

October 17, 2011

Office of the United Nations High Commissioner for Human Rights United Nations Office
at Geneva
Palais des Nations
CH-1211 Geneva 10
Switzerland

**Re: Call for Submissions on the Participation of Persons with
Disabilities in Political and Public Life**

To the Office of the High Commissioner for Human Rights:

Thank you for the opportunity to submit our comments on the political participation of persons with disabilities in advance of the OHCHR's thematic study. Persons with disabilities have historically been subject to legal and actual limitations on their exercise of their right to vote and stand for election, as articulated in Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD). Human Rights Watch welcomes and strongly supports the OHCHR's interest in examining this right, one that empowers persons with disabilities to take part in political and public life.

This submission highlights areas of concern we hope will inform your consideration of violations of Article 29 of the CRPD. It documents legal restrictions on the right of persons with disabilities to vote and stand for election, including the laws that deprive them of their legal capacity to make decisions. It describes accessibility barriers that effectively lead to the denial of the right to vote, as well as limitations that may prevent persons with disabilities from running for public office. This submission also presents positive examples of how some countries have implemented this right, and recommendations for States parties to the CRPD. The following information is based on our research and advocacy efforts in a number of countries around the world and ongoing monitoring of the human rights of persons with disabilities.

I. LEGAL RESTRICTIONS ON THE RIGHT OF PERSONS WITH DISABILITIES TO VOTE

Deprivation of Legal Capacity

Article 29 of the CRPD guarantees to persons with disabilities “political rights and the opportunity to enjoy them on an equal basis with others.”¹ The right to political participation is also protected by other UN, as well as regional, human rights treaties.² Furthermore, Article 12 of the CRPD establishes that persons with disabilities “enjoy legal capacity on an equal basis with others in all aspects of life.”³ The CRPD does not make any distinctions for particular types of disability and must therefore be applied without discrimination. The ordinary meaning of Article 12(2) leaves no doubt that all persons with disabilities—regardless of their disability—are entitled to participate equally in the political process.

Despite these legal provisions, people with disabilities, especially those with intellectual or psychosocial disabilities, who have been deprived of legal capacity and placed under guardianship or in institutions against their will, are denied the right to vote in many countries around the globe. This denial is discriminatory, and results from historic segregation and stigmatization.

The practice of excluding those perceived as lacking capacity to vote has a long history, and currently most democratic countries have capacity-related qualifications for voting.⁴ In Portugal, for example, the Constitution protects the right to vote: “The exercise of the right to vote is personal and constitutes a civic duty.”⁵ However, it qualifies this right with a capacity exception: “Every citizen who has attained the age of eighteen years shall possess the right to vote, save such incapacities as may be provided for in the general law.”⁶ These capacity requirements mean that persons who have, or who are perceived to have, developmental or psychosocial disabilities are prevented from voting by law, without recourse.

In Germany, the Electoral Law flatly prevents some citizens from voting based on disability. Article 1 of Section 1 states: “The German Bundestag shall...be elected in a general, direct, free, equal and secret ballot by Germans eligible to vote.”⁷ Article 13

¹ CRPD, art. 29.

² For example, Article 3, Protocol No. 1 of the European Convention For the Protection of Human Rights and Fundamental Freedoms, Article 23 of the American Convention on Human Rights, and Article 13 of the African (Banjul) Charter on Human and Peoples’ Rights.

³ CRPD, art. 12.

⁴ Marta Mendiondo, Pamela Teaster and Susan Lawrence, “Public Guardianship: In the Best Interests of Incapacitated People?,” August 10, 2011, ISBN: 0313378274.

⁵ Constitution of Portugal, art. 49. 2.

⁶ Constitution of Portugal, art. 49. 1.

⁷ Federal Electoral Law (Bundewahlgesetz, BGW), s. 1, art. 1.

states: “A person shall be disqualified from voting if (1) he or she is not eligible to vote owing to a judicial decision, (2) a custodian has been appointed not only through a restraining order to attend to all his or her affairs... (3) he or she is accommodated in a psychiatric hospital under an order pursuant to Article 63 of the Penal Code.”⁸

Similarly, the Constitution of Thailand prohibits those “being of unsound mind or of mental infirmity” from voting.⁹ Timor Leste’s electoral laws deny political participation to citizens with mental disabilities by stating “[t]he following are not granted active electoral capacity: [. . .](b) Individuals clearly and publicly known as mentally ill even where they are not judicially disabled.”¹⁰ The Constitution of Ghana provides that “[e]very citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote.”¹¹ Section 16 of India’s 1950 Representation of People Act disqualifies a person from registration in an electoral roll who is of “unsound mind.”¹² The Constitution of Gambia provides that “[e]very citizen of The Gambia of full age and capacity” are allowed to vote and stand for election.¹³ Kenya’s new Constitution prohibits discrimination based on disability¹⁴ and requires that voting “[take] into account the special needs of persons with disabilities.”¹⁵ However, it prohibits persons “declared to be of unsound mind” from qualifying to register to vote.¹⁶

Peru’s Constitution and Civil Code likewise deprive people with disabilities of their right to political participation. The Peruvian Constitution guarantees all citizens the right to participate in political life,¹⁷ including the right to vote and stand for election,¹⁸ “in enjoyment of his civil capacity,” and declares that “any act that prohibits or abridges citizenship from the exercise of rights shall be null and punishable.”¹⁹ However, the Constitution permits the suspension of the right to political participation in cases of judicial interdiction.²⁰ Furthermore, Peru’s Civil Code limits the rights of persons with disabilities to exercise their civil rights, declaring certain individuals, including people with multiple sensory disabilities as “absolutely incapable.”²¹ People with intellectual

⁸ Ibid, s. 1. art. 13.

