

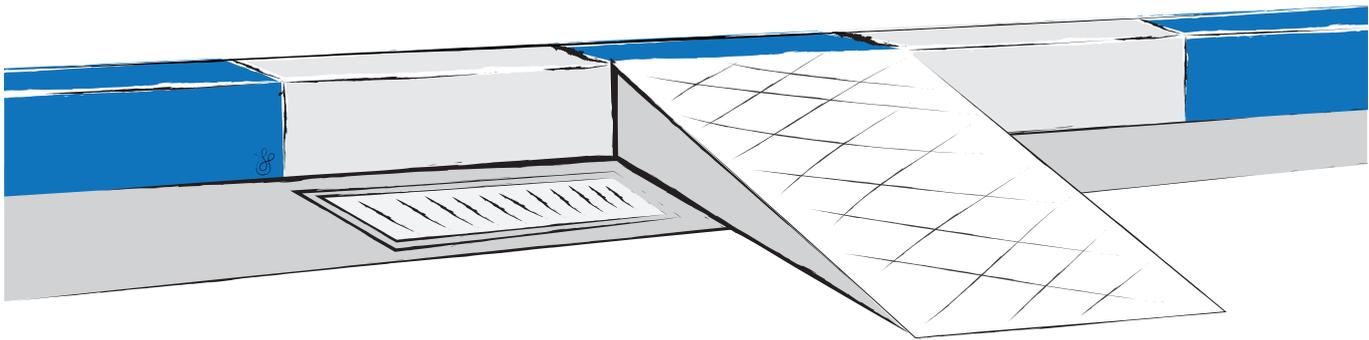


المجلس الوطني لحقوق الإنسان
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Conseil national des droits de l'Homme

المملكة المغربية
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Kingdom of Morocco

Protection and Promotion of the rights of Persons with disabilities

Memorandum



Following a request sent to the CNDH, on the 22nd of January 2015, by the Speaker of the House of Councillors (the Upper House) asking for the Council's human rights based opinion on Draft 'Framework' Law (loi cadre) # 97-13 on the promotion and protection of the rights of persons with disabilities, the Council started a consultation and analysis process to prepare the hereunder Advisory Opinion.

Prior to drafting its opinion, the Council's regional human rights commissions held several regional consultation workshops, from the 28th January to the 1st of February 2015, attended by the representatives of 402 local, regional and national disability rights associations, as well as the Ombudsman's regional representatives (Le Médiateur du Royaume). The CNDH also held successive consultation meetings, on the 9th and 10th of February 2015, with several Moroccan labor unions (CDT, FDT and UNTM) and the General Confederation of Moroccan Enterprises (CGEM). The Council received later on written contributions from the FDT, the UNTM and CGEM.

In its opinion, the Council primarily recommends harmonizing the provisions of the Draft Framework Law with international human rights standards and the Convention on the Rights of Persons with Disabilities in particular. The bill should also be aligned with the principles and objectives of the Moroccan Constitution and take into account comparative experiences.

CNDH's main recommendations can be summarized as follows:

Objectives and principles: rewording the first objective of the bill, to refer first to the prevention of the causes of disability and the elimination of incapacitating effects.

Social protection, health and accessibility: adding a provision to give people with disabilities, their families and family caregivers the right to compensation to help them cover their needs.

Access to the right to health: introducing provisions to guarantee free or affordable care programs and health services to people with disabilities, prohibiting involuntary or forced treatment, protecting the right to prior free and informed consent, implementing the right to access to health information, and informing, training and supporting the families of persons with disabilities and caregivers.

Access to the right to education: introducing provisions to commit public authorities to providing reasonable accommodation, according to the needs of each learner with disabilities, taking measures to facilitate the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, facilitating the learning of sign language and promoting linguistic identity of the deaf community, and ensuring that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

The right to work: strengthening the rights of persons with disabilities to employment and vocational training. CNDH proposes introducing a provision to commit public authorities to supporting opportunities for self-employment, job search, job retention, and return-to-work programs. CNDH also recommends implementing the recommendations of the Office of UN High Commissioner for Human Rights on work and employment, which call on States "to adopt positive measures to increase employment of persons with disabilities in the public and private sectors, including through the promotion of self-employment schemes which are non-discriminatory and fully inclusive of persons with disabilities."

