

Mandate of the Special Rapporteur on the rights of persons with disabilities

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(Please use this reference in your reply)

9 February 2023

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolution 44/10.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **Draft Law for the Promotion and Protection of the Rights of Persons with Disabilities** (hereafter the 'draft Law').

At the outset I would like to welcome the commitment of your Excellency's Government to improve the rights of persons with disabilities through the development of national disability legislation.

In this context, I commend Mozambique for having ratified the Convention on the Rights of Persons with Disabilities (CRPD). I highlight that the CRPD was adopted as a resolution by the UN General Assembly in 2006 and has standing as the most progressive interpretation of human rights standards for persons with disabilities. These rights are furthermore guaranteed by all other human rights treaties, including the ones ratified by Mozambique, such as the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child. I am also encouraged that during the third cycle of the Universal Period Review held in 2021, your Excellency's Government accepted a number of recommendations to strengthen the promotion and protection of the rights of persons with disabilities in line with the CRPD, including the finalization of the draft Law.

I have been informed that in 2017, the Council of Ministers approved a draft Law for the Promotion and Protection of the Rights of persons with disabilities. At the time, organizations of persons with disabilities and civil society raised concerns that the draft was not in line with the CRPD and that the drafting process had not been participatory. Subsequently, the Council of Ministers did not proceed with submitting the draft Law for adoption by the Parliament and civil society and organizations of persons with disabilities proposed revisions to the Government.

In 2021, the Ministry of Gender, Child and Social Action committed to address concerns raised over the draft Law. The Ministry worked with organizations of persons with disabilities and civil society to draft a new improved text. This version was then consulted with other Ministries resulting in significant changes and without informing organizations of persons with disabilities. The Ministry approved the revised draft Law in August 2022 despite objections by organizations of persons with disabilities. The Council of Ministers then approved the draft Law and submitted it for consideration by the Parliament.

From 5 to 14 February 2023, the Parliament is conducting public hearings to discuss and collect inputs on the draft Law to inform its deliberations. Following this consultative process, the Parliament is expected to initiate procedures to adopt the draft Law.

I submit the following comments in a spirit of cooperation and in support of this unique opportunity to strengthen the framework for the protection of the rights of persons with disabilities, and to bring it in line with human rights standards.

The adoption of national legislation aligned with the rights as set forth in the nearly universally ratified CRPD offers the best chance of advancing the full enjoyment of all civil, political, economic, social and cultural rights of Mozambicans with disabilities. Moreover, ensuring that the process by which national disability legislation is adopted fully benefits from the voice of persons with disabilities themselves and their representatives is likewise critical to the success of the disability law framework and key obligations of the CRPD. I highlight here some of the main issues arising from my review of the draft Law.

Scope and Implementation

I welcome the draft Law's purpose, namely, that the objectives of the legislation are to "establish a normative framework that ensures full exercise of the rights of Persons with Disabilities, elimination of barriers, as well as their inclusion and participation on an equal basis with other people in all spheres of "society." This process is an important step towards implementation of Mozambique's commitments as set out in the CRPD.

That said, the draft Law does not provide the kind of specific guidance reflected in international standards, in particular the CRPD. As such, its generic provisions run the risk of falling well below international obligations in their implementation. More specific guidance on the range of rights set out in the draft Law is clearly warranted, including the provisions on education, employment, access to justice, health, among others. A detailed scoping of the existing legal framework and ensuring that the provisions in the draft Law provide specific guidance on how the rights of persons with disabilities are to be implemented will provide a stronger basis on which to develop national disability legislation. The participation of persons with disabilities and their representative organizations in this process is vital.

The draft Law is structured around a division of civil and political rights (chapter II) and economic, social and cultural rights (chapter IV). This categorization appears to go against the spirit of the CRPD that purposefully avoids the tradition of division of rights. To align the draft Law with the CRPD, it should reflect the indivisibility and interdependence of human rights.

In article 39, the draft Law sets out provisions concerning implementation and suggests that legislation on disability matters "must confirm to the principles set out in this Law." This provision would be contrary to article 4 of the CRPD which makes it very clear that all legislation, policy and programming are to adhere to the principles of the CRPD, not only those addressing disability specific matters. This provision should be revised to reflect this important point.

Further, article 39 seems to suggest that implementation of the legislation is gradual, with no restrictions as to what rights in the legislation are subject to gradual implementation. This also seems to not conform with article 4 of the CRPD which makes it clear that only economic, social and cultural rights are subject to progressive realization. Article 4(2) of the CRPD provides: “With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.” Non-discrimination, for instance, is immediately realizable and should not be made contingent on resources. This must be changed to reflect international human rights standards including, but not limited to, the CRPD.

Participation of persons with disabilities in the drafting process

I welcome the initial involvement of organizations of persons with disabilities in the drafting process. However, I regret that many of their proposals do not seem to be reflected in the latest version of the draft Law. Participation is a core human rights principle that is firmly rooted in international law, and it is a basic condition for democratic societies as it allows individuals to play a central role in their own development, as well as in the development of their communities.