⁹ Constitution of the Kingdom of Thailand, s. 100(4).

¹⁰ Law No. 7/2006, “Law on the Election of the President of the Republic,” Section II, “Voting Capacity,” Article 5 (b). United Nations Human Rights “Report on the Rights of Persons with Disabilities in Timor-Leste,” August 29, 2011, http://unmit.unmissions.org/Portals/UNMIT/Human%20Rights/Final%20UNHR%20Report%202011%20Eng%20for%20web_.pdf (accessed October 4, 2011).

¹¹ Constitution of Ghana, art. 42.

¹² Representation of People Act, s. 16.

¹³ Constitution of Gambia, art. 26.

¹⁴ Constitution of Kenya, art. 27(4).

¹⁵ Ibid, art. 82.

¹⁶ Ibid, art. 83.

¹⁷ Constitution of Peru, Art. 2 (17). Copy of Constitution attached.

¹⁸ Ibid, Article 31.

¹⁹ Ibid, Article 31.

²⁰ Ibid, Article 33.

²¹ Código Civil, Decreto Legislativo, N° 295. November 14, 1984. Article 43. This includes “deafmute, deafblind, and blindmute individuals who cannot express their will in an indubitable manner.”

disabilities and “those who suffer mental deterioration that prevents them from expressing their free will in an “indubitable manner” are considered “relatively incapable.”²² Under Article 45 of the Civil Code, “legal representatives of the incapable exercise their civil rights.”²³ Article 10 of the Organic Election Law, following Article 33 of the Constitution, states that the “exercise of citizenship and therefore the right to vote and be elected” is suspended in cases of judicial interdiction.²⁴

Although Peru has taken some measures to protect the right to vote for persons with disabilities,²⁵ they continue to face arbitrary, and in some cases systematic, barriers to voting. In November 2010, The National Registry of Identification and Civil Status (RENIEC) (el Registro Nacional de Identificación y Estado Civil, the government agency responsible for maintaining and updating the electoral rolls) admitted to having excluded some 20,000 persons with intellectual and psychosocial disabilities from the voter registry,²⁶ justifying its action by stating that it was for their benefit, as they would otherwise be penalized since voting is mandatory in Peru. Persons with intellectual and psychosocial disabilities who had been excluded from the electoral rolls were invited to re-register.²⁷ But with limited time and poor communication about this decision, fewer than 60 persons with disabilities were able to re-register before the voter registry closed. As a result, thousands of persons with disabilities were barred from voting in the national elections in April and June 2011.

In October 2011, RENIEC issued Resolution No. 508-2011-JNAC/RENIEC, which removes the restriction preventing persons with psychosocial or intellectual disabilities (without judicial interdiction) from being included on the voting registry.²⁸ The resolution also mandates the issuance of new national identity documents with voting assignments to all persons excluded, including through free procedures and home delivery.

²² Ibid, Article 44.

²³ Ibid, Article 45.

²⁴ Ley Orgánica de Elecciones, Ley N° 26859 (October 1, 1997), Art. 10. (*Suspensión del ejercicio de la ciudadanía* **Artículo 10o.**- El ejercicio de la ciudadanía y por ende el derecho a elegir y ser elegido se suspenden en los casos siguientes: a) Por resolución judicial de interdicción; b) Por sentencia con pena privativa de la libertad; c) Por sentencia con inhabilitación de los derechos políticos)(<http://pdba.georgetown.edu/Electoral/Peru/peruelec.html>)

²⁵ See, e.g., Law N° 29478 (December 18, 2009) (authorizing voting facilities for persons with certain physical disabilities); Resolución Defensorial No. 28-2004-DP (December 9, 2004) (request by Public Ombudsman to RENIEC to modify procedures to prevent exclusion of persons with disabilities from electoral rolls); Oficio no. 035-2005-DP/ADH-PPD (December 6, 2005) (request by Public Ombudsman to RENIEC to audit records of persons with mental disabilities to determine propriety of exclusion from electoral rolls); Resolución Jefatural N. 224-2006-J/ONPE (September 30, 2006) (regulations on preferential attention for persons with disabilities, pregnant women and older people during elections).

²⁶ Oficio No. 062-2010-DP/ADHPD-PDEPRODIS; Human Rights Watch interview with Malena Pineda Angeles, Chief, Program for the Defense and Promotion of the Rights of Persons with Disabilities, July 26, 2011, Lima, Peru.

²⁷ Oficio No. 4895-2010/GOR/RENIEC. RENIEC also issued instructions to its regional offices that they facilitate the re-registration of persons with disabilities who express interest in the right to vote, *Memorandum Multiple No. 000567-2010/GOR/RENIEC, and that they inform in particular those who had filed complaints, associations of persons with disabilities, and personnel in charge of complaints, Memorando Multiple No. 0004-2010-DP/ADHPD-PDEPRODIS.*

²⁸ RENIEC, Resolution No. 508-2011-JNAC/RENIEC (10 October 2011).

