



Convention on the Rights of Persons with Disabilities

Distr.: General
19 October 2011

Original: English

Committee on the Rights of Persons with Disabilities

Sixth session

19–23 September 2011

Consideration of reports submitted by States parties under article 35 of the Convention

Concluding observations of the Committee on the Rights of Persons with Disabilities

Spain

1. The Committee considered the initial report of Spain (CRPD/C/ESP/1) at its 56th and 57th meetings (see CRPD/C/6/SR.3 and SR.4), held on 20 September 2011, and adopted the following concluding observations at its 62nd meeting, held on 23 September 2011.

I. Introduction

2. The Committee welcomes the initial report of Spain, which was the first State to submit its initial report to the Committee. The Committee commends the State party for the written replies to the list of issues raised by the Committee (CRPD/C/ESP/Q/1/Add.1) and for the comprehensive responses to the questions posed during the dialogue.

3. The Committee commends the State party for its delegation, which included among its members representatives of various Government ministries, including many senior representatives, as well as two persons with disabilities. The Committee expresses its appreciation for the spirited and fruitful dialogue held between the delegation and the members of the Committee.

II. Positive aspects

4. The Committee congratulates the State party for the progress made in many areas related to the rights of persons with disabilities, including the adoption of Act 26/2011 of 1 August 2011 on the normative adaptation to the Convention, amending regulations and modifying several Spanish laws in response to the Convention, and including important positive action measures in health, housing, employment and other areas.

5. The Committee notes with satisfaction Act 51/2003 on equality of opportunity, non-discrimination and “universal accessibility” for persons with disabilities as well as its enabling regulations, in particular the royal decrees providing for basic standards of accessibility.
6. The Committee commends the State party for establishing independent monitoring mechanisms in full compliance with article 33, paragraph 2, of the Convention.
7. The Committee welcomes the State party’s adoption of the Third Plan of Action for persons with disabilities, which addresses disability along gender-analysis lines, as well as the Global Action Strategy for the Employment of Persons with Disabilities 2008-2012, including its first plan of action, covering the years 2008-2010.
8. The Committee commends the State party’s adoption of its long-term strategy for persons with disabilities (2012-2020), which includes objectives for the short and medium term.
9. The Committee commends the State party for the high percentage (78.35 per cent) of enrolment of children with disabilities in the regular education system, and for the efforts made to maintain the funding for programmes for persons with disabilities in times of economic crisis. In this, Spain is setting a very important example of fulfilling the purpose of article 4, paragraph 2, of the Convention. The Committee further welcomes the commitment of the State party to avoid reducing social assistance.
10. The Committee acknowledges the efforts that the State party has made to strengthen its commitment to international cooperation by allocating earmarked funding for disability-inclusive development.

III. Principal areas of concern and recommendations

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

11. The Committee takes note of the adoption of Act 26/2011, which introduces the concept of persons with disabilities as defined in the Convention and expands the protection of such persons. However, it is concerned that not all persons with disabilities are covered by the law.
12. **The Committee urges the State party to ensure that all persons with disabilities enjoy protection against discrimination and have access to equal opportunities irrespective of their level of disability.**
13. The Committee welcomes Act 49/2007 of 26 December 2007, which establishes the Permanent Specialized Office to deal with offences and sanctions in the areas of equal opportunities, non-discrimination and universal accessibility by persons with disabilities. However, it is concerned by the slow development and lack of promotion of this arbitration system at the regional government level, by the lack of information on the number of sanctions submitted and resolved, and by the failure of the State party to report on actions undertaken to implement this law. The Committee is concerned about the overall effectiveness of the system.
14. **The Committee recommends that the State party raise awareness among persons with disabilities about the system of arbitration, increase the level of free legal aid, and ensure the regulation of offences and sanctions at the regional government level.**

15. The Committee regrets the lack of information on the meaningful participation of persons with disabilities and their representative organizations at the regional level in designing and evaluating the implementation of legislation, policy and decision-making processes, and on the participation of children with disabilities at all levels.

