August 11, 2021

***Subject: CESCR - Draft General Comment on Land and Economic, Social and Cultural Rights***

**Submitted by the Portuguese National Monitoring Mechanism for the CRPD implementation – Me-CDPD**

1. Me-CDPD welcomes the opportunity of input to the Draft General Comment and commends the Committee on taking the initiative to provide further important interpretation, namely by the lens of mainstreaming. Persons with disabilities needs should also be covered by the International Covenant on Economic, Social and Cultural Rights, and the following observations aim to strengthen the Comment.

2. Portugal ratified (1976) and accessed (1978) the Covenant and its additional protocol (2009 ratification and 2013 accession), with one declaration recognizing the competences of the Committee on Economic, Social and Cultural Rights, under the terms and for the purposes set out in articles 10 and 11 of the Protocol.

3. It is essential that the General Comment refers to some references to the rights protected by the United Nations Convention on the Rights of Persons with Disabilities because this Convention complements and contributes - in the spirit of the principle of more favorable interpretation of international human rights treaties - the scope of rights enshrined in the Covenant in matters of economic, social and cultural rights, namely: equality and non-discrimination (Article 5), accessibility (Article 9), humanitarian situations (Article 11), legal capacity (Article 12. º), access to justice (Article 13) and among other rights considered pertinent to clarify the obligations of States Parties.

4. Persons with disabilities still face major challenges to access to land, economic, social and cultural rights, thus being kept apart from society. The access to property, employment and leisure is still denied to some extent to people with disabilities, regardless of the existence of national and international laws that recognize their rights.

5. From a mainstream perspective, it is highly desirable that their needs are also included in international covenants, such as the one the GC refers to.

6. According to the last available data (Census 2011), 16% of Portuguese population aged between 15 and 64 had prolonged health problems and difficulties in carrying out basic activities, and the percentage raises up to 40,5% for people aged over 65.

We believe that many of these persons face long term challenges in accessing, e.g., education, employment, social inclusion, property owning and cultural rights.

7. 43 years after ratification of the Covenant by the Portuguese government, articles 6º, 7º, 11º, 13º and 15º are far from being fully implemented.

8. People with disabilities are still amongst the ones with lower levels of income, higher unemployment rates and risk of poverty or social exclusion. In fact, data on living conditions and social protection show that there is a considerable gap between people with and without disabilities regarding the indicator on risk of poverty or social exclusion: in 2018 in Portugal, the risk of poverty or social exclusion in women with disability (29.1%) was 11.2 pp higher than the risk faced by women without disabilities (17.9%), and for men it was 9.8 pp (28.1% vs. 18.3%)[[1]](#footnote-1).

9. In 2007, the unemployment rate of persons with disabilities was 2,5 times over the reference for people without disabilities[[2]](#footnote-2), and we do not have reasons to assume the situation has improved significantly since then. This situation has a direct impact on living conditions, and on access to culture and/or leisure activities.

10. Disability is associated with lower levels of education and a more unfavorable situation regarding employment, highlighting the lower levels of employment and fulltime employment. This situation results in lower levels of income from employment for people with disabilities, partially offset by a higher average level of social transfers. However, the differences in income are expressive, with the average income of people without disabilities being 1.5 times higher than that of people with disabilities, the latter being concentrated in the lower income population groups[[3]](#footnote-3).

Although persons with disabilities have seen their social and economic situation evolving in a promising way, namely by better access to education, employment, and social benefits, these did not translate in a closing of the gap between persons with and without disabilities, since all those parameters also improved for persons without disabilities.

11. According to Portugal (2016), the socioeconomic characterization of households with people with disabilities and the analysis of the social transfers they receive show that

existing supports are far from allowing a harmonization of the living conditions of people with disabilities in relation to the population in general; they also fail to break the vicious cycle between increased expenses, fewer opportunities for qualification and greater difficulties in accessing the labor market.

12. Considering all the above, we can easily understand that persons with disabilities have additional difficulties to access to land and to ownership, thus being left out of all the inclusion parameters that are related with this.

As a result, they are stripped of their possibility to access several rights that are connected with land and addressed by the Covenant, like the right to housing (availability, accessibility and affordability), the right to food and to self-employment.

**Non-discrimination and equality** – articles 2 (2) and 3 of the Covenant

State Parties must ensure that they undertake measures that promote the full enjoyment of all Covenant rights on an equal basis with others of people with disabilities. This is particularly important when it comes to land ownership and exploitation, namely by ensuring full legal capacity and provision of support to ownership and land exploitation.

**Participation, consultation and transparency**

State parties must ensure that people with disabilities have access to information in a way that is understandable and that there is available support to ensure people are able to take part in decision-making process and not subjected to undue influence.

**RECOMMENDATION**

a) We would like to recommend that **persons with disabilities** **are included as one third group of people that are at higher risk of discrimination**, namely regarding property rights over land and on land registration, and on the ability to access to economic, social, and cultural rights connected with it.

b) Although Portugal ratified the Covenant and the optional protocol, we believe that persons with disabilities needs have not been taken into consideration when implementing the rights addressed by the Covenant.

1. http://oddh.iscsp.ulisboa.pt/index.php/pt/2013-04-24-18-50-23/publicacoes-dos-investigadores-oddh/item/483-relatorio-oddh-2020 [↑](#footnote-ref-1)
2. http://www.cartasocial.pt/pdf/emprego\_pdi.pdf [↑](#footnote-ref-2)
3. PEAF [1994-2001] cited at https://estudogeral.uc.pt/bitstream/10316/80248/1/Deficiencia%20e%20politicas%20publicas%20em%20Portugal.pdf [↑](#footnote-ref-3)