The National Registry of Identification and Civil Status pledged in its October order to create a commission to address the fines charged to people with mental and intellectual disabilities who are unable to vote. The commission will consist of representatives of the National Jury of Elections, the National Electoral Office, the Ombudsman, the Commission on Social Inclusion and Persons with Disabilities of Congress, and the National Council on Disability (CONADIS).

Additionally, RENIEC will create a commission to include the National Jury of Elections, the National Electoral Office, the Ombudsman's Office, the Commission on Social Inclusion and Persons with Disabilities of Congress and the National Council for the Integration of Persons with Disabilities (CONADIS), to reach an administrative solution to the possible fines given to people with disabilities for not fulfilling their obligation to vote.

In other countries, the exclusion hinges on the degree to which the person's legal capacity is limited by the courts or other authorities. An evaluation, performed by judges or psychiatrists, may be used to assess whether a person with limited legal capacity can exercise the right to vote. Under Article 3.1(b) of Spain's 1985 Electoral Law, "those who are declared incompetent by a Court of Law" cannot vote, "provided that they are explicitly declared incapable of voting."²⁹ Article 3.1(c) prevents "the inmates of psychiatric wards placed there by judicial decree" from voting, so long as they have been "explicitly declared by a judge incapable of voting."³⁰ The CRPD Committee, in their concluding observations on the report from Spain, expressed deep concern at the lack of access and opportunities for meaningful political participation of people with disabilities.³¹ The committee specifically recommended the removal of the Article 3 language noted above.³²

In the United States, where voting statutes are enacted at the state level, as of 2008, 39 of 50 states had a capacity exception.³³ For example, the state of Delaware requires a person to be "adjudged mentally incompetent" by a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing evidence that the individual has a severe cognitive impairment which precludes exercise of basic voting judgment, before that person can be prohibited from voting.³⁴ The laws in Delaware are seen as more humane than states that do not protect due process rights to a hearing.

²⁹ Electoral Law of Spain, art. 3.

³⁰ Electoral Law of Spain, art. 3.

³¹ The United Nations Office at Geneva, "Committee on the Rights of Persons with Disabilities Adopts Concluding Observations on the Initial Report of Spain", 2011, [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/37CB50EC8DE07E0FC12579140060926F?OpenDocument#](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/37CB50EC8DE07E0FC12579140060926F?OpenDocument#) (accessed October 12, 2011).

³² Ibid.

³³ National Alliance on Mental Illness, "State Voting Laws Regarding Mental Illness," 2011, <http://www.nami.org/Template.cfm?Section=Elections1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=104206> (accessed August 29, 2011).

³⁴ 15 Del. Code Ann. § 1701 (Amended by 73 Del. Laws, c. 34, effective May 8, 2001).

Many regional and international human rights bodies maintain similar capacity requirements. Article 23 of American Convention on Human Rights provides that every citizen has the right to vote.³⁵ However, the second clause qualifies that right: “The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.”³⁶

Similarly, the Human Rights Committee, the body that monitors and interprets the ICCPR, emphasizes that “any conditions which apply to the exercise of the rights protected by article 25 [on the right to political participation] should be based on objective and reasonable criteria.”³⁷ The Committee’s interpretation, however, allows that an “established mental incapacity may be a ground for denying a person the right to vote or to hold office.”³⁸

The recent decision by the European Court of Human Rights (ECHR) in the case of *Kiss v. Hungary*³⁹ is a step in the right direction, but does not go far enough to protect the rights of persons with mental disabilities.⁴⁰ In *Kiss*, the ECHR unanimously held that the automatic disenfranchisement of a person under guardianship is an unjustified violation of Article 3 of Protocol 1.⁴¹ The Court considered that when “[a] restriction on fundamental rights applies to a particularly vulnerable group in society...such as the mentally disabled, then the State’s margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question.”⁴² The Court also noted that “the treatment as a single class of those with intellectual or mental disabilities is a questionable classification, and the curtailment of their rights must be subject to strict scrutiny.”⁴³

The Court accepted, however, that the Government of Hungary did have a legitimate aim in ensuring “that only citizens capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public

³⁵ Organization of American States’ American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L. V/II.82 doc.6 rev.1 at 25 (1992)).

³⁶ *Ibid.*

³⁷ Human Rights Committee, General Comment 25 (57) ¶ 4, General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

³⁸ *Ibid.*

³⁹ *Alajos Kiss v. Hungary*, App. No. 38832/06 (May 20, 2010), <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=868178&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> [hereinafter *Kiss v. Hungary*].

⁴⁰ See, e.g., <http://www.electionaccess.org/> and <http://fra.europa.eu/fraWebsite/attachments/Right-to-Political-Participation-100610.pdf> (accessed August 29, 2011).

⁴¹ *Kiss v. Hungary*.

⁴² *Ibid.*

⁴³ *Ibid.*

affairs” and that “it should be for the legislature to decide on what procedure should be followed in order to assess the fitness to vote of mentally disabled persons.”⁴⁴ While *Kiss v. Hungary* is rightly described as a “landmark” decision, the Court left open the likelihood that provisions removing the right to vote from certain persons with mental disabilities would be permissible.