16. The Committee recommends that the State party take specific measures to ensure the active participation of persons with disabilities in public decision-making processes at the regional level, and to include children with disabilities at all levels.

17. The Committee takes note of Act 2/2010 of 3 March 2010 on sexual and reproductive health, which decriminalizes voluntary termination of pregnancy, allows pregnancy to be terminated up to 14 weeks and includes two specific cases in which the time limits for abortion are extended if the foetus has a disability: until 22 weeks of gestation, provided there is “a risk of serious anomalies in the foetus”, and beyond week 22 when, inter alia, “an extremely serious and incurable illness is detected in the foetus”. The Committee also notes the explanations provided by the State party for maintaining this distinction.

18. The Committee recommends that the State party abolish the distinction made in Act 2/2010 in the period allowed under law within which a pregnancy can be terminated based solely on disability.

B. Specific rights (arts. 5-30)

Equality and non-discrimination (art. 5)

19. The Committee welcomes the regulatory amendments introduced under Act 26/2011 that would abolish the need to have a disability certificate to bring a discrimination claim before a judicial body. However it regrets the lack of information on cases of discrimination, and it is concerned that persons with disabilities will still be marginalized. The Committee is further concerned by the lack of information on reasonable accommodation. It is also concerned that, in practice, disability affects parents’ guardianship or custody of their children and that legal protection against discrimination on the grounds of disability is not enforceable in cases of discrimination due to perceived disability or association with a person with a disability.

20. The Committee urges the State party to expand the protection of discrimination on the grounds of disability to explicitly cover multiple disability, perceived disability and association with a person with a disability, and to ensure the protection from denial of reasonable accommodation, as a form of discrimination, regardless of the level of disability. Moreover, guidance, awareness-raising and training should be given to ensure a better comprehension by all stakeholders, including persons with disabilities, of the concept of reasonable accommodation and prevention of discrimination.

Women with disabilities (art. 6)

21. The Committee is concerned that public programmes and policies on the prevention of gender-based violence do not sufficiently take into consideration the particular situation of women with disabilities. The Committee is also concerned that employment policies do not include a comprehensive gender perspective and that unemployment, inactivity and training rates are significantly worse for women than for men with disabilities.

22. The Committee recommends that the State party:

(a) Include a more comprehensive consideration of women with disabilities in public programmes and policies on the prevention of gender-based violence,

particularly so as to ensure access for women with disability to an effective, integrated response system;

(b) **Include a gender perspective in employment policies, and particularly specific measures for women with disabilities;**

(c) **Elaborate and develop strategies, policies and programmes, especially in the fields of education, employment, health and social protection, to promote the autonomy and full participation of women and girls with disability in society, and to combat violence against them.**

Children with disabilities (art. 7)

23. The Committee is particularly concerned at the reportedly higher rates of abuse of children with disabilities in comparison with other children. The Committee is equally concerned by the lack of early identification, family interventions and informed support of children with disabilities, which puts at risk their full development and ability to express their views; and by the lack of available resources and coordinated public administration in the social, health and education services, among others.

24. **The Committee recommends that the State party:**

(a) **Increase efforts to promote and protect the rights of children with disabilities, and to undertake research on violence against children with disabilities, adopting measures to eradicate this violation of their rights,**

(b) **Establish policies and programmes that will ensure the right of children with disabilities to express their own views;**

(c) **Develop coordinated public policies with sufficient resources to ensure inclusive access to support services that include informed therapeutic, rehabilitation and habilitation services, and care which covers the health, psychosocial and education needs of children with disabilities, in particular during early childhood.**

Awareness-raising (art. 8)

25. The Committee commends the many initiatives taken by the State party to implement the Convention. However, it notes that more needs to be done to increase awareness in society, in the media and among persons with disabilities themselves of the rights of persons with disabilities,

