



## Convention on the Rights of Persons with Disabilities

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### Committee on the Rights of Persons with Disabilities

#### Concluding observations on the initial report of Brazil \*

##### I. Introduction

1. The Committee considered the initial report of Brazil (CRPD/C/BRA/1) at its 216<sup>th</sup> and 217<sup>th</sup> meetings, held on 25<sup>th</sup> and 26<sup>th</sup> August 2015, respectively, and adopted the following concluding observations at its 226<sup>th</sup> meeting, held on 1 September 2015.
2. The Committee welcomes the initial report of Brazil, which was prepared in accordance with the Committee's reporting guidelines, and thanks the State party for the written replies (CRPD/C/BRA/CO/R.1) to the list of issues prepared by the Committee.
3. The Committee appreciates the fruitful dialogue held with the State party's delegation and commends the State party for the high level of its delegation which included a remarkable number of delegates with disabilities from all of the three State branches of government.

##### II. Positive aspects

4. The Committee commends the State party on a number of achievements, notably that the Convention has Constitutional rank, the establishment of a Permanent Commission on the Rights of Persons with Disabilities at the Chamber of Deputies of the National Congress in 2015, and the adoption of a National Plan for the Rights of Persons with Disabilities – Living Without Limits (*Plano Nacional dos Direitos da Pessoa com Deficiência – Viver sem Limite*). It welcomes the establishment of councils on the rights of persons with disabilities at the municipal and state levels as well as at the Federal District, the adoption of several measures to improve accessibility in the different areas of the Convention such as the BB Accessibility campaign to facilitate access to assistive technologies, the establishment of the Ministerial Committee of Technical Aid, and the legal provisions to implement accessibility to the governmental websites, radio and the TV, and the provision of cash benefits for persons with disabilities by the Social Security System.
5. The Committee also commends the State party for its membership of the Washington Group on Disability Statistics, and its international cooperation agenda to enhance the exercise of rights of persons with disabilities in Portuguese speaking countries.

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\* Adopted by the Committee at its fourteenth session (17 August to 4 September 2015).

### III. Principal areas of concern and recommendations

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

6. The Committee is concerned at the lack of a coherent and comprehensive disability strategy to implement the human rights model of disability established in the Convention and harmonize the State party's legislation, policies and programmes.

7. **The Committee recommends the State party to develop a disability strategy to implement the human rights model of disability. The Committee further recommends that, in consultation with organizations of persons with disabilities, the State party initiates a systematic review of existing legislation, policies and programmes and where necessary brings them into line with the Convention. This should include a review of any legislation, policies or programmes upon which the rights of persons with disabilities are restricted or denied on the basis of impairment, or where services or benefits to persons with disabilities lead to their segregation or exclusion.**

8. The Committee is concerned that the Statute of Persons with Disabilities (*Lei Brasileira de Inclusão da Pessoa com Deficiência*) does not meet all of the State party's obligations under the Convention.

9. **The Committee urges the State party to take immediate steps to bring the Statute of Persons with Disabilities (*Lei Brasileira de Inclusão da Pessoa com Deficiência*) into full alignment with the Convention before it enters into force, in consultation with organizations of persons with disabilities.**

10. The Committee is concerned at the lack of mechanisms in place for the participation of persons with disabilities, through their representative organizations, in decision-making processes relating to the implementation of the Convention.

11. **The Committee recommends the adoption of a consultative mechanism for systematic consultations with persons with disabilities, through their representative organizations, on policies, programmes and legislation relating to the implementation of the Convention. The Committee also recommends the State party to promptly implement the results of all national conferences on the rights of persons with disabilities, including the proposals from the "III National Conference on the Rights of Persons with Disabilities" (CRPD/C/BRA/Q/1/Add.1 para. 11).**

#### B. Specific rights (arts. 5–30)

##### Equality and non-discrimination (art. 5)

12. The Committee is concerned at the lack of measures to address discrimination against indigenous and Afro-descendant persons with disabilities. In particular, it is concerned about the isolation of indigenous communities that place persons with disabilities in extreme exclusion conditions.

13. **The Committee recommends the State party to implement legislation, inter-sectorial policies and programmes to address the multiple forms of discrimination against indigenous and Afro-descendant persons with disabilities, in particular, to prevent persons with disabilities living in isolated indigenous communities or remote areas from being excluded.**

**Women with disabilities (art. 6)**

14. The Committee is concerned that measures taken by the State party for preventing violence against women and girls, such as the Maria da Penha law (Law No. 11340/2006) and the Women's Assistance Hotline – Dial 180, are not effective in combatting violence against women and girls with disabilities, and are not fully accessible to deaf and other women and girls with disabilities.