The Venice Commission is currently considering recommending that States allow judges to remove a person’s right to vote if they “lack proper judgment”⁴⁵ or because they “lack voting competence.”⁴⁶ Both suggestions directly violate the principles enumerated in Articles 12 and 29 of the Convention on the Rights of Persons with Disabilities, which was ratified by the European Union and most member states. In response to the proposed language a joint statement from a number of international NGOs emphasized that “[a] “proper judgment” test constitutes indirect disability-based discrimination as it will primarily apply to people identified as having intellectual or psychosocial disabilities.”⁴⁷

The Committee on the Rights of Persons with Disabilities stated that disability-based discrimination should be prohibited in all laws, “particularly those governing elections,” and that “urgent adoption of legislative measures to ensure that the right of persons with disabilities, including persons who are currently under guardianship or trusteeship, can exercise their right to vote and to participate in public life on an equal basis with others.”⁴⁸ In the Committee’s review of Spain, one of the recommendations included amending the law that authorizes the denial of the right to vote on the basis of a judge’s decision. The Committee also reiterated that physical and information access restrictions are a form of discrimination and that reasonable accommodations should be made immediately rather than progressively.⁴⁹

Positive Examples

Some countries and courts have slowly been reforming capacity requirements for some time. In the United States, for example, where individual states determine their own capacity requirements,⁵⁰ the U.S. District Court for the District of Maine held in the 2001 case *Doe v. Rowe* that the article of the Maine Constitution prohibiting those “under guardianship for reasons of mental illness” from voting violated the 14th Amendment to

⁴⁴ Ibid.

⁴⁵ Proposal made in writing by the Venice Commission secretariat to MDAC, 12 April 2011

⁴⁶ Proposal suggested by the Dutch member of the Venice Commission, 18 June 2011

⁴⁷ NGO Statement to Venice Commission ‘Right to Political Participation of People with Disabilities’ June 15, 2011

⁴⁸ Concluding observations of the UN Committee on the Rights of Persons with Disabilities regarding Tunisia; Fifth session, 11- 15 April 2011, para. 13, 35.

⁴⁹ Ibid.

⁵⁰ Nina A Kohn, “Cognitive Impairment and the Right to Vote: Rethinking the Meaning of Accessible Elections,” 1 Canadian J. of Elder L. 30 (Fall 2008).

the U.S. Constitution.⁵¹ In the United States, voters in the state of Kansas recently approved an amendment to the state Constitution to remove language allowing the state Legislature to “exclude persons from voting because of mental illness.”⁵²

In Canada, a federal court held in 1988 that the provision of the Canadian Elections Act prohibiting a person who is “restrained of his liberty of movement or deprived of the management of his property by reason of mental disease . . .” from voting was both overbroad and arbitrary.⁵³ Rather than amend the Act to make it more narrowly tailored, the Canadian Parliament repealed that section of the Act entirely, and thus Canada is one of the few countries that has no capacity requirement for voting.⁵⁴ The laws of Austria and the United Kingdom also have no capacity requirement to vote.⁵⁵

Both the Netherlands and Italy have repealed laws limiting the voting rights of people under guardianship and now place no limitations on their political participation. South Africa's Constitution guarantees the right to vote for every citizen.⁵⁶ Sweden also has universal suffrage, and eliminated the guardianship system to protect the right to vote, among other reasons.⁵⁷ In its decision on the *Kiss* case, the ECHR acknowledged that removing the right to vote from all persons under guardianship failed the strict scrutiny required by the CRPD.⁵⁸

II. ACCESSIBILITY BARRIERS THAT DENY THE RIGHT OF PERSONS WITH DISABILITIES TO POLITICAL PARTICIPATION

Inaccessibility of Voting Stations and Ballots

The full realization of the right to political participation includes removing physical and communication barriers that effectively deny this right. As Article 29 of the CRPD

⁵¹ Doe v. Rowe, 156 F.Supp.2d 35, 49 (D. Maine, 2001). The Court also noted the issue that when the constitutional provision removing the right to vote was added, the Maine Legislature “did not provide a specific definition for ‘mental illness.’” Ibid, p. 43.

⁵² Mental Health America, “Mental Health in the Headlines,” November 8, 2010, <http://www.nmha.org/index.cfm?objectid=2C605387-1372-4D20-C86A8D2FD71C2EAF> (accessed August 29, 2011).

⁵³ Canadian Disability Rights Council v. Canada, 3 F.C. 622, 624 (1988). See also Nina A Kohn, “Cognitive Impairment and the Right to Vote: Rethinking the Meaning of Accessible Elections,” 1 Canadian J. of Elder L. 30 (Fall 2008).

⁵⁴ Nina A Kohn, “Cognitive Impairment and the Right to Vote: Rethinking the Meaning of Accessible Elections,” 1 Canadian J. of Elder L. 30 (Fall 2008).

⁵⁵ European Union Agency for Fundamental Democratic Rights, “The Right to Political Participation of Persons with Intellectual Disabilities and Persons with Mental Health Problems in the European Union,” 2010, <http://fra.europa.eu/fraWebsite/attachments/Right-to-Political-Participation-100610.pdf> (accessed August 29, 2011).

⁵⁶ Constitution of South Africa, s. 19.

⁵⁷ Stanley S. Herr, “Self-Determination, Autonomy and Alternatives for Guardianship,” 2011, <http://ruralinstitute.umt.edu/Transition/Handouts/Self-Determination.Herr.pdf> (accessed August 29, 2011).