The active and informed participation of different groups, including persons with disabilities, is a requirement of the CRPD (article 4(3)). Moreover, such participation can have a significant impact on policy and law affecting persons with disabilities, since persons with disabilities are best positioned to identify their own needs and the most suitable policies for meeting them. Their participation ensures that policies and programmes are devised on the basis of their needs and preferences. In addition, such involvement promotes agency and empowerment, a sense of ownership and responsibility vis-à-vis public decisions and may contribute to enhanced public trust. I urge that the consideration of the draft Law take place with full and meaningful participation of persons with disabilities.

In this context, article 13 of the draft Law on the right to participate in political and public life should include a reference to the right of persons with disabilities to be consulted and involved in all public decisions that affect their life, consistent with article 4(3) of the CRPD.

Non-discrimination and equality

Importantly, the draft Law includes a provision on non-discrimination in article 10. This draft provision should clarify that reasonable accommodation is an element of the non-discrimination obligation and as such, is likely to give rise to implementation challenges. It is important to clarify that there is a duty to provide reasonable accommodation and that the failure to do so amounts to discrimination. Of note, the CRPD under article 5 specifies that States must, to promote equality and eliminate discrimination, “take all appropriate steps to ensure that reasonable accommodation is provided” and, further, undertake specific measures “which are necessary to accelerate or achieve de facto equality of persons with disabilities.”

In the light of this, draft article 10 should be elaborated to reflect that reasonable accommodation is a core element of non-discrimination on the basis of disability and that, in addition to reasonable accommodation, specific measures may also be required. While the concept of reasonable accommodation does appear in the glossary section of the draft Law, it should be specifically referenced in the non-discrimination provision and it should be clarified that the concept applies to all domains of life (e.g., education, employment, political participation, among others).

Situations of risk

In article 8, the draft Law addresses situations of risk and emergencies which is an important dimension of ensuring the rights of persons with disabilities. In its current wording, the provision provides no guidance apart from prioritizing persons with disabilities in rescue, assistance and protection actions in the context of risk situations and emergencies. Article 11 of the CRPD requires States to undertake, consistent with their obligations under international law, “including international humanitarian law” all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters. The provision makes no mention of international humanitarian law which is a departure from article 11 of the CRPD.

This provision should be further elaborated and clarify that persons with disabilities should participate in disaster risk reduction, including emergency planning. It should also provide detail as to what governmental body has overall responsibility for ensuring the participation of persons with disabilities in such planning and for ensuring that emergency management processes are inclusive of persons with disabilities and take their needs into account. Further, serious consideration should be given to making this provision the subject of prioritized regulations, under the draft Law’s article 40 (Regulation).

Equal recognition before the law

Article 11 of the draft Law on equal recognition before the law and legal capacity is an essential element of national disability legislation and article 40 prioritizes the elaboration of regulations to guide implementation of this provision. The draft provision is generic and vague, which would leave much for interpretation and does not refer to the central concept of the exercise of legal capacity as set forth in the CRPD (article 12), namely, supported decision making. Also unclear is whether the existing legal framework maintains substituted decision making and to what extent this provision will amend such provisions. It is hoped that this provision could be revised to align more specifically with the CRPD and also with the guidance provided by the CRPD Committee in its General Comment (No. 1) on article 12 of the CRPD.

The right to participate in political and public life

Article 13 of the draft Law covers the rights of persons with disabilities to participate in political and public life. This is a crucially important provision, but it does not address the existing discriminatory provision in Mozambique’s election law that specifically allows discrimination on the basis of disability in its provisions on who may be excluded from the vote.

Moreover, the draft provision does not provide specific coverage of crucial elements of the right to participate in political life, namely, the right of persons with disabilities to be able to access materials and to cast their vote secretly and to select a persons of their own choosing, where needed, to assist them in casting their vote. In particular, with regard to voting, article 29(a) of the CRPD requires “[e]nsuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use” and that measures be undertaken to protect “the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections” and “where necessary, at their request, allowing assistance in voting by a person of their own choice.”

The role of the election management body in implementing the provision requires clarification in the draft Law.

The right to health

Article 22 of the draft Law on the right to health would fall short of obligations under the CRPD. The right to health encompasses both freedoms and entitlements whereas the draft Law fails to explicitly elaborate freedoms such the right to non-discrimination, the right to make decisions affecting one’s health and bodily integrity, the right to free and informed consent, and the right to be free from non-consensual medical treatment and experimentation. Without the clear recognition of the autonomy to make their own choices in relation to medical treatment and rehabilitation procedures, persons with disabilities are reduced to being perceived as a medical problem while their views and preferences are disregarded. The absence of any reference to informed consent in article 22 would need to be revised.

In light of these observations, I strongly encourage your Excellency’s Government to revise the draft Law and to continue consulting and involving persons with disabilities, including through their representative organizations, to ensure a framework for the rights of persons with disabilities in line with international human rights law, including the CRPD. In this process of reflection, I stand ready to offer our support, together with the Office of the High Commissioner for Human Rights.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please provide information on the compliance of the draft Law with Mozambique’s commitments under the international human rights standards, including the Convention on the Rights of Persons with Disabilities, to which it is a State Party.
3. Please provide information on how persons with disabilities, including their representative organizations, will be consulted and included in the finalization of the draft Law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s

Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities