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## **Committee on the Elimination of Discrimination against Women**

### **Concluding observations on the combined eighth and ninth periodic reports of Portugal\***

1. The Committee considered the combined 8th and 9th periodic reports of Portugal (CEDAW/C/PRT/8-9) at its 1337th and 1338th meetings, on 28 October 2015 (see CEDAW/C/SR.1337 and 1338). The Committee's list of issues and questions are contained in CEDAW/C/PRT/Q/8-9 and the responses of the State party are contained in CEDAW/C/PRT/Q/8-9/Add.1.

#### **A. Introduction**

2. The Committee welcomes the combined 8th and 9<sup>th</sup> periodic reports submitted by the State party. It also appreciates the State party's written replies to the list of issues and questions raised by its pre-sessional working group. It welcomes the oral presentation of the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party delegation which was headed by H.E. Mr. Pedro Nuno Bartolo, Ambassador and Permanent Representative of Portugal to the United Nations at Geneva. The delegation also included representatives of the Commission of Citizenship and Gender Equality; the Ministry of Foreign Affairs; the Ministry of Finance; the Ministry of Internal Administration; the Ministry of Justice; the Ministry of Agriculture and Sea; the Ministry of Health; the Ministry of Education and Science; the Ministry of Solidarity, Employment and Social Security; the Office of the High Commissioner for Migration; the Regional Secretary for Inclusion and Social Affairs of Madeira; and other representatives of the Permanent Mission of Portugal to the United Nations at Geneva.

#### **B. Positive Aspects**

4. The Committee notes the progress achieved since the consideration in 2008 of the State party's 7th periodic report (CEDAW/C/PRT/7) in undertaking legislative reforms, in particular the adoption of:

(a) The new Asylum Law 26/2014, introducing a gender sensitive framework for the protection of refugees and asylum seekers, in 2014;

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\* Adopted by the Committee at its sixty-second session (26 October-20 November 2015).

(b) Amendments to the Penal Code of the State party to include “gender identity” as a prohibited ground of discrimination, in January 2013;

(c) Law No. 7/2011 on Gender Identity, on 15 March 2010 and amendments to the Civil Code of the State party recognizing different forms of family relations, on 31 May 2010;(d) The Labour Code introducing legal provisions on the protection of parenthood and reconciliation of work and family life, on 12 February 2009; and

(d) Law No. 112/2009 on Domestic Violence, on 16 September 2009.

5. The Committee welcomes the State party’s efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption of the following:

(a) The Fifth National Action Plan for Gender Equality, Citizenship and Non-discrimination (2014-2017);

(b) The Third National Action Programme for the Elimination of Female Genital Mutilation (2014-2017);

(c) The Second National Action Plan for the Implementation of the United Nations Security Council resolution 1325 (2000) on women, peace and security for 2014 to 2018; and

(d) The National Strategy for Roma People (2013-2020).

6. The Committee welcomes the fact that, in the period since the consideration of the previous report, the State party has ratified or acceded, among others, to the following international and regional instruments:

(a) ILO Convention 189 (2011) concerning decent work for domestic workers, in 2015;

(b) The International Convention on the Protection of the Rights of All Persons from Enforced Disappearance, in 2014;

(c) The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), in 2013;

(d) The ILO Convention 183 on Maternity Protection, in 2012; and

(e) The International Convention on the Rights of Persons with Disabilities, in 2009.

## **C. Principle areas of concern and recommendations**

### **Parliament**

7. **The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites the Parliament, in line with its mandate, to take necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.**

### **General Context**

8. The Committee notes with concern that austerity measures, many of which taken by the State party under the bailout agreements with the European Union institutions and the International Monetary Fund (IMF), have a detrimental and disproportionate impact on

women in many spheres of life. The Committee further notes that few studies and evaluations have been conducted to monitor the gender-specific effects of such measures. The Committee wishes to emphasize that the concerns expressed below take into account the exceptional circumstances that the State party has faced during the last years and is still facing. However, the Committee reminds the State party that even in times of fiscal constraints and economic crisis, special efforts must be made to respect women's human rights, sustain and expand social investment and social protection and to employ a gender-sensitive approach, giving priority to women in vulnerable situations.