⁵⁸ European Union Agency for Fundamental Rights, “The right to political participation of persons with mental health problems and persons with intellectual disabilities,” October 2010, http://www.fra.europa.eu/fraWebsite/attachments/Report-vote-disability_EN.pdf (accessed August 29, 2011).

explains, states must ensure that their “voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.”⁵⁹ Article 9 establishes the requirements of accessibility: “appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”⁶⁰ As it relates to the political process, Article 9 requires governments to provide accessible polling stations and transportation to the polling station. It also refers to voter education materials, which should be available in accessible formats such as Braille, easy-to-read and sign language.

Voter registration often does not reach persons with disabilities. Where stigma and discrimination against persons with disabilities is high, persons with disabilities may be hidden in their homes. As a result, they are less likely to have national identification cards, or other forms of identification, or to be reached by mainstream voter registration efforts. For example, a study in Indonesia found that families would not reveal that they have family members with disabilities in the house, and so they would not be registered to vote during door-to-door registration drives.⁶¹ The problem was particularly acute where family members had intellectual disabilities.⁶²

Inaccessible polling stations can prevent a person from voting, and have psychological effects by sending the message that people with disabilities are not welcome in the community space. In Egypt, persons with disabilities who are unable to use the standard format ballot must relay their vote to the polling officials, who then record the vote and sign it to verify its authenticity. Such public voting violates the rights of persons with disabilities and discourages them from voting.⁶³ Instead, countries should consult with persons with disabilities and implement voting methods that maintain confidentiality and independence.

In Peru, voters have been prevented from voting because of failure to provide the necessary accommodations, despite advertising those options. Inadequate information about the resources available for voters with different disabilities has also been identified as a barrier to voting.

⁵⁹ CRPD, art. 29.

⁶⁰ CRPD, art.9

⁶¹ Australian Government, “Indonesia,” 2011, <http://www.aisaid.gov.au/country/indonesia.cfm> (accessed August 29, 2011).

⁶² Ibid.

⁶³ Charles O'Mahony, “On Cairo Time: Whose Vote Will Be Counted in 2011?,” August 6, 2011, <http://disabilityandhumanrights.com/wp/2011/08/06/on-cairo-time-whose-vote-will-be-counted-in-2011/> (accessed August 29, 2011).

In Timor Leste, many voters do not have electoral cards, which prevents them from voting as well as applying for government social assistance.⁶⁴ Voters are impaired from getting their electoral cards because of the inaccessibility of registration services including the mobile ones that often prove equally inaccessible.⁶⁵ There are no provisions for proxy, itinerant, or absentee ballot voting for disabled voters.⁶⁶ Election and candidate information is not available in disability accessible formats, other than the radio, and there are no legislative provisions requiring information accessibility.⁶⁷

Positive Examples

There are many ways to make the electoral process accessible to people with different kinds of disabilities. In Nicaragua, a program created by the International Foundation for Election Systems built ramps at polling sites around the country, resulting in a tenfold increase in the number of persons with disabilities that voted.⁶⁸ In Australia, the electoral commission worked with persons with disabilities and an architect to develop a checklist for choosing polling sites that were accessible. Information on accessibility was posted on the commission's website, and each polling site has at least one voting mechanism accessible to people using wheelchairs. Costa Rica recently upgraded railings, sidewalks and ramps in its major polls locations.⁶⁹ A recent ruling in Zambia held the Electoral Commission of Zambia guilty of unlawfully discriminating against persons with disabilities by failing to provide disabled voters a way to vote in private without assistance.⁷⁰ The ruling requires that the Commission institute accommodation measure to allow private voting by the next election.⁷¹ In Timor Leste, despite the absence of legislation on the subject, a government regulation increased accessibility for physically disabled voters by granting voters with disabilities priority in polling lines and allowing for assistance by another voter in the act of voting for those unable to physically vote themselves.⁷² The new draft Rights of Persons with Disabilities Bill in India allows persons with disabilities who are unable to vote in person to vote via absentee ballot

⁶⁴ United Nations Human Rights "Report on the Rights of Persons with Disabilities in Timor-Leste," August 29, 2011, http://unmit.unmissions.org/Portals/UNMIT/Human%20Rights/Final%20UNHR%20Report%202011%20Eng%20for%20Web_.pdf (accessed October 12, 2011).

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ International Foundation for Electoral Systems, "IFES to Conduct Census of Nicaraguans with Disabilities," October 1, 2007, <http://www.ifes.org/Content/Publications/Feature-Stories/2007/Oct/IFES-to-Conduct-Census-of-Nicaraguans-with-Disabilities.aspx> (accessed August 29, 2011).

⁶⁹ Mario Seing Jiménez, "Access To Voting For People With Disabilities In Costa Rica," 2008, http://www.oas.org/sap/docs/DECO/7_EMBs/presentaciones/Seign_Jimenez_e.pdf (accessed August 29, 2011).

⁷⁰ MalubaJere, "Court rules against ECZ on voters with disabilities," September 20, 2011. The Post.

⁷¹ Ibid.