In addition, CNDH suggests adding two provisions to guide inclusion policies targeting persons with disabilities in the labor market: the first aims at providing for incentives to encourage the employment of persons with disabilities in the private sector and the second at committing employers (in the public, semi-public or private sectors) to providing reasonable accommodation to persons with disabilities at the workplace. CNDH also recommends further strengthening the commitment of the government and public authorities to developing national standards for businesses and disability-friendly employment agencies.

Accessibility: ensuring accessibility to infrastructure, buildings, and all properties, new products and services, and strengthening the commitment to removing obstacles and barriers and ensuring access to the physical environment and public transportation, information and communication services. CNDH also proposes a special card to be issued and given to persons with disabilities at the territorial level (regional or provincial). The Council recommends adding an article to the final provisions of the bill committing public authorities to taking all necessary measures to ensure the protection and safety of persons with disabilities at risk and emergency situations, and an article committing public authorities to developing the use of sign language in all aspects of life.

The wording for the mandate of the National Committee provided for in Article 25 of the bill may confuse the levels of institutional monitoring under article 33 of the Convention on the Rights of Persons with Disabilities:

■ **1st level:** under the first paragraph of article 33, "States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels."

■ **2nd level:** under the second paragraph of article 33, States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

CNDH recommends the rewording of Article 25 of the bill to align its provisions with the first paragraph of Article 33 of the Convention.

CNDH's advisory opinion includes additional recommendations to ensure the implementation of the public commitments made under the bill, including public budget process, studying the impact of the bill according to the human rights based approach, as well as strengthening Morocco's treaty practice.

CNDH recommends also including in the economic and financial report, the gender-based budget report and the human resources report that are released with the draft Finance Report, statistics and indicators on the impact of budget decisions on persons with disabilities and their access to their rights, as guaranteed by the Constitution and the international Convention on the Rights of Person with Disabilities.

CNDH and the Central Authority for the Prevention of Corruption released a joint memorandum on draft 'organic' law # 13 65 on the work of the government and the status of its members (on August 1, 2013). In its advisory opinion on disability rights, the Council reaffirms the recommendation to introduce a provision to preliminary study the impact of bills and draft laws according to the human rights based approach.

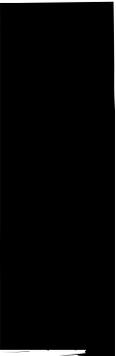
The Council also recommends rewording the objectives of the social cohesion fund, created under the 2012 Finance Act, adding as an explicit objective the financing costs related to the implementation of government commitments under the 'framework' law on disability rights and other relevant laws.

CNDH recommends at the end of its opinion the ratification of two highly important international conventions to strengthen the normative basis of the rights of persons with disabilities:

- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted by the World Intellectual Property Organization's (signed by Morocco on June 28, 2013);
- ILO's Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

Protection and Promotion of the rights of Persons with disabilities

Memorandum



MEMORANDUM ON PROTECTION AND PROMOTION OF THE RIGHTS OF PERSONS WITH DISABILITIES

The National Human Rights Council (CNDH),

In response a request for opinion dated and received on the 22nd of January 2015, referred to the Council by the Speaker of the House of Councillors;

In compliance with the provisions of its founding Dahir (Royal Decree) No. 1-11-19, dated 1st March 2011, mainly Article 16;

Considering the Upper House's Rules of Procedure, mainly Article 282;

Fulfilling the Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments, mainly principles 22, 24, 25 and 28;

Implementing the Memorandum of Understanding between the CNDH, the Upper House, and the House of Representatives, on the 10th of December 2014, mainly Article 2;

In accordance with the Constitution, mainly the Preamble and Articles 34 and 71 (paragraph 2);

Considering the Convention on the Rights of Persons with Disabilities;

Considering the Optional Protocol to the Convention on the Rights of Persons with Disabilities;

Hereunder presents its opinion on Draft Framework Law No. 97-13 on the Protection and Promotion of the Rights of Persons with Disabilities.

