone. While exemptions may be considered a fair way to ensure that persons with disabilities are not penalised for failures on the part of the State to put measures in place to facilitate their right and obligation to vote, there is a fine line between exemption from voting and exclusion from voting.

In order to guard against exclusion from the right to vote, which is a violation of the Convention on the Rights of Persons with Disabilities (CRPD), exemptions from the right to vote need to be examined to determine: Who are the persons with disabilities exempted from voting and why? What reasonable accommodations could be provided to permit persons with disabilities to vote? What steps is the State progressively taking to put measures in place for the exercise and obligation of the right to vote of all persons with disabilities? Based on those responses, it may be revealed that the State is falling short in fulfilling its obligations, or that its laws, policies or practices are either directly or indirectly discriminating against a specific group of persons with disabilities.

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## Recommendations

1. Alongside recommendations made to all States to ensure the right to vote and the right to stand for election of persons with disabilities, States in which the compulsory voting system is practiced should refrain from imposing penalties against persons with disabilities who cannot participate in elections on account of inaccessible and unaccommodating facilities and materials.
2. Exemptions from compulsory voting should be granted and operate only to the extent that voting is inaccessible owing to the State, and should not pose as an excuse by States for failing to fulfil their obligation to render the act of voting accessible and to provide accommodations and support where necessary in order for persons with disabilities to exercise their right to vote on an equal basis with others.
3. Organisations of persons with disabilities and civil society should carefully and regularly examine exemptions and penalties which apply in countries with the compulsory voting system and the actions taken by the State in order to determine: whether there is progressive realisation concerning the accessibility of persons with disabilities to cast their vote on an equal basis with others, including through the provision of reasonable accommodation, whether the State is directly or indirectly discriminating against persons with disabilities, or a subset of persons with disabilities, and to hold the government to account on its actions and inactions in this respect through active advocacy and lobbying, monitoring and reporting, and the lodging of complaints.

<sup>1</sup> See research report of the UK Electoral Commission, *Compulsory Voting around the World*, June 2006. Further information can be found at [www.idea.int/vt/compulsory\\_voting.cfm](http://www.idea.int/vt/compulsory_voting.cfm), [www.guardian.co.uk/politics/2005/jul/04/voterapathy.uk](http://www.guardian.co.uk/politics/2005/jul/04/voterapathy.uk) and [www.electionaccess.org/LR/Alphabet\\_LR.htm](http://www.electionaccess.org/LR/Alphabet_LR.htm)

**Issue 1****Timely actions for monitoring and advocating for the implementation of the right to vote and to be elected***by the International Disability Alliance*

The right to political participation is enshrined in several international human rights instruments including: Article 25 of the International Covenant on Civil and Political Rights (ICCPR), Article 7 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD); as well as figures in more recent international standards on political participation of persons with disabilities, including Recommendation CM/Rec (2001)14 of the Committee of Ministers of the Council of Europe, the Venice Commission's Revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections, and the OHCHR thematic study on participation in political and public life by persons with disabilities.

Article 29 of the CRPD provides that States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.

In order to fulfil these rights, States should prohibit discrimination and provide for effective legal protection against all forms of discrimination, as well as put in place measures of accessibility and the provision of reasonable accommodation.

Some guidance on implementing this right is set out in Article 29:

1. Voting procedures, facilities and materials should be appropriate, accessible and easy to understand and use;
2. Voting should be exercised through secret ballot, without intimidation, and with the assistance of a person of the elector's own choice
3. Standing for election, effective holding of office and performing all public functions at all levels of government should be facilitated, including through the use of assistive and new technologies.

While the obligations to implement such measures is incumbent on Governments, rights-holders (i.e. persons with disabilities themselves) and stakeholders (among others, electoral management bodies, national human rights institutions-NHRIs, DPOs and NGOs) have an important role to play in ensuring the right to political participation in the lead up to elections, during elections, and in the post-election period.

This article proposes a series of actions which can be taken at different moments of the political process to ensure participation by persons with disabilities. The following action plan is not exhaustive and should be adapted to specific national contexts.