⁷² Technical Secretariat for Electoral Administration (STAE), "Regulation on the Polling and Result Tabulation Procedures for the Election of the President of the Republic," STAE/11/07, Article 31. United Nations Human Rights "Report on the Rights of Persons with Disabilities in Timor-Leste," August 29, 2011, http://unmit.unmissions.org/Portals/UNMIT/Human%20Rights/Final%20UNHR%20Report%202011%20Eng%20for%20Web_.pdf (accessed October 4, 2011).

but also directs “the Election Commission to ensure that all polling stations are accessible to persons with disabilities.”⁷³

Information regarding the voting process and candidates can be available in different formats to ensure that persons with disabilities can make informed decisions.⁷⁴ Sign language and closed captioning serve persons who are deaf or who have hearing loss. Braille versions, voter information on websites that are accessible to screen reading technology, and oral instructions serve persons with visual disabilities. Easy-to-understand versions serve persons with intellectual or developmental disabilities. Information should be publicized far in advance of the election to allow persons with disabilities time to make plans.

In Ireland, one version of the ballot uses photographs and party emblems, while polling stations display a large print copy of the ballot.⁷⁵ In Spain, electoral officials provide documentation in Braille for persons with visual disabilities.⁷⁶ Tactile ballot guides are provided in Ghana,⁷⁷ Sierra Leone⁷⁸ and the United Kingdom.⁷⁹ In Jordan, interpreters were provided at polling locations for persons with disabilities for the first time in last November’s elections.⁸⁰ In 2007, Australia ran a trial electronic voting system for 300,000 persons with visual disabilities.⁸¹ Before the trial, persons with visual disabilities had no option to cast a secret ballot but instead had to use another person to vote on their behalf. While the trial was deemed too expensive to implement permanently, in its place the electoral service provided a telephone option.⁸² The telephone option was used in the 2010 Australian Federal election and gave visually impaired voters the

⁷³ The Hindu, “Proposed law gives disabled people right to fertility and prohibits forcible abortions,” July 3, 2011, <http://www.thehindu.com/news/national/article2154019.ece> (accessed August 29, 2011).

⁷⁴ Government of Ontario, “Count Us In: Removing Barriers to Political Participation Quick Reference Guide to Accessible Campaign Information and Communication,” July 2007, <http://www.lakeofbays.on.ca/Elections/2010/Quickreferenceguidetoaccessiblecampaigninformation.pdf> (accessed August 29, 2011).

⁷⁵ Australian Government, “Indonesia,” 2011, <http://www.usaid.gov.au/country/indonesia.cfm> (accessed August 29, 2011).

⁷⁶ United Nations Committee on the Rights of Persons with Disabilities, “Implementation of the Convention on the Rights of Persons with Disabilities: Initial reports submitted by States parties in accordance with article 35 of the Convention – Spain,” October 5, 2010, CRPD/C/ESP/1.

⁷⁷ International Foundation for Electoral Systems, “IFES in Ghana: Disabilities Project,” October 5, 2005, <http://www.ifes.org/Content/Galleries/I/IFES-in-Ghana-Disabilities-Project.aspx> (accessed August 29, 2011).

⁷⁸ International Foundation for Electoral Systems, May 1, 2002, <http://www.ifes.org/Content/Publications/Articles/2002/Tactile-Ballot-Guide.aspx> (accessed August 29, 2011).

⁷⁹ Australian Government, “Indonesia,” 2011, <http://www.usaid.gov.au/country/indonesia.cfm> (accessed August 29, 2011).

⁸⁰ National Democratic Institute, “Preliminary Statement Of The NDI Election Observer Delegation to Jordan’s 2010 Parliamentary Elections,” November 10, 2010, http://www.ndi.org/files/Jordan_2010_Election_Delegation_Statement.pdf (accessed August 29, 2011).

⁸¹ Australian Human Rights Commission “The right to vote is not enjoyed equally by all Australians,” February 2010, http://www.hreoc.gov.au/human_rights/vote/index.html (accessed August 29, 2011).

⁸² Australian Government, “Part B - Participation in political and public life (article 29),” 2011, http://www.ema.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_PartB-Participationinpoliticalandpubliclife%28article29%29 (accessed August 29, 2011).

chance to vote secretly by using an unaffiliated call center that was trained to recite the ballot options to the voter and record the vote.⁸³ The call center representative did not know the voters name and no election officials were in attendance at the time of voting.⁸⁴ Further measures were taken to assure accuracy.⁸⁵

In the United States, the technology of ballot marking devices includes the ability to make the font bigger to make it easier to read and audio ballots allow persons with disabilities “to use headphones to listen to candidate information and provide for various means of marking selections, such as a Braille keyboard for persons who are blind.”⁸⁶ Improving accessibility does not necessarily need to include technology. For example, in Costa Rica, electoral guidelines provide for technical aides such as magnifying glasses, ergonomic pens, and a flashlight with batteries.⁸⁷

In Sweden, the website of Sweden’s Election Committee has easy-to-read, sign language, and audio options.⁸⁸ Spain used a number of methods to provide information about voting during 2008 and 2009 elections there, including a radio and television campaign, a website with accessible features, and a telephone service that persons could call.⁸⁹ In the 2010 election, Australia produced a guide to assist persons with disabilities in audio, braille, large print, TTY, and e-text formats. The guide explained accessible polling places and how a voter could cast an early vote if he or she was unable vote in person.⁹⁰ Canada ran public awareness campaigns to ensure that persons with disabilities were aware of the assistive technology that was available to them.⁹¹ Assisted voting systems are already in place in Jordan,⁹² Guyana,⁹³ Chile,⁹⁴ Costa Rica⁹⁵ and Jamaica.⁹⁶

⁸³ Australian Election Commission, “Telephone voting for blind or low vision electors, 2010 federal election,” http://www.aec.gov.au/Elections/federal_elections/2010/ (accessed October 12, 2011).