26. **The Committee calls upon the State party to take proactive measures to enhance awareness of the Convention and the Optional Protocol thereto at all levels, in particular among the judiciary and the legal profession, political parties, Parliament and Government officials, civil society, media, and persons with disabilities, as well as among the general public.**

Accessibility (art. 9)

27. The Committee takes note that Act 26/2011 introduces regulatory amendments that will shorten the timelines for meeting accessibility requirements in public facilities and with respect to goods and services available to the public. However, it remains concerned at the low level of compliance with these requirements, in particular at the regional and local levels, in the private sector, and in relation to existing facilities. The Committee is aware of situations of discrimination faced by air passengers with disabilities, including situations of denial of boarding. The Committee reminds the State party that article 9 of the Convention also requires States to ensure access to information and communication.

28. **The Committee recommends that sufficient financial and human resources be allocated as soon as possible to implement, promote and monitor compliance with accessibility legislation through national measures as well as through international cooperation.**

Right to life (art. 10)

29. The Committee welcomes the fact that Act 26/2011 amends regulations to contain provisions to reflect the right to accessibility when granting informed consent to medical treatment. It however regrets that guardians representing persons with disabilities deemed “legally incapacitated” may validly consent to termination or withdrawal of medical treatment, nutrition or other life support for those persons. The Committee wishes to remind the State party that the right to life is absolute, and that substitute decision-making in regard to the termination or withdrawal of life-sustaining treatment is inconsistent with this right.

30. **The Committee requests the State party to ensure that the informed consent of all persons with disabilities is secured on all matters relating to medical treatment, especially the withdrawal of treatment, nutrition or other life support.**

Situations of risk and humanitarian emergencies (art. 11)

31. The Committee is concerned at the insufficiency of specific protocols for persons with disabilities in emergency situations.

32. **The Committee calls upon the State party to review its laws and policies related to emergency situations with a view to including provisions guaranteeing the security and protection of persons with disabilities.**

Equal recognition before the law (art. 12)

33. The Committee notes that Act 26/2011 allows a period of one year following its entry into force for the presentation of a bill to govern the scope and interpretation of article 12 of the Convention. The Committee is further concerned that no measures have been taken to replace substitute decision-making by supported decision-making in the exercise of legal capacity.

34. **The Committee recommends that the State party review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences. It further recommends that training be provided on this issue for all relevant public officials and other stakeholders.**

Liberty and security of the person (art. 14)

35. The Committee takes note of the legal regime allowing the institutionalization of persons with disabilities, including persons with intellectual and psychosocial disabilities (“mental illness”). It is concerned at the reported trend of resorting to urgent measures of institutionalization which contain only ex post facto safeguards for the affected individuals. It is equally concerned at the reported abuse of persons with disabilities who are institutionalized in residential centres or psychiatric hospitals.

36. **The Committee recommends that the State party: review its laws that allow for the deprivation of liberty on the basis of disability, including mental, psychosocial or intellectual disabilities; repeal provisions that authorize involuntary internment linked to an apparent or diagnosed disability; and adopt measures to ensure that health-care services, including all mental-health-care services, are based on the informed consent of the person concerned.**

Integrity of the person (art. 17)

37. The Committee is concerned that persons with disabilities whose legal capacity is not recognized may be subjected to sterilization without their free and informed consent.

38. **The Committee urges the State party to abolish the administration of medical treatment, in particular sterilization, without the full and informed consent of the patient; and ensure that national law especially respects women's rights under articles 23 and 25 of the Convention.**

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

39. The Committee is concerned at the lack of resources and services to guarantee the right to live independently and to be included in the community, in particular in rural areas. It is further concerned that the choice of residence of persons with disabilities is limited by the availability of the necessary services, and that those living in residential institutions are reported to have no alternative to institutionalization. Finally, the Committee is concerned about linking eligibility of social services to a specific grade of disability.