**15. The Committee recommends the State party to take immediate action to adopt a due diligence framework to ensure that its laws, policies and programmes targeting violence against women, including institutionalized women are accessible and effective in preventing and redressing violence against women and girls with disabilities, and include specific measures, targets and indicators.**

16. The Committee is also concerned that the State party does not have a strategy to ensure the full development, advancement and empowerment of women with disabilities in accordance with article 6, paragraph 2 of the Convention.

**17. The Committee recommends that, in consultation with women with disabilities and their representative organizations, the State party implement a strategy to promote each of the three elements of article 6, paragraph 2 of the Convention.**

**Children with disabilities (art. 7)**

18. The Committee is concerned that children with disabilities are not systematically involved in decisions that affect their lives and do not have the opportunity to express their opinion in matters that affect them directly.

**19. The Committee recommends the State party to adopt safeguards to ensure consultation of girls and boys with disabilities and their representative organizations in all decisions that affect their lives.**

**Awareness-raising (art. 8)**

20. The Committee is concerned at the lack of strategies to specifically promote the contents of the Convention and the human rights model of disability to the general public, public officials and private actors.

**21. The Committee recommends that the State party, in cooperation with organizations of persons with disabilities, undertake public awareness campaigns to reinforce the positive image of persons with disabilities as holders of all of the human rights enshrined in the Convention. The Committee also recommends the State party to provide training on the rights recognized in the Convention to all public authorities, and public and private professionals working with persons with disabilities. It also recommends to provide information on the Convention to persons with disabilities in special, indigenous persons with disabilities and their families.**

**Accessibility (art.9)**

22. The Committee notes with concern that accessibility of built environment, transport, information and communication and services open to the public is not fully achieved, especially in remote and rural areas.

**23. The Committee recommends to the State Party to take efficient measures to ensure accessibility of built environment, transport, information and communication and services open to the public, in line with the Committee's general comment No. 2 (2014), on accessibility, in rural and remote areas, including by full implementation of**

the existing legislation, including public procurement, and policies, efficient monitoring and sanctioning all that fail to comply fully with accessibility standards.

**Equal recognition before the law (art. 12)**

24. The Committee is concerned that some of the State party's legislation still provides for substituted decision-making in some circumstances. This is contrary to article 12 of the Convention as elaborated in the Committee's general comment No. 1 (2014) on equal recognition before the law. The Committee is also concerned that supported decision-making procedures require judicial approval and do not give primacy to the autonomy, will and preferences of persons with disabilities.

**25. The Committee urges the State party to withdraw all legal provisions that perpetuate the system of substituted decision-making. It also recommends that, in consultation with organizations of persons with disabilities and other service providers, the State party take tangible steps to replace the system of substitute decision-making with a supported decision-making model that upholds the autonomy, will and preferences of persons with disabilities in full conformity with article 12 of the Convention. It further recommends that all persons with disabilities currently under guardianship be kept duly informed about the new legal scheme and the exercise of the right to supported decision-making should be guaranteed in all cases.**

**Access to justice (art. 13)**

26. The Committee is concerned at the inaccessibility of judicial facilities. It is also concerned about the lack of measures to ensure procedural gender-sensitive and age-appropriate accommodations related to persons with disabilities.

**27. The Committee recommends the State party to introduce a national plan to ensure accessibility of judicial facilities. It also recommends to take measures to ensure that legal proceedings include gender-sensitive and age-appropriate accommodations for persons with disabilities. Furthermore, the Committee recommends the introduction of effective training of personnel in the justice, police and prison systems on the rights enshrined in the Convention.**

**Liberty and security of the person and freedom from torture or cruel, inhuman or degrading treatment or punishment (arts. 14 and 15)**

28. The Committee is concerned at reports of the arbitrary deprivation of liberty and involuntary treatment of persons with disabilities on the basis of impairment, including situations where it is assumed that persons with disabilities are dangerous to themselves or others on the basis of a diagnosis of impairment.

**29. The Committee recommends the State party to take measures, including the repeal of relevant legal provisions, to abolish the practice of involuntary commitment or hospitalization prohibit forced medical treatment, in particular, psychiatric treatments, on the basis of impairment and provide sufficient community-based alternatives.**

30. The Committee is concerned that persons with disabilities who are deemed not liable for the commission of a crime on the basis of impairment may be subject to security measures, including indefinite detention. The Committee is also concerned about arbitrary detentions that may amount to inhuman and degrading treatment or torture. It is further concerned about the situation of persons with disabilities deprived of their liberty in prisons and other places of detention, which are severely overcrowded and where psychological ill-treatment of inmates becomes a norm, as stated by the UN Special

Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment at the end of his official visit to Brazil in August 2015.