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Australian Government, “Indonesia,” 2011, <http://www.usaid.gov.au/country/indonesia.cfm> (accessed August 29, 2011).

⁸⁷ Mario Seing Jiménez, “Access To Voting For People With Disabilities In Costa Rica,” 2008, http://www.oas.org/sap/docs/DECO/7_EMBs/presentaciones/Seign_Jimenez_e.pdf (accessed August 29, 2011).

⁸⁸ International Foundation for Electoral Systems, “Removing Barriers for Voters with Disabilities,” June 14, 2011, <http://www.ifes.org/Content/Publications/News-in-Brief/2011/June/Removing-Barriers-for-Voters-with-Disabilities.aspx> (accessed August 29, 2011).

⁸⁹ United Nations Committee on the Rights of Persons with Disabilities, “Implementation of the Convention on the Rights of Persons with Disabilities: Initial reports submitted by States parties in accordance with article 35 of the Convention – Spain,” October 5, 2010, CRPD/C/ESP/1.

⁹⁰ Australian Government, “Part B - Participation in political and public life (article 29),” 2011, http://www.ema.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_PartB-Participationinpoliticalandpubliclife%28article29%29 (accessed August 29, 2011).

⁹¹ Australian Government, “Indonesia,” 2011, <http://www.usaid.gov.au/country/indonesia.cfm> (accessed August 29, 2011).

⁹² International Foundation for Electoral Systems, “Jordanian Director of Elections Receives Award for Advancing Democracy,” March 21, 2011, <http://www.ifes.org/Content/Publications/Press-Release/2011/Jordanian-Director-of-Elections-Receives-Award-for-Advancing-Democracy.aspx> (accessed August 29, 2011).

⁹³ Rabindra Rooplal, “Disability Act empowers physically challenged,” March 13, 2011, <http://www.kaieteurnews.com/2011/03/13/disability-act-empowers-physically-challenged/> (accessed August 29, 2011).

For those voters who are unable to reach the polling station, they can be served via absentee ballots. While this flexibility is important, solutions that only allow persons with disabilities to vote remotely should be used with caution, as an important part of political participation is the communitarian spirit of group action. Absentee ballots are no replacement for accessible polling stations, and assisted voting is no replacement for a private and independent voting mechanism.

III. RESTRICTIONS ON THE RIGHT OF PERSONS WITH DISABILITIES TO BE ELECTED

Discrimination, Poverty, and Legal Capacity

The barriers that persons with disabilities face when entering politics are often the same as those faced in many other activities—stigma and prejudice; lack of information and resources; isolation from centers of power; and inaccessible public spaces. Candidates still sometimes hide their disabilities, believing them to be a sign of weakness.⁹⁷ The high cost of elections is another barrier, as persons with disabilities are disproportionately likely to be poor.⁹⁸ Under the CRPD these barriers must be addressed, so that persons with disabilities are able “to stand for elections, to effectively hold office and perform all public functions at all levels of government” on an equal basis with others.

Restrictions on legal capacity may also deprive persons with disabilities of their right to be elected to public office. Indonesia’s electoral law requires candidates to be “physically and mentally healthy.”⁹⁹ The Constitution of Jamaica, prohibits persons “certified to be insane or otherwise adjudged to be of unsound mind” from registering to vote, from voting and from being “appointed as a Senator or elected as a member of the House of Representatives.”¹⁰⁰ In India, a state election law disqualifies candidates

⁹⁴ Rodolfo Herranz, “Participación ciudadana de discapacitados: la ley del voto asistido (Citizen Participation for the disabled: the law of assisted voting),” 2008, http://www.bcn.cl/carpeta_temas_profundidad/discapacidad-leyes-chile/voto-asistido-ley-discapitados-chile-participacion-ciudadana/ (accessed August 29, 2011).

⁹⁵ Mario Seing Jiménez, “Access To Voting For People With Disabilities In Costa Rica,” 2008, http://www.oas.org/sap/docs/DECO/7_EMBs/presentaciones/Seign_Jimenez_e.pdf (accessed August 29, 2011).

⁹⁶ Vision 2030, “Jamaica National Development Plan – Persons with Disabilities Draft Sector Plan, June 2009, http://www.vision2030.gov.jm/Portals/0/Sector_Plan/Microsoft%20Word%20-%20Persons%20with%20Disabilities%20pdf.pdf (accessed August 29, 2011).

⁹⁷ Elections Canada, “Access to Electoral Success Challenges and Opportunities for Candidates with Disabilities in Canada,” April 2004, http://www.elections.ca/res/eim/article_search/article.asp?id=16&lang=e&frmPageSize= (accessed August 29, 2011).

⁹⁸ Ibid.

⁹⁹ Australian Government, “Indonesia,” 2011, <http://www.usaid.gov.au/country/indonesia.cfm> (accessed August 29, 2011).

