Written submission on Article 25 of the ICCPR
With respect to the List of Issues for Bosnia and Herzegovina

The Mental Disability Advocacy Center

Human Rights Committee
104th Session 12 - 30 March 2012

The Mental Disability Advocacy Center (MDAC) is an international human rights organization which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities. MDAC uses law to promote equality and social inclusion through strategic litigation, advocacy, capacity-building and research. MDAC engages in domestic, regional and global level advocacy on the right to vote of people with disabilities.

This submission provides information on Bosnia and Herzegovina’s implementation of Article 25 of the International Covenant on Civil and Political Rights (ICCPR), specifically regarding the right to vote of people with psychosocial and/or intellectual disabilities. It does so with reference to Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD) and is supplemented with suggested questions for the Committee’s list of issues to Bosnia and Herzegovina (BiH).

Interpreting Article 25 ICCPR in light of Article 29 CRPD

1. ICCPR Article 25 recognizes that every citizen should have the right and the opportunity, without undue restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives; and to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage.

2. In interpreting this provision, Human Rights Committee (HRCom) General Comment No. 25 (1996) surmised that “established mental incapacity may be a ground for denying a person the right to vote or to hold office.” In other words, it was envisaged that the existence of a psychosocial disability (mental health problem) or intellectual disability may in some circumstances be seen as a justifiable reason to restrict a person’s right to political participation. As Manfred Nowak has noted, “a certain contradiction can be seen between the

---

1 BiH ratified the International Covenant on Civil and Political Rights on 1 September 1993 and the Convention on the Rights of Persons with Disabilities on 12 March 2010.
2 General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12 July 1996, para. 4, available at http://www2.ohchr.org/english/bodies/hrc/comments.htm
principle of universal – i.e. unlimited – suffrage and the authorization, in the chapeau of article 25, to provide for reasonable restrictions”. 3

3. In 2008, twelve years after the HRCom General Comment No.25, the CRPD entered into force. CRPD Article 29 provides that “States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected”.

4. As reiterated in the recent Thematic Study on Participation in Political and Public Life by Persons with Disabilities published by the OHCHR in December 2011, Article 29 of the CRPD “does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, any exclusion or restriction of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability would constitute “discrimination on the basis of disability” within the meaning of Article 2 of the Convention [CRPD]”.

5. The Thematic Study examines the argument that any restriction or curtailment of the right of a person with a disability to participate in public life may not in fact be based on disability itself but rather on a lack of legal capacity. Such a restriction, the report states, would be “inconsistent with the provisions of Article 12, paragraph 2 of the Convention, which recognises that persons with disabilities enjoy legal capacity “on an equal basis with others in all aspects of life”. This provision does not provide any exception. It only requires States parties to take appropriate measures “to provide access by persons with disabilities to the support they may require in exercising their legal capacity”. Consequently, deprivation of legal capacity based on a perceived or actual mental illness or psychosocial disability may constitute a violation of the obligations set out in Article 12 [of the CRPD].”

6. In summary, the CRPD does not provide any basis on which the right to vote or to participate in public affairs of a person with a psychosocial and/or intellectual disability can be restricted. The Committee on the Rights of Persons with Disabilities (the CRPD’s treaty body) has also been clear in its interpretation of these provisions. In its Concluding Observations with respect to Tunisia (the first State Party reviewed by the Committee, April 2011) it recommended “the urgent adoption of legislative measures to ensure that persons with disabilities, including persons who are currently under guardianship or trusteeship, can exercise their right to vote

---

5 Ibid, para 30.
and participate in public life, on a equal basis with others”\(^6\). With regard to Spain (the second, and to date only other State Party to be reviewed by the Committee, September 2011) the Committee recommended “that all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participation in public life on an equal basis with others”.\(^7\)

7. Furthermore, the UN High Commissioner for Human Rights issued a statement for the international day of people with disabilities, 3 December 2011.\(^8\) She stated that people with disabilities “are prevented from exercising this right because of discriminatory laws, the lack of accessible voting booths or because electoral material and information is not available in accessible formats such as sign language and Braille. Such obstacles prevent the exercise of one of the most fundamental human rights – to have a say in one’s own government.” She concluded that “individuals with disabilities should certainly be able to vote and participate in decision-making at the community, local and national levels. It is the obligation of the State to ensure this is possible.”