**Issue 1****LEADING UP TO ELECTIONS****Persons with disabilities and DPOs, with the support of stakeholders (such as NGOs, NHRIs, universities, the media and international cooperation actors) should:**

1. Identify de jure and de facto barriers which prohibit full participation of persons with disabilities as voters and candidates to elections, and advocate for their removal.
2. Challenge discriminatory legislation before the courts, such as the exclusion of categories of persons with disabilities from the right to vote and from running for public office, including persons deprived of their legal capacity, persons deemed incompetent, persons residing in institutions and persons who cannot express themselves in writing or in the state language, among others.
3. Advocate for the reform of election laws in line with international standards, including the CRPD.
4. Disseminate information on the right to vote and to be elected of persons with disabilities by producing policy and briefing papers with recommendations on measures to be taken by the Government in order to render national electoral law and practices compatible with the CRPD and the latest international standards on political participation.
5. Urge Governments to promote information campaigns to raise public awareness on the rights of citizens with disabilities, in close consultation with persons with disabilities and their representative organisations.
6. Call on Governments to train electoral management bodies (EMBs),<sup>1</sup> in particular electoral commissions and polling officers on accessibility, non-discrimination and reasonable accommodation regarding persons with disabilities, in cooperation with organisations of persons with disabilities representing different disability constituencies, including persons with intellectual disabilities, persons with psychosocial disabilities, blind persons, deaf persons and deafblind persons, little persons, wheelchair users, and persons with limited mobility, among others.
7. Urge Governments, EMBs, political parties, and others to carry out studies and collect data on existing barriers which persons with disabilities face in exercising their right to vote and to be elected, and on their participation in elections as voters and as candidates.
8. Urge Governments to ensure that public information and communications on elections are available in sign language and accessible formats, including through the training of sign language interpreters.
9. Call on Governments to render environments accessible for accessible polling stations and accessible means of transportation to reach polling stations.
10. Urge Governments to ensure that polling stations are sufficiently widespread to ensure participation in both urban and rural areas, with a particular focus on making available postal voting and mobile polling stations to facilitate voting for persons in hospital or living in institutions.
11. Advocate for the abolition of restrictions on the legal capacity of persons with disabilities, including persons with psychosocial, intellectual disabilities, deaf, blind and deafblind people, and for the enjoyment and exercise of all human rights, including the right to vote and stand for elections, on an equal basis with others.
12. Encourage Governments to publish and share good practices on elections regionally and internationally.

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### **Electoral Management Bodies (EMBs) should:**

1. Closely consult with and actively involve persons with disabilities and their representative organisations when organising the election process.
2. Provide training to polling officers on ensuring the accessibility of elections and on the provision of reasonable accommodation, including ensuring that voters with disabilities can benefit from an assistant of their own choosing to help them to cast their vote.
3. Provide reasonable accommodation to persons with disabilities in order to facilitate the process to register and vote.
4. Develop checklists for election observers which also focus on election access and accessibility.
5. Train election observers to assess the accessibility of elections.
6. Publish an evaluation report and comprehensive study on the accessibility of elections that contain both quantitative and qualitative indicators which are developed and conducted in consultation with persons with disabilities and their representative organisations.

### **Political parties should:**

1. Be more inclusive of and accessible to persons with disabilities, ensuring their participation in the political parties' activities and administration.
2. Be more attentive to the rights of persons with disabilities in defining their party platforms and political programmes.
3. Promote good practices, and consult and involve persons with disabilities and their representative organisations.
4. Develop guides, toolkits and website materials to support local authorities and politicians to ensure inclusion and political participation of persons with disabilities.
5. Promote inclusiveness and accessibility to political campaigns by making campaign information, material and events accessible through the availability of accessible languages and formats (captioning, audio description, sign language interpretation, plain language, Braille, easy to read and understand format, among others).

**Issue 1****DURING THE ELECTIONS**

**Persons with disabilities and DPOs, with the support of stakeholders (such as NGOs, NHRIs, universities, the media and international cooperation actors) should:**

1. Identify and report inaccessible polling stations and barriers to vote in secret, as well as denial of the right to vote on the basis of deprivation of legal capacity.
2. Present complaints and report cases of the denial of reasonable accommodation during elections.
3. Call on NHRIs to implement complaint mechanisms allowing persons with disabilities and their families or assistants to denounce barriers on exercising the right to vote.
4. Urge governments to make available accessible transportation to and from polling stations where public transportation is not accessible for persons with reduced mobility.

**Electoral Management Bodies (EMBs) should:**

1. Ensure mobile polling stations in hospitals and in institutions which respect voters' privacy and which permit assistance in voting, along with accessibility standards.
2. Support and prepare polling officers to evaluate the accessibility of elections, including (i) accessibility of polling stations and booths, ensuring privacy, (ii) effectiveness of assisted voting systems (allowing persons with disabilities to vote with an assistant of their choice) and (iii) use of Braille ballots and templates, large print ballots and easy-to-read ballots, among others.
3. Ensure accessible and reserved parking for persons with disabilities close to the main entrance of voting places with accessible walkways from the parking to the entrance.