31. **The Committee recommends the State party to:**

(a) **Abolish security measures that involve the arbitrary detention of persons with disabilities on the basis of impairment and implement alternative measures that are consistent with articles 14 and 19 of the Convention; and**

(b) **Ensure that penitentiary facilities are accessible and provide reasonable accommodation for persons with disabilities.**

#### **Freedom from exploitation, violence and abuse (art. 16)**

32. The Committee is concerned at the lack of dedicated mechanisms for identifying, investigating and prosecuting instances of exploitation, violence and abuse against persons with disabilities. The Committee also regrets the lack of disaggregated data on reports, investigations and prosecutions of abuse, exploitation and violence against women, men, girls and boys with disabilities.

33. **The Committee recommends the State party to ensure the availability of accessible, effective and independent monitoring of facilities and programmes designed to serve persons with disabilities, and complaint mechanisms in alignment with article 16(3) to ensure that authorities can identify, investigate and prosecute all cases of violence against persons with disabilities. It also recommends to ensure that the Public Ministry and the attorney offices for persons with disabilities investigate cases related to violence and exploitation of persons with disabilities by allocating the necessary human, technical and financial resources. The Committee recommends that the State party collect disaggregated data and statistics on reports by persons with disabilities of abuse, exploitation and violence, and their outcomes.**

#### **Protecting the integrity of the person (art. 17)**

34. The Committee is deeply concerned that children and adults with disabilities whose legal capacity is restricted through interdiction can be sterilized without their free and informed consent, pursuant to Law No. 9263/1996. It is also concerned that the Statute of Persons with Disabilities (*Lei Brasileira de Inclusão da Pessoa com Deficiência*), authorizes surgical treatment on persons with disabilities under *curatela*, in absence of free, prior and informed consent on an unequal basis with others.

35. **The Committee recommends the State party take measures to:**

(a) **immediately revise Law No. 9263/1996 and explicitly and unconditionally prohibit the sterilization of persons with disabilities in the absence of their individual prior, fully informed and free consent;**

(b) **ensure that persons with disabilities are provided with support to make informed choices and decisions regarding medical procedures and interventions; and**

(c) **conduct campaigns to raise awareness among families, guardians, medical professionals and managers of institutions of the rights of persons with disabilities, particularly women and girls with disabilities, under article 17 of the Convention.**

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

36. The Committee is concerned at the lack of access to support services and allowances, especially personal assistance services, aimed at enabling persons with disabilities to live independently and be included in the community. The Committee is also

concerned that the State party does not have a comprehensive strategy to replace institutionalization with community-based living for persons with disabilities.

**37. The Committee recommends the State party to establish a framework providing for legal entitlement to personal assistance services to enable persons with disabilities to live independently in the community. The Committee also recommends that, in consultation with organizations of persons with disabilities, the State party develop and implement an effective de-institutionalization and community-based living strategy with clear time frames and benchmarks.**

#### **Freedom of expression and opinion, and access to information (art. 21)**

38. The Committee is concerned that information intended for the general public, including official pronouncements and political campaigns, is still not fully available in accessible formats, such as Braille, Brazilian sign language (*LIBRAS*), and other accessible modes, means and forms of communication, including easy to read format.

**39. The Committee recommends the State party to provide the necessary resources and training to ensure that all information intended for the general public is available in a timely manner in accessible formats and technologies.**

#### **Respect for home and family life (art. 23)**

40. The Committee is concerned that persons with disabilities are separated from their children on the basis of impairment.

**41. The Committee recommends the State party to take legal action to explicitly prohibit the removal of children on the basis of their parents' impairment, including where the parent is subject to interdiction.**

42. The Committee is concerned at the lack of disaggregated data on the number of families of children with disabilities who have access to community-based supports, such as the Specialized Social Assistance Reference Centers (*Centro de Referência Especializado da Assistência Social – CREAS*).

**43. The Committee recommends the State party to collect and report disaggregated data on the availability of community-based supports for families of children with disabilities, and the number of families who access those services.**

#### **Education (art. 24)**

44. The Committee is concerned that children with disabilities are refused admission to schools, or are charged extra fees. Furthermore, the Committee is concerned about a lack of reasonable accommodation and accessible school environments in the mainstream education system.

**45. The Committee recommends the State party to strengthen its efforts with adequate budgetary allocations to consolidate an inclusive quality education system. It also recommends to implement a mechanism to prohibit, monitor and sanction disability-based discrimination in the public and private education systems, and to provide reasonable accommodation and accessibility in all educational facilities.**

#### **Health (art. 25)**

46. The Committee is concerned that mainstream health services are not accessible to persons with disabilities. The Committee is also concerned at the lack of health professionals who have adequate training to provide inclusive health care and meet the specific needs of persons with disabilities.