**9. The Committee recommends that the State party conduct a comprehensive study on the consequences of the austerity measures on women and design an action plan to mitigate the adverse effects of such measures as well as seek assistance and support from the European Union and IMF for its implementation.**

#### **Implementation of the Convention in the autonomous regions of the Azores and Madeira**

10. The Committee notes the adoption of Equality Municipal Plans (Law 75/2013) and the appointment of Gender Equality Advisors in the autonomous regions of the Azores and Madeira, but is concerned that implementation of the Convention lags behind in these regions. The Committee is also concerned about the lack of a regional plan of action for gender equality in the Azores and the absence of a specifically dedicated machinery for the promotion of gender equality.

**11. The Committee recalls the State party's obligation to implement the Convention throughout its entire territory, including in the autonomous regions of the Azores and Madeira and take measures to ensure effective programmes and plans of action to promote women's rights and gender equality. The Committee also recommends that the State party support the establishment of an effective machinery for the advancement of women in the Azores and make sure it is provided with adequate human, technical and financial resources.**

#### **Visibility of the Convention, Optional Protocol and the Committee's general recommendations**

12. The Committee welcomes the training and numerous awareness raising programmes carried out by the State party on the Convention, the Optional Protocol thereto and its General Recommendations, including as part of the mandatory curricula of law schools and professional training for judges and prosecutors. Nevertheless, the Committee is concerned about the lack of information provided concerning impact assessments of such training activities, as well as the lack of data on cases where the Convention has been referred to by domestic courts.

**13. The Committee recommends that the State party continue its efforts to provide systematic and mandatory training to judges, prosecutors and lawyers on the Convention, the Optional Protocol thereto and the Committee's General Recommendations. It also recommends that the State party carry out impact assessments of its training activities for legal professionals. The Committee further recommends that the State party promote the use of the Convention in domestic courts, give it greater visibility and collect and provide data on court cases referring to the Convention in its next periodic report.**

#### **National machinery for the advancement of women**

14. The Committee notes the information provided by the State party that there is effective coordination among the various bodies working on gender equality in the State

party such as the Commission for Citizenship and Gender Equality, the Equality Advisers at the local level and the Commission for Equality, Labour and Employment. While acknowledging the State party's efforts to find extra-budgetary resources for certain policies, the Committee is however concerned about the reported reduction in the budget allocations especially to the Commission for Citizenship and Gender Equality, and that the extra funding may not be sustainable or sufficient in relation to the Commission's extended tasks.

**15. The Committee recommends that the State party take measures to provide the Commission for Citizenship and Gender Equality with sufficient and sustainable resources in order to enable it to carry out its functions effectively, and intensify its efforts to ensure effective coordination of the various government bodies working on gender equality.**

#### **Non-governmental organizations**

16. The Committee is concerned about reports that non-governmental organizations working on women's rights have been particularly affected by the austerity measures, which have greatly compromised their activities. It is also concerned about the insufficient engagement of the State party with women's non-governmental organizations.

**17. The Committee recommends that the State party take measures to reduce the adverse impact of austerity measures on non-governmental organizations that are working on women's rights and gender equality. In particular, it recommends that the State party provide adequate support, including financial assistance, to such non-governmental organizations and systematically consult them on all matters concerning women's rights and gender equality.**

#### **Temporary special measures**

18. The Committee notes the information provided by the State party on its preference for measures that will have a long-term, transformative effect of "rebalancing" of society and commends it for wanting to effectuate these changes, including through long term measures in social, labour and family policies and by proceeding to gender impact assessments. It nonetheless considers that temporary special measures can be used within this long-term strategy, for instance, to rapidly help to alleviate the impact of austerity measures, and to avoid having women further disadvantaged or marginalized by them, thus accelerating substantive equality between men and women.