**AFTER THE ELECTIONS**

**Persons with disabilities and DPOs, with the support of stakeholders (such as NGOs, NHRIs, universities, the media and international cooperation actors) should:**

1. Analyse information collected by election observers and propose strategies to improve election access and participation through discussions with the Government and EMBs and by engaging in public discussions and awareness raising.
2. Advise on and lodge complaints by persons with disabilities whose right to political participation was impeded.
3. Urge Governments to include information and data in their national reports to relevant treaty bodies and for the Universal Periodic Review on the number of persons with disabilities deprived of their political rights and the grounds for the deprivation as well as disaggregated data on the number of persons with disabilities holding public office.<sup>2</sup>

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4. Report to regional and international human rights mechanisms such as UN treaty bodies, including the Human Rights Committee, the Committee on the Elimination of all forms of Discrimination against Women and the Committee on the Rights of Persons with Disabilities, before which the State is coming up for review<sup>3</sup> and Special Procedures mandate holders,<sup>4</sup> including the Special Rapporteur on Disability, on the barriers on the right to vote and to be elected of persons with disabilities.

**Electoral Management Bodies (EMBs) should:**

1. Consult with persons with disabilities and their representative organisations to improve inclusiveness and accessibility of the election process.

**INTERNATIONAL BODIES****International election observers and electoral assistance bodies should:**

1. Observe accessibility and inclusiveness in the electoral process, detecting and preventing problems and activities which may impede persons with disabilities from exercising their right to vote and bring those problems and challenges to the attention of EMBs.
2. Mainstream the rights of persons with disabilities and include the disability dimension when providing guidance and advice, and in developing the capacity of EMBs, political parties and national election observers.
3. Disseminate good practices of accessibility and inclusiveness in the electoral process observed in different countries.
4. Analyse and document observations collected during the election and devise strategies to address identified shortcomings, in consultation with DPOs and EMBs.

**UN Treaty Bodies, namely the CRPD Committee, Human Rights Committee, and Committee on the Elimination of Discrimination Against Women should:**

1. Address the political participation of persons with disabilities when examining state reports and in formulating general comments, as well as exploring how multiple forms of discrimination based on disability, gender and other grounds negatively impact upon the right to political participation. To this end, treaty bodies should require States to collect data on political participation which is also systematically disaggregated by disability. In addition, guide States in ensuring equal recognition before the law, including with respect to voting and standing for election, by calling on States to abolish substituted decision-making regimes in accordance with Article 12 of the CRPD, Article 16 of the ICCPR and Article 15 of CEDAW.
2. Where individual communications raise this issue, clarify general provisions of international treaties (CRPD, ICCPR and CEDAW respectively) to uphold non-discrimination and the right to political participation on an equal basis with others.
3. Create opportunities for exchange amongst treaty bodies to reinforce the coherence of standards on the right to political participation.



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<sup>1</sup> The term 'electoral management body' or EMB has been coined as a name to refer to the body or bodies responsible for electoral management. Such bodies have a variety of shapes and sizes, with a wide range of titles to match, which include 'Election Commission', 'Department of Elections', 'Electoral Council', 'Election Unit', or 'Electoral Board'.

<sup>2</sup> See, for example, the CRPD Committee's Concluding Observations on China (CRPD/C/CHN/Q/1), September 2012, paras 26 and 44.

<sup>3</sup> See IDA's Calendar for forthcoming treaty body sessions and further information available at [www.internationaldisabilityalliance.org/en/un-treaty-bodies](http://www.internationaldisabilityalliance.org/en/un-treaty-bodies)

<sup>4</sup> More on Special Procedures is available at [www.internationaldisabilityalliance.org/en/special-procedures](http://www.internationaldisabilityalliance.org/en/special-procedures) and [www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx). Forthcoming country visits by Special Procedures mandate holders is available at [www.ohchr.org/EN/HRBodies/SP/Pages/Forthcomingcountryvisits.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Forthcomingcountryvisits.aspx)

e capacity to vote in guardianship proceedings and a person without full legal capacity is not allowed to stand for any elections.

*The International Disability Alliance (IDA) is a unique, international network of global and regional organisations of persons with disabilities. Established in 1999, each IDA member represents a large number of national disabled persons' organisations (DPOs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world's largest – and most frequently overlooked – minority group. Currently comprising eight global and four regional DPOs, IDA's mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.*

*IDA members are: Disabled Peoples' International, Down Syndrome International, Inclusion International, International Federation of Hard of Hearing People, World Blind Union, World Federation of the Deaf, World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry, Arab Organization of Persons with Disabilities, Pacific Disability Forum, Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families (RIADIS), and the European Disability Forum.*

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