

Participation of persons with disabilities in the election process

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PERSONS WITH DISABILITIES

According to the Disability World Report, published in 2011, by the World Bank and WHO, persons with disabilities represent over a billion people around the world.

This means about 15% of the world's population. And it would not be exaggerated to say that the majority of these people are in age to cast their vote or stand for elections.

NATIONAL PRACTICES on the PARTICIPATION OF PERSONS WITH DISABILITIES IN ELECTION PROCESSES

In 2011, the International Disability Alliance has contributed to the OHCHR Thematic Study on the participation of persons with disabilities in political and public life. This Study showed that national laws, policies and practices on the right to political participation by persons with disabilities vary across the globe.

Generally, the way in which the right is, or is not observed by States can be described as falling into the following categories:

First: Persons with disabilities are allowed by law to vote and to stand for elections and are de facto supported to do so, such as in Austria, Canada, Netherlands and Sweden.

Second: The laws do not prohibit persons with disabilities to vote or to stand for elections but none or very few adequate specific measures are taken to promote the “de facto” exercise of their rights, that is, to enjoy their rights on an equal basis with others.

For instance, in Italy there is lack of information available in Braille. In addition, sign language interpreters are not available at polling stations. Finally, there is a lack of training of polling officials to facilitate voting by persons with disabilities.

Further, in Belgium, for example, the voter system is not accessible for blind or severe partially sighted people.

In the third category, some persons with disabilities are allowed by law to vote and to stand for elections, but not all of them, for example, blind, deaf, deafblind and persons with intellectual disabilities.

In Latvia, for example, the electoral Law requires that candidates confirm by signature personal information about them.

In San Marino, the Electoral Law requires literacy for office.

In the fourth category, all persons with intellectual disabilities or under guardianship are prohibited to exercise their right to vote and to be elected based on their disability; which is the case in Denmark, Finland and France.

PROMOTING THE RIGHTS OF PERSONS WITH DISABILITIES IN THE UN SYSTEM

The rights to vote and to be elected of persons with disabilities are provided by three International Human Rights Instruments:

The first one is the Universal Declaration of Human Rights, in its Article 21, which states that everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Further, it specifies that the will of the people shall be the basis of the authority of government; and it shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The second one is the Convention on the Rights of Persons with Disabilities, approved in 2006 by the UN and ratified so far by 119 States in the world, of which 22 out of the 27 members of the European Union and by the EU itself.

The very purpose of the CRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.

In its Article 29, the CRPD brings the latest international human rights standard on the right to vote of persons with disabilities.

The Article aims to promote the rights of persons with disabilities to participate in political life like everyone else, by voting and standing for election, and to actively contribute to and be engaged in wider society, and should have the same opportunities to enjoy this rights.

The third international instrument is the International Covenant on Civil and Political Rights, which in its Article 25 recognises that every citizen shall have the right and the opportunity, without discrimination of any ground, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot.

In order to complement and to monitor the implementation of those mentioned International Human Rights Instruments, the UN created the **Human Rights Mechanisms**.

We will talk about developments regarding the rights of persons with disabilities to vote and to be elected within three of those mechanisms, namely the Human Rights Council, the Treaty Bodies and the High Commissioner for Human Rights.

The Human Rights Council, among other relevant developments, approved a Resolution in March of 2012 regarding the rights of participation in political and public life of persons with disabilities.

Through this Resolution, the Council called upon States parties to adopt and implement all appropriate measures to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, including the right and opportunity for persons with disabilities to vote and be elected, and to participate in the conduct of public affairs.

Treaty bodies

The UN Treaty Bodies, which are in charge of the implementation of the UN human rights treaties, have made advances towards giving more attention to persons with disabilities in the scope of their mandate.

For example, the **Committee on the Rights of Persons with Disabilities** has systematically urged States, by means of its Concluding Observations, to guarantee and promote the full and effective exercise to the right to vote and to participate in public life on an equal basis with others.

So far, the Committee reviewed **Spain, Tunisia and Peru**.

For instance, regarding the Recommendations to Spain, the Committee recommended that all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others. (Point 38)

Another relevant body is the **Human Rights Committee**, which has the mandate to monitor implementation of the International Covenant on Civil and Political Rights.

On its Concluding Observations, the Committee, for instance, 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.