INTRODUCTION

In order to draw up this advisory opinion, the CNDH's regional human rights commissions held several regional consultation workshops, from the 28th January to the 1st of February 2015, attended by the representatives of 402 local, regional and national disability rights associations, as well as the Ombudsman's (Le Médiateur du Royaume) regional representatives.

On the 9th and 10th of February 2015, the Council also held successive consultation meetings with several Moroccan labor unions (CDT, FDT and UNTM) and the General Confederation of Moroccan Enterprises (CGEM). The Council received later on written contributions from the FDT, the UNTM and CGEM.

CNDH recommendations on the different articles of the draft-framework law (as sent to the Upper House):

MEMORANDUM ON PROTECTION AND PROMOTION OF THE RIGHTS OF PERSONS WITH DISABILITIES

ARTICLE I

1. Regarding the first objective of the draft framework law and the scope of the term “disability prevention”, the Council points out that States are required, in accordance with Article 25 (paragraph b) of the international Convention on the Rights of Persons with Disabilities, to provide “those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons”.

This paragraph shows that the Convention does not aim at preventing disability “but rather to prevent discrimination on the basis of disability”¹. This interpretation is consistent with principle (d)² of the general principles of the Convention provided for in its Article 3.

It should be recalled that standard 2.1 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities³ provides that “States should work towards the provision of programmes run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment” and that “this could prevent, reduce or eliminate disabling effects”. In the same context, the resolution indicates that “Such programmes should ensure the full participation of persons with disabilities and their families at the individual level and of organizations of persons with disabilities at the planning and evaluation level”.

The World Programme of Action concerning Disabled Persons, adopted by the United Nations General Assembly on 3 December 1982 (Resolution 37/52) specifies the scope of prevention strategies based on a logic that aims to reduce the incidence of deficiencies and impairment. The range of actions that the program proposes focus on the prevention of the structural causes of disability, including the avoidance of war; the improvement of the educational, economic and social status of the least privileged groups; specific intervention measures through better nutritional practices and health services; early detection and diagnosis; prenatal and postnatal care; improved medical care for the elderly; training and regulations to reduce accidents in the industrial and agricultural sectors, on the roads and at home; and control of environmental pollution and the use and abuse of drugs and alcohol.

In the same vein, the Committee on the Rights of the Child, in paragraphs 53, 54 and 55 of its General Comment No. 9 on the rights of children with disabilities⁴, lists a series of causes of disabilities that may be subject to prevention strategies.

The CNDH also recalls that the prevention of the causes and consequences of disability is a central public health objective recognized worldwide and particularly embodied in Resolution 58.23 of the World Health Assembly on “Disability, including prevention, management and rehabilitation”⁵.

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The Council thus recommends to the legislator reviewing the wording of the first objective, which should refer to the prevention of the causes of disability and the reduction and elimination of the disabling effects.

ARTICLE 2

2. The CNDH notes that the definition of persons with disabilities, under Article 2 of the draft framework law, is consistent with that provided in the second paragraph of Article 1 of the Convention on the Rights of Persons with Disabilities.

The Council also believes that the incorporation of the definitions set forth in Article 2 of the Convention into Article 2 of the draft framework law will have a major positive impact on the effectiveness of the positive obligations of public authorities under Article 34 of the Constitution⁶.

As such, the Council recommends introducing in Article 2 of the bill the definitions of “reasonable accommodation”⁷, “universal design”⁸ and the specific definitions of “communication”⁹ and “language”¹⁰ as provided by Article 2 of the Convention.

3. For the sake of internal consistency in the draft framework law, the Council proposes two changes in the disability based discrimination relating provisions:

- Moving the definition of disability based discrimination from Article 3 to Article 2 of the draft framework law, in order to have all definitions in Article 2;
- Replacing the definition of disability-based discrimination by the definition enshrined in Article 2 of the Convention¹¹, which considers the denial of reasonable accommodation a form of disability-based discrimination.