40. **The Committee encourages the State party to ensure that an adequate level of funding is made available to effectively enable persons with disabilities: to enjoy the freedom to choose their residence on an equal basis with others; to access a full range of in-home, residential and other community services for daily life, including personal assistance; and to so enjoy reasonable accommodation so as to better integrate into their communities.**

41. The Committee is concerned that the law for the promotion of autonomy limits the resources to hire personal assistants only to those persons who have level 3 disabilities and only for education and work.

42. **The Committee encourages the State party to expand resources for personal assistants to all persons with disabilities in accordance with their requirements.**

Education (art. 24)

43. The Committee welcomes the fact that the principle of inclusion governs the schooling of pupils with special educational needs; that discrimination in education is prohibited; and that most children with disabilities are included in the regular education system. It commends the enactment of Organic Act 2/2006 on education, which obliges the education authorities to provide specialist teachers, qualified professionals and the necessary materials and resources, as well as the laws that oblige schools to make necessary curricular adjustments and diversifications for pupils with disabilities. However, the Committee is concerned by the implementation of these laws in practice, in view of reported cases of failure to provide reasonable accommodation, of continued segregation and exclusion, of financial arguments used as justification for discrimination, and of the cases of children enrolled in special education against their parents' will. The Committee notes with concern that parents challenging the placement of their children with disabilities in special education have no possibility of appeal and that their only alternative is to educate them at their own expense or pay for the reasonable accommodation of their child in the regular education system.

44. **The Committee reiterates that denial of reasonable accommodation constitutes discrimination and that the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realization. It recommends that the State party:**

(a) **Increase its efforts to provide reasonable accommodation in education, by: allocating sufficient financial and human resources to implement the right to**

inclusive education; paying particular attention to assessing the availability of teachers with specialist qualifications; and ensuring that educational departments of local governments understand their obligations under the Convention and act in conformity with its provisions;

(b) Ensure that the decisions to place children with a disability in a special school or in special classes, or to offer them solely a reduced-standard curriculum, are taken in consultation with the parents;

(c) Ensure that the parents of children with disabilities are not obliged to pay for the education or for the measures of reasonable accommodation in mainstream schools;

(d) Ensure that decisions on placing children in segregated settings can be appealed swiftly and effectively.

Right to work (art. 27)

45. Despite a number of enabling provisions to keep persons with disabilities in employment, the Committee is concerned with the overall low rate of employment of persons with disabilities.

46. The Committee recommends that the State party develop open and advanced programmes to increase employment opportunities for women and men with disabilities.

Participation in political and public life (art. 29)

47. The Committee is concerned 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. It regrets the lack of information on standards of evidence or grounds, and criteria used by judges when depriving persons of their right to vote. It notes with concern the number of persons with disabilities denied their right to vote.

48. 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.

C. Specific obligations (arts. 31-33)

Statistics and data collection (art. 31)

49. The Committee regrets the low level of disaggregated data on persons with disabilities. The Committee recalls that such information is indispensable to: understanding the situations of specific groups of persons with disabilities in the State party who may be subject to varying degrees of vulnerability; developing laws, policies and programmes adapted to their situations; and assessing the implementation of the Convention.

50. **The Committee recommends that the State party systematize the collection, analysis and dissemination of data, disaggregated by sex, age and disability; enhance capacity-building in this regard; and develop gender-sensitive indicators to support legislative developments, policymaking and institutional strengthening for monitoring and reporting on progress made with regard to the implementation of the various provisions of the Convention.**

51. The Committee regrets that the situation of children with disabilities is not reflected in the data on the protection of children.

52. **The Committee recommends that the State party systematically collect, analyse and disseminate data, disaggregated by sex, age and disability, on abuse and violence against children.**

Follow-up and dissemination

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

54. The Committee strongly encourages the State party to involve civil society organizations, in particular disabled persons' organizations, in the preparation of its second periodic report.

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

Next report

56. The Committee requests the State party to submit its second periodic report by no later than 3 December 2015, and to include therein information on the implementation of the present concluding observations.