47. **The Committee recommends the State party to adopt plans and allocate resources to ensure that mainstream health services, including sexual and reproductive health services and information, are accessible to persons with disabilities. It also recommends the State party to ensure that health professionals in mainstream health services receive training on the rights enshrined in the Convention.**

**Work and employment (art. 27)**

48. The Committee is concerned at discrimination against persons with disabilities in the realm of employment, especially women with disabilities, and continue reliance on sheltered workshops. It is also concerned about the low levels of compliance with the quota system applying to private businesses with 100 or more employees.

49. **The Committee recommends that, in consultation with organizations representing persons with disabilities, the State party develop and implement a coordinated strategy to increase employment of persons with disabilities in the open labour market, including specific measures for women with disabilities. It is further recommended to take immediate action to create possibilities for transition from segregated employment to the open labour market.**

**Adequate standard of living and social protection (art. 28)**

50. The Committee is concerned that many persons with disabilities are living in poverty and have no access to resources for adequate standard of living; it is particularly concerned about persons with disabilities living in isolated indigenous communities, rural and remote areas who are exposed to exclusion and extreme poverty conditions.

51. **The Committee recommends the State party to review the qualification requirements for social protection to ensure access for persons with disabilities who are living in poverty and enable them to cover expenses related to impairment, giving particular attention to those living in isolated indigenous communities, rural and remote areas. Participation in political and public life (art. 29)**

52. The Committee is concerned that persons with disabilities under interdiction are discriminated against in relation to their right to vote. The Committee is also concerned that many polling places are not accessible to persons with disabilities, and that voting information is not provided in all accessible formats.

53. **The Committee, recalling its views in communication No. 4/2011 (*Zsolt Bujdosó and five others v. Hungary*) that legislative restrictions on the right to vote of persons with disabilities whose legal capacity was restricted pursuant to guardianship breached article 29 of the Convention, urges the State party to remove legal restrictions and immediately restore the right to vote for persons deprived of legal capacity through interdiction. The Committee also recommends the State party to increase its efforts to ensure that voting procedures, facilities and materials are fully accessible to persons with disabilities.**

**Participation in cultural life, recreation, leisure and sport (art. 30)**

54. The Committee is concerned that the State party has not ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, which would enable persons who are blind, visually impaired or otherwise print disabled to access published works. It is also concerned that tourist areas and facilities are not fully accessible to persons with disabilities.

55. **The Committee recommends that the State party ratify the Marrakesh Treaty. It further recommends to take appropriate measures to ensure that libraries are accessible to all persons with disabilities, including persons with cognitive or psycho-**

social impairments and those who are deaf-blind. It further recommends to step up its efforts to make tourism in Brazil fully accessible.

### **C. Specific obligations (arts. 31–33)**

#### **Statistics and data collection (art. 31)**

56. The Committee is concerned that the State party does not systematically collect disaggregated data across all sectors according to sex, age, disability, indigenous peoples and geographic location.

57. **The Committee recommends that the State party systematically facilitate the collection, analysis and dissemination of disaggregated data across all sectors including health, education, employment, political participation, access to justice, social protection, and violence by disability and according to other categories listed above, and amend the census questions, in close cooperation with organisations of persons with disabilities, to accurately reflect the population.**

#### **International cooperation (art. 32)**

58. **The Committee encourages the State party to integrate a disability rights-based perspective, in accordance with the provisions of the Convention, in all efforts aimed at achieving the post-2015 Development Agenda, including ensuring participation of representative organizations of persons with disabilities in monitoring its implementation.**

#### **National implementation and monitoring (art. 33)**

59. The Committee is concerned that the National Council for the Protection of the Rights of People with Disabilities (CONADE) does not constitute an independent monitoring mechanism in accordance with the Paris Principles.

60. **The Committee recommends that the State party establish an independent mechanism in line with the Paris Principles with the necessary resources to promote, protect and monitor implementation of the Convention, ensuring full participation of persons with disabilities and their representative organizations herein.**

#### **Follow-up and dissemination**

61. The Committee requests that the State party, within 12 months and in accordance with article 35, paragraph 2 of the Convention, provide information in writing on the measures taken to implement the Committee's recommendations as set forth in **paragraphs 25 and 35(a) above.**

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

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

64. 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 national and minority languages, including sign language, and in accessible formats, and to make them available on the government website on human rights.

#### **Next report**

65. The Committee requests the State party to submit its combined **second, third and fourth** periodic reports no later than **1 September 2022**, and to include therein information on the implementation of the present concluding observations. The Committee invites the State party to consider submitting the above-mentioned reports under the Committee's simplified reporting procedure, according to which the Committee prepares a list of issues at least one year prior to the date set for the report/combined reports of a State party. The replies of a State party to such a list of issues constitute its report.

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