The **Committee on the Elimination of Discrimination against Women**, CEDAW, has also highlighted the rights of persons with disabilities through its jurisprudence. The Committee has recommended to State Parties to adopt targeted measures to ensure the equal participation and representation of women, including women with disabilities, in public and political life. In 2011, the CEDAW Committee recommended to **Italy** to apply temporary special measures in various forms in areas where women, including women with disabilities, are underrepresented, such as legislative, executive, administrative and political bodies.

Regarding the work of the **Office of the High Commissioner for Human Rights**, OHCHR:

In 2001, for instance, the OHCHR prepared a thematic study on participation in political and public life by persons with disabilities. The study analysed relevant provisions of the CRPD, highlighting good practices in the field of participation of persons with disabilities in elections and identified the main challenges that still prevent or limit the equal and effective participation of persons with disabilities in the political and public life of their countries.

The Study recommended countries to revise their legislation and make it consistent with the CRPD.

PROMOTING THE RIGHTS OF PERSONS WITH DISABILITIES IN EUROPE

Further than the International Human Rights Systems; there are the regional human rights systems. We will take a few minutes to talk about the European system.

CoE Human Rights Commissioner

One of the most relevant bodies in Europe is the **Council of Europe's Human Rights Commissioner**, which published important papers /recommendations regarding the rights of persons with disabilities and the CRPD standards, such as (1) Persons with disabilities must not be denied the right to vote, in 2011; (2) persons with intellectual and psycho-social disabilities must not be deprived of their individual rights, in 2012; and (3) Human Rights and Disability: Equal Rights For All - IssuePaper(2008)

Venice Commission

As you may know, the Venice Commission revised its Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections, at its 89th plenary session, in 17 December 2011.

The revised Interpretative Declaration states that the participation of all citizens in political and public life and the democratic process is essential for the development of democratic societies.

Further, the Venice Commission declares that the universal suffrage is a fundamental principle of the European Electoral Heritage; and that people with disabilities may not be discriminated against in this regard, in conformity with Article 29 of the CRPD and the case law of the European Court of Human Rights.

Committee of Ministers of the Council of Europe

In 2011, following the Venice Commission's Interpretative Declaration, the Committee of Ministers of the Council of Europe adopted a Recommendation regarding the political rights of persons with disabilities, which asserts 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.

The European Court of Human Rights

In 2010, the European Court of Human Rights ruled on the Case Kiss v Hungary, 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 psychosocial disability on account of partial guardianship was not compatible with the principle of universal suffrage inscribed in Article 3 of Protocol n° 1 of the European Convention on Human Rights.

RECOMMENDATIONS

? What can be done to guarantee the participation of persons with disabilities in the election process?

According to Article 29 of the CRPD, the following measures, which are not exhaustive, can be taken in order to ensure that persons with disabilities can fully and effectively participate in political processes on an equal basis with others:

I. Leading up to elections:

1. Ensure that voting procedures, facilities and materials are accessible and easy to understand and use, including by voting materials available in Braille facilitating to blind persons to vote on their own; and that general information and campaigns on elections are made accessible for deaf persons, by including sign language interpretation and closed captioning in all information provided over TV;
2. Ensure that electronic forms of voting are designed in an accessible way from the outset and any information on elections that is provided through Internet should respect the relevant website accessibility standards.
3. Identify *de jure* and *de facto* barriers which prohibit full participation of persons with disabilities as voters and candidates and remove them;

4. Provide support to election management bodies and civil society organizations to ensure an inclusive political process;
5. Ensure that election management bodies carry out consultations with persons with disabilities and their representative organizations when organizing the election process;
6. Conduct information campaigns to raise the awareness of political parties and the public of the rights of citizens with disabilities, including persons with disabilities themselves;
7. Include election access questions on mainstream election observer checklists and develop a checklist focused on election access;
8. Train election observers to assess the accessibility of elections.

II. During the elections:

1. Protect the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, facilitating the use of assistive and new technologies where appropriate;
2. Make polling stations accessible;
3. Support election observers' work in order to assess accessibility of elections;
4. Guarantee the free expression of the will of persons with disabilities as electors and to this end, upon request; allow assistance in voting by a person of the voter's own choice;
5. Put in place mechanisms allowing persons with disabilities and their families (or assistants) to present complaints regarding barriers on exercising the right to vote.

III. After the elections:

1. Review and address complaints received from persons with disabilities, and use them to assess and improve the election system;
2. Analyse observations collected from election observers with a view to improve the system;
3. Consult with persons with disabilities and their representative organizations to improve inclusiveness and accessibility for future elections.