8. These global developments have been mirrored by regional human rights bodies. In March 2011, Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, issued an official Statement on the right to political participation of people with disabilities, stating that, “there is no room for procedures in which judges or medical practitioners would assess the voting competence of a person and then give a green light—or not.”\(^9\)

9. In November 2011 the Committee of Ministers of the Council of Europe adopted a Recommendation affirming that “all people with disabilities, whether they have physical, sensory, or intellectual impairment, mental health problems or chronic illnesses, have the right to vote on the same basis as other citizens, and should not be deprived of this right by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning or perceived disability. The recommendation goes on to call for European governments to ensure that “their legislation overall does not discriminate against persons with disabilities in political and public life.”\(^10\)

10. Following advocacy by disabled people’s organisations, in December 2011 the Venice Commission (a constitutional law think tank affiliated with the Council of Europe) also amended one of its key documents on electoral matters.\(^11\) The Venice Commission’s previous

---

\(^6\) Para 35. Available at [http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session5.aspx](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session5.aspx)

\(^7\) Para 47. Available at [http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session6.aspx](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session6.aspx)


\(^9\) Available at [http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=127](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=127)

\(^10\) Available at [https://wcd.coe.int/ViewDoc.jsp?id=1871285&Site=CM](https://wcd.coe.int/ViewDoc.jsp?id=1871285&Site=CM)

\(^11\) “Revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections”, Adopted by the Council for Democratic Elections at its 39th meeting (Venice, 15
text stated that, “no person with a disability can be excluded from the right to vote or to stand for election on the basis of her/his physical and/or mental disability unless the deprivation of the right to vote and to be elected is imposed by an individual decision of a court of law because of proven mental disability.” The revised text rejects this approach, and instead says that, “universal suffrage is a fundamental principle of the European Electoral Heritage. People with disabilities may not be discriminated against in this regard, in conformity with Article 29 of the Convention of the United Nations on the Rights of Persons with Disabilities and the case law of the European Court of Human Rights.”

11. In light of these developments in international human rights law and discourse, MDAC respectfully invite the HRCom to interpret and apply Article 25 of the ICCPR in harmony with the contemporary standards of the CRPD. Accordingly, when considering BiH’s implementation of Article 25 of the ICCPR the existence of a psychosocial and/or intellectual disability should not be interpreted as a ground to restrict political rights guaranteed under Article 25 of the ICCPR, whether indicated by an automatic curtailment of that person’s legal capacity to act, or whether restricted through an individualised court decision.

Bosnia and Herzegovina’s implementation of Article 25 ICCPR

12. The state-level Election Law of Bosnia Herzegovina (BiH) recognizes the right to vote of all citizens who are recorded in the Central Voters Register\(^\text{12}\), but stipulates that the Register shall not contain names of BiH citizens whose full legal capacity has been withdrawn by the final and binding decision of a court of law.\(^\text{13}\)

13. Some reports indicate that there are over 6500 persons with disabilities that have been declared to be legally incompetent and placed under guardianship in BiH\(^\text{14}\) and hence are ineligible to be put on the voting register. It is only people with disabilities who are negatively affected by this legislation: a clear case of disability-based discrimination which is prohibited by Article 26 of the ICCPR and more clearly set out in Article 5 (and defined in Article 2) of the CRPD.

---


\(^{13}\) See Article 3.2 of the Election Law of BiH. Available at <http://www.izbori.ba/documents/ENG/Law/BH_Election_Law.pdf>

14. Therefore, persons with psychosocial and/or intellectual disabilities can be deprived of their right to vote or stand for election in BiH due to legal provisions that link the exercise of their political rights to legal capacity. The OHCHR Thematic Study (referenced above) reiterates that such restrictions may be inconsistent with the obligations that States parties have undertaken under ARTICLES 2, 12 and 29 of the Convention [CRPD] and should be eliminated as a matter of priority from legislation and practices”. 15

15. Moreover, the existence of these provisions also constitutes a violation of Article 25 ICCPR read in line with Article 29 of the CRPD.

**Questions for the List of Issues for Bosnia and Herzegovina**

- What public policy goal necessary in a democratic State is served by prohibiting BiH citizens with disabilities from exercising their right to vote and stand for election?

- How many people are placed under guardianship in BiH?

- Therefore, how many people are denied the right to vote based on their legal capacity?

- What steps, if any, are being taken to revise BiH legislation so persons with disabilities can vote and be elected on an equal basis with others?

- What steps, if any, are being taken to abolish guardianship systems based on the denial of legal capacity and introduce support systems to assist people with disabilities to exercise their legal capacity including the right to vote?

---

15 Supra note 4, para. 70.