**19. The Committee recommends that the State party includes temporary special measures, in accordance with article 4 (1) of the Convention and in line with the Committee's General Recommendation No. 25 (1992) on temporary special measures, in its legislation, budgetary measures and social and health policies as a rapid response to some of the worst problems faced by women within the context of austerity measures adopted by the State party. In adopting temporary special measures, the State party should establish concrete goals and targets and timetables, as well as a system for monitoring implementation and progress.**

#### **Stereotypes**

20. The Committee welcomes the State party's efforts to combat gender stereotypes through education in schools, promotional materials and legislation prohibiting sex- and gender-based discrimination in the media. However, it notes with concern that gender stereotypes continue to persist in all spheres of life, as well as in the media, and that the State party lacks a comprehensive strategy to address discriminatory stereotypes.

21. **The Committee recommends that the State party further strengthen its efforts to overcome stereotypical attitudes regarding the roles and responsibilities of women and men in the family and in society by adopting a comprehensive strategy addressing the issue and continuing implementing measures to eliminate discriminatory gender stereotypes, educating its public and establishing as soon as possible a mechanism to regulate the use of discriminatory gender stereotypes in the media.**

#### **Violence against women**

22. The Committee welcomes the adoption of the fifth National Plan to Prevent and Combat Domestic and Gender-based Violence 2014-2017 and the use of electronic bracelets to prevent domestic violence. However, it is concerned about:

(a) Prevalence of gender based violence against women in the domestic sphere and disproportionately low number of prosecutions and convictions of perpetrators, albeit increasing, compared to the high numbers of reported cases of domestic violence;

(b) Limited use of protection orders; and

(c) Lack of coordination between the family and criminal courts in cases of domestic violence, resulting in limited options available for women in need of immediate protection orders so that these measures are conditioned in a woman's placing formal criminal charges against her abuser.

23. **The Committee urges the State party to:**

(a) **Ensure the strict application of laws criminalizing violence against women and take additional measures to prevent and protect women and girls from gender based violence against women in the domestic sphere, including by effectively prosecuting and convicting perpetrators;**

(b) **Apply protection orders against abusive partners; and**

(c) **Establish a mechanism to ensure effective cooperation and coordination between family and criminal courts in order to ensure that women have immediate recourse to protection orders and injunctions against abusive partners, without the need to engage in criminal proceedings.**

24. The Committee welcomes the Law 83/2015 aimed at implementing provisions of the Istanbul Convention, but remains concerned that despite the improvements, the State party's legislation is not fully in compliance with the provisions of the Istanbul Convention as it does not cover all forms of non-consensual sexual acts. The Committee is also concerned about the lack of crisis centres and emergency services for victims of rape as well as the absence of standard protocols on gender-sensitive ways to deal with victims of rape for hospital staff and police. Furthermore, the Committee is concerned that marital rape is rarely prosecuted as a specific crime but rather as domestic violence.

25. **The Committee recommends that the State party to:**

(a) **Take the necessary measures to adequately address sexual violence in its laws and policies and ensure that all forms of non-consensual sexual acts are included in the definition of rape under the Penal Code;**

(b) **Establish crisis centres and emergency services for victims of rape and sensitize hospital staff and the police on the assistance required in such cases as well as establish standard protocols dealing with victims of rape; and to**

(c) **Review its sentencing policy in cases of marital rape, in order to ensure that it is punished in a way that is commensurate with the gravity of the crime.**

26. The Committee welcomes the recent amendments to the Penal Code specifically criminalizing female genital mutilation. However, the Committee is concerned about the reports of such crime being committed against its citizens or residents abroad and regrets the lack of information concerning the application of the extraterritorial jurisdiction in the State party for the crime of female genital mutilation. The Committee notes the State party's efforts to raise awareness on the harmful effects of female genital mutilation on the health and life of women, both inside and outside its territory, but expresses concern that such efforts may not be sufficient.

**27. The Committee recommends that the State party ensure the strict application of legislation criminalizing female genital mutilation, including by prosecuting and adequately punishing perpetrators, and ensure extraterritorial jurisdiction for female genital mutilation perpetrated outside its territory. The Committee also recommends that the State party strengthen targeted prevention strategies, including education and awareness-raising programmes, in particular for communities where such harmful practices are prevalent. In doing so, the State party should take into account the Joint General Recommendation No. 31 (2014) of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on harmful practices (2014).**

#### **Trafficking and exploitation of prostitution**

28. The Committee welcomes the updated National Referral System established in 2014 and the third National Plan to Prevent and Combat Trafficking in Human Beings 2014-2017. However, it is concerned that:

(a) Poverty and social exclusion of women, in particular disadvantaged and marginalized groups of women such as migrant, asylum seeking and Roma women, increase their risk of becoming victims of trafficking and exploitation in prostitution;

(b) There is a lack of adequate victim identification mechanisms;

(c) The lenient sentencing policy is applied for traffickers who are reportedly often charged with the crime of pimping which carries lighter punishment; and

(d) There is a lack of information on the protection and assistance in place for victims of trafficking, including the issuance of temporary resident permits.

**29. The Committee urges the State party to:**

**(a) Intensify its efforts to combat trafficking in women and children and prevent trafficking of women who live in poverty and are at high risk of trafficking, as well as establish victim identification mechanisms;**

**(b) Ensure the prompt and effective prosecution and conviction of traffickers under the relevant article of the Penal Code; and**

**(c) Strengthen protection and rehabilitation of women victims of trafficking, by providing them with access to alternative income opportunities and providing undocumented women with temporary resident permits irrespective of their ability or willingness to cooperate with the prosecution authorities.**

#### **Participation in political and public life**

30. The Committee welcomes the efforts of the State party to increase the representation of women in political and public life which has borne steady results. However, the Committee is concerned that the Parity Law of 2006, establishes a minimum quota of 33.3 percent for candidates of each sex on electoral lists for European, national and local elections, whereas parity may be seen as meaning equal representation, in other words a 50-

50 representation. In addition, the Committee notes that the Parity Law has had a limited effect at the local level and that this law's effectiveness is hampered by the lenient sanctions in case of failure to comply with such quota. The Committee is also concerned that despite some improvements, the number of women in decision-making posts in the executive (8% mayors, 10 to 30% in various executive bodies) and the diplomatic service remains low. While welcoming the very high proportion of women in the judiciary, the Committee regrets that only 8.2 per cent of justices on the Supreme Court of Justice are women and that a number of public bodies have fewer than 35% of women. Finally, the Committee notes that Madeira will also use a parity system for future elections.

**31. The Committee calls on the State party to increase the representation of women in political life by amending its Parity Law, in order to reach a 50 percent representation of both sexes in all legislative assemblies at the European, national and local levels. The same should be done in the Autonomous Regions. It also recommends that the State party reinforces the sanction in case of failure to comply with the law, for instance by foreseeing the automatic nullity of those lists. The Committee further recommends that the State party take targeted measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, to increase the representation of women in decision-making positions in the executive and in the diplomatic service, on the Supreme Court and other public bodies.**

### **Education**

32. The Committee welcomes the significant achievements of the State party in increasing the participation of women and girls at the secondary and tertiary levels of education. The Committee is however concerned about the sex segregation of fields of study and the underrepresentation of girls in technology, vocational courses and apprenticeships at the secondary level as well as in engineering, manufacturing and construction in higher education resulting in a similar sex-segregation of occupations in the labour market and higher unemployment rates for young women, in spite of their higher level of certification compared with employed males. While welcoming Law 69/2009 mandating sexual education as a compulsory subject and the report that it has been implemented in 83% of all schools, the Committee is concerned that the programme is offered primarily through Natural Science at Grade 3 and Biology at the secondary level resulting in students, not enrolled in these subjects, being excluded. The Committee is also concerned that the focus is primarily on health and prevention of sexually transmitted diseases and early pregnancy rather than social relations of gender and the impact of patriarchal attitudes and stereotypes.

**33. The Committee recommends that the State party continue its efforts to increase the participation of women and girls at the secondary, tertiary levels of education, including in male dominated areas such as mathematics, information technologies, engineering and construction with a view to increasing opportunities for employment thereby reducing the higher unemployment rates. The Committee also recommends that the State party change the mode of delivery of the sexual education programme by offering it as intact, time-tabled subject thereby ensuring that all students are equally exposed. The content of the curriculum should also be reviewed to ensure an approach which reflects a strong gender perspective, including unequal power in gender relations, responsible sexual behavior and the prevention of early pregnancy.**

### **Employment**

34. The Committee welcomes the Council of Ministers resolution 18/2014 on equal pay for work of equal value and resolution No. 19/2012, which aims at increasing the representation of women in decision-making positions in state owned companies. It also

welcomes various measures adopted to increase women's representation in the private sector, including big companies on the stock market. However, the Committee is concerned that:

(a) So far the measures taken have had a limited impact on the employment situation of women, including their career advancement and salaries, which remain significantly lower than those of men;

(b) The unemployment rate among women, especially young women below the age of 25, is very high and that women who belong to disadvantaged and marginalized groups such as Roma, migrant and older women have very limited access to the labour market; and

(c) Discrimination against pregnant women and new mothers in employment continues to exist.

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

**(a) Take targeted measures, including temporary special measures, such as financial incentives for employment of women;**

**(b) Enhance access to the employment market for women, especially young women, and apply the principle of equal pay for work of equal value in all sectors of the economy;**

**(c) Increase employment opportunities for disadvantaged and marginalized groups of women, such as Roma, migrant and older women, including by providing training and opportunities for women's entrepreneurship; and**

**(d) Take all necessary measures to eliminate discrimination in employment against pregnant women and new mothers.**

#### **Health**

36. The Committee welcomes the State party's significant achievements in reducing infant and maternal mortality. However, the Committee is concerned about the limited freedom experienced by women in their family planning and choices of birth methods. It is particularly concerned about the reports that women are often not consulted and are subjected to overly medicalised births and caesarean operations. The Committee is also concerned about the recent 2015 amendments to the Law on Voluntary Termination of Pregnancy of 2007, which has imposed stringent conditions in the form of four obligatory separate consultations prior to abortion and fees.

**37. The Committee recommends that the State party provide for adequate safeguards to ensure that overly medical procedures, such as caesarean operations, for childbirth are thoroughly assessed and carried out only when it is necessary and with the informed consent of a patient. The Committee also recommends that the State party amend its Law on Voluntary Termination of Pregnancy and annul the excessively burdensome conditions recently introduced, including the requirement of fees in order to provide women with freedom of informed choice and respect for autonomy. The State party should organize its health services so that the exercise of conscientious objection in such cases does not impede their effective access to reproductive health care services, including abortion.**

#### **Mortgages and financial credit**

38. The Committee notes the measures taken by the State party to address the housing situation of families living with mortgage or rent arrears, including the adoption of a legal framework for the prevention and settlement of arrears on credit agreements with



household customers and the creation of a Property Investment Fund for Rental Housing. The Committee is nevertheless concerned at reports of evictions as a consequence of mortgage and rent arrears, which, in light of austerity measures, can have serious consequences for female headed households.

39. **The Committee recommends that the State party strengthen its initiatives, including funds, to address the problem of mortgage and rent arrears, and ensure a gender-based approach in deciding on debt settlements, especially as regards female headed households.**

#### **Rural women**

40. The Committee notes the information provided by the State party about the growing number of rural women involved in commercial farming and the large investments made by the State party for such initiatives. Nevertheless, the Committee is concerned that large numbers of rural women continue to face significant problems in accessing employment and education, and are dependent on low social benefits.

41. **The Committee recommends that the State party continue its efforts to encourage women's entrepreneurship including in commercial farming, and take the necessary measures to provide women living in rural areas with enhanced educational and employment opportunities.**

#### **Roma women**

42. The Committee notes the National Roma Inclusion Strategy (2013-2020) and is concerned that Roma women, especially those living in rural areas, face social exclusion and lack access to education, health, employment and housing. It is particularly concerned about the high rates of school dropout among Roma girls due to early marriages. Furthermore, the Committee is concerned that a large number of Roma women continue to live in substandard housing conditions, often in informal settlements consisting of barracks, shacks or tents in isolated areas, with limited or no access to public transportation, basic services, such as safe drinking water or sanitation facilities, electricity or waste disposal facilities.

43. **The Committee recommends that the State party increase its efforts, including within the framework of the National Roma Inclusion Strategy for 2013–2020, to ensure access to adequate housing and basic services for Roma women, including access to education, health and employment. The Committee also recommends that the State party take measures to prevent school drop out among Roma girls by sensitizing families and communities on the harmful effects of early marriages on girls' health and development.**

#### **Marriage and family relations**

44. The Committee notes with concern that:

(a) The State party's legislation establishes different post-divorce conditions for men and women, under which men are allowed to re-marry 180 days after the divorce, while women can only do so after 300 days, except under certain conditions that are not equally applicable to men, on the basis of the so-called "presumption of paternity" principle;

(b) The default minimum age of marriage is set at 16 years (with parental approval) and not at 18; and

(c) Under the State party's legislation access to assisted reproductive services are not available to all women.

45. The Committee recommends that the State party:

(a) Revise its legislation in order to provide for equal treatment of men and women with regard to conditions following the divorce and eliminate any time limits for re-marriage;

(b) Raise the minimum age of marriage to 18 years;

(c) Adopt legislative measures aimed at facilitating and expanding women's right to decide freely and responsibly on the number of their children in accordance with article 16 (e) of the Convention, and ensure access to assisted reproductive services, including in vitro fertilization, to all women without any restrictions.

#### **Beijing Declaration and Platform for Action**

46. The Committee calls upon the State party to utilize the Beijing Declaration and Platform for Action, in its efforts to implement the provisions of the Convention.

#### **2030 Agenda for Sustainable Development**

47. The Committee calls for the realization of substantive gender equality, in accordance with the provisions of the Convention, throughout the process of implementation of the 2030 Agenda for Sustainable Development.

#### **Dissemination**

48. The Committee recalls the obligation of the State party to systematically and continuously implement the provisions of the Convention. It urges the State party to give priority attention to the implementation of the present concluding observations and recommendations between now and the submission of the next periodic report. The Committee therefore requests the timely dissemination of the concluding observations, in the official language(s) of the State party, to the relevant state institutions at all levels (national, regional, local), in particular to the Government, the ministries, the Parliament and to the judiciary, to enable their full implementation. It encourages the State party to collaborate with all stakeholders concerned, such as employers' associations, trade unions, human rights and women's organisations, universities and research institutions, media, etc. It further recommends that its concluding observations be disseminated in an appropriate form at the local community level, to enable their implementation. In addition, the Committee requests the State party to continue to disseminate the CEDAW Convention, its Optional Protocol and jurisprudence, and the Committee's General Recommendations to all stakeholders.

#### **Technical Assistance**

49. The Committee recommends that the State party link the implementation of the Convention to its development efforts and that it avail itself of regional or international technical assistance in this respect.

#### **Ratification of other treaties**

50. The Committee notes that the adherence of the State party to the nine major international human rights instruments<sup>1</sup> would enhance the enjoyment by women of

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<sup>1</sup>The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial

**their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to which it is not yet a party.**

**Follow-up to concluding observations**

**51. The Committee requests the State party to provide, within two years, written information on the steps undertaken to implement the recommendations contained in paragraphs 23 (c), 25 (b) and 37 above.**

**Preparation of the next report**

**52. The Committee invites the State party to submit its tenth periodic report in November 2019.**

**53. The Committee requests the State party to follow the “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents” (HRI/MC/2006/3 and Corr.1).**

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Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.