¹⁰⁰ Vision 2030, “Jamaica National Development Plan – Persons with Disabilities Draft Sector Plan”, June 2009, http://www.vision2030.gov.jm/Portals/0/Sector_Plan/Microsoft%20Word%20-%20Persons%20with%20Disabilities%20pdf.pdf (accessed August 29, 2011).

from filing nomination applications if they are “deaf/mute or of unsound mind,”¹⁰¹ or are “[l]eprosy afflicted”.¹⁰² Additionally, the word used to describe a person who is deaf and mute is a particularly offensive term.¹⁰³

Positive Examples

In Uganda, a quota system reserves seats in Parliament for persons with disabilities and the government pays for sign language interpreters and personal assistants for those elected.¹⁰⁴ Persons with disabilities are also active in local governments—47,000 councilors with disabilities work in the local government structures and as a result there is at least one representative of the disability community at each of the five levels of the local council.¹⁰⁵ As a result, Uganda has a high number of elected representatives with disabilities.¹⁰⁶ Likewise, Kenya’s new Constitution requires the government to “ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.”¹⁰⁷

Other countries have used public awareness campaigns and programs. In the United Kingdom, political parties worked together to begin the “Access to Elected Office for Disabled People” strategy to identify and address barriers faced by persons with disabilities who want to enter politics.¹⁰⁸ It includes a fund to help defray election costs as well as training and policy changes. In an article on the new program, member of the House of Lords Jane Campbell, who uses a wheelchair, supported accommodations for politicians with disabilities, noting that “we do need to change to include disabled people because it’s not a democracy if we don’t.”¹⁰⁹ In Jordan, Mustafa Rawashdeh was inspired to run for office as a result of public awareness efforts undertaken by the Higher Council for the Affairs of Persons with Disabilities.¹¹⁰

¹⁰¹ IBN Live, “Differently-abled protest unfair law,” October 04, 2011, <http://ibnlive.in.com/news/differentlyabled-protest-unfair-law/189930-60-120.html> (accessed October 12, 2011).

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Human Rights Watch, “‘As if We Weren’t Human’: Discrimination and Violence against Women with Disabilities in Northern Uganda” August 26, 2010, <http://www.hrw.org/en/node/92610/section/7> (accessed August 29, 2011); World Bank and World Health Organization, “World Report on Disability,” 2011, http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf (accessed August 29, 2011).

¹⁰⁵ Ibid.

¹⁰⁶ World Bank and World Health Organization, “World Report on Disability,” 2011, http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf (accessed August 29, 2011).

¹⁰⁷ Constitution of Kenya, art. 54(2).

¹⁰⁸ Her Majesty’s Government, “Access to elected office for disabled people,” February 2011, <http://odi.dwp.gov.uk/docs/abo/aeo.pdf> (accessed August 29, 2011).

¹⁰⁹ Mark Gould, “Helping more disabled people get into politics,” May 4, 2011, <http://www.guardian.co.uk/society/2011/may/04/disabled-people-electoral-representation> (accessed August 29, 2011).

¹¹⁰ Arab Archives Institute, “Rights for all a centerpiece of disabled candidates’ platforms,” November 3, 2010, <http://www.alarchief.com/articles/details.asp?articleID=14760&word=> (accessed August 29, 2011).

Candidates should also be accessible to persons with disabilities. Candidates should be encouraged to have accessible offices that are close to public transportation where possible. Candidates should insist on accessible locations for campaign events.¹¹¹

IV. CONCLUSIONS AND RECOMMENDATIONS

The human rights of persons with disabilities should not be impaired by a denial of the right to political participation. The rights to vote and stand for election are protected under international law and, as demonstrated above, there are a range of successful options for States to increase the political participation of their citizens with disabilities.

Thus, States Parties should:

- Remove all voting restrictions based on legal capacity;
- Disseminate accessible information regarding elections and political party platforms (including in Braille, sign language and easy-to-read formats);
- Implement public awareness campaigns about the political rights of persons with disabilities and services and programs that support political participation;
- Train voter registration and polling station staff;
- Require polling locations to be accessible, and where only some locations are accessible, publicize and disseminate that information;
- Allow a person trusted by the voter with a disability to assist them in the polling booth;
- Provide accessible transportation to the polling station;
- Allow for alternative options such as mobile polling stations or advance voting;
- Build the capacity of persons with disabilities and disabled peoples' organizations (DPOs) through training and education on substantive topics and political skills like public speaking and negotiations;
- Consider effective methods of bringing persons with disabilities into politics, such as quota systems, dedicated funding sources, or political caucuses;¹¹²
- Consult with persons with disabilities, DPOs, and families of persons with disabilities to better understand and support their needs with respect to voting.

¹¹¹ Ibid.

¹¹² Disability World, "Kenyans With Disabilities Must Now Challenge Political Marginalization," January 28, 2007, http://www.disabilityworld.org/01_07/kenyanmargins.shtml (accessed August 29, 2011).

We hope you will find these comments useful and would welcome an opportunity to discuss them further with you. Thank you for your consideration of these issues.

Sincerely yours,

A handwritten signature in black ink, reading "Shantha Rau Barriga". The signature is written in a cursive, flowing style.

Shantha Rau Barriga
Disability Rights Researcher/Advocate
Human Rights Watch

CC: Simon Walker
Office of the High Commissioner for Human Rights