Beyond the required alignment with the definitions of the Convention, the CNDH emphasizes that adopting the disability based discrimination definition of Article 2 of the Convention is a necessary condition to ensure the effectiveness of constitutional guarantees in the fight against discrimination, especially in case of litigation. It will also allow persons with disabilities, in their capacity as rights holders, to seek legal redress in case reasonable accommodation is denied.

4. Finally, the Council points out that the Committee on the Rights of Persons with Disabilities has recommended, to several States parties to the Convention, including in their national legislation the definition of reasonable accommodation and sanctioning, by law, the denial of reasonable accommodation as a form of disability based discrimination.

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In this context, the Committee, “in order to clarify the meaning of reasonable accommodation”, recommended New Zealand to “give consideration to amending the Human Rights Act 1993 to include a definition of reasonable accommodation, in conformity with the definition of reasonable accommodation in article 2 of the Convention”¹². The Committee recommended Denmark “to adopt new comprehensive cross-sectoral anti-discrimination legislation that extends protection beyond the labour market and affirms the denial of reasonable accommodation as a form of discrimination on the basis of disability”¹³. The Committee further recommended Denmark to “ensure effective legal remedies to persons with disabilities, including the possibility of submitting complaints related to discrimination on the basis of disability to the Board of Equal Treatment”.

The Committee's recommendations to Sweden focused both on the incorporation of the Convention “into Swedish legislation” and the adoption of “a legal definition of reasonable accommodation and incorporate it into all relevant statute laws so that it can be applicable in all areas of government, including judicial and administrative areas”¹⁴.

ARTICLE 3

6 5. The CNDH considers that the wording of some principles of Article 3 of the draft framework law is not very consistent with Article 3 of the Convention. The differences noted may reduce the legal scope of these principles.

It should be recalled in this regard that the “nondiscrimination on the basis of disability in all its forms” in the bill may be interpreted in a way which does not cover multiple discrimination; i.e. cases of discrimination on various grounds. This restricted interpretation could lead, in the medium term, to the emergence of a case law relating to a “single ground” approach of discrimination, which does not often guarantee a fair and effective judicial response to multiple discrimination cases, which are complex by nature¹⁵. This approach has also a considerable disadvantage; it increases the burden of proof on the plaintiffs, who are often in a vulnerable situation.

CNDH believes that the future national legislation against discrimination should include provisions on multiple discrimination, as it is the case in many other comparative legislations¹⁶. The Council proposes that the framework law should incorporate principle (b) of nondiscrimination as set out in Article 3 of the Convention with no specifications or restrictions. This proposal aims at implementing the provisions of the second paragraph of Article 5 of the Convention, according to which “States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds”.

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6. The CNDH also notes that the wording of the participation principle in the draft framework law may reduce the scope of State involvement in this regard. Indeed, principle (c) in Article 3 of the Convention seeks to ensure “full and effective participation and inclusion in society” for persons with disabilities, while the same principle is restated in Article 3 of the bill as follows: “Ensure the participation of persons with disabilities in all activities adapted to their situation by involving them in these activities in a full and effective manner”.

In addition to this semantic gap, the Council emphasizes that the public authorities’ commitment scope in the bill is inferior to their commitment scope under the constitution, regarding persons with disabilities’ participation and integration. It is also fully compatible with the Convention. Article 34 of the Constitution stipulates that “Public authorities shall develop and implement policies for individuals and groups with special needs. For this purpose, they shall in particular seek to ... rehabilitate and integrate into social and civil life persons with physical, sensorimotor and mental deficits, and facilitate their exercise of the rights and freedoms recognized for all citizens”.

The CNDH thus proposes replacing the third principle of Article 3 of the bill by a literal transcription of principle (c) of Article 3 of the Convention.

7. The Council notes that Article 4 of the draft framework law does not provide for the principle of “respect for difference and acceptance of persons with disabilities as part of human diversity and humanity”, provided for in principle (d), Article 3 of the Convention. The Council, which has no information justifying this choice, stresses the importance of this principle, particularly in relation to the fight against disability-based discrimination and against “stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life”, which is an obligation of States parties to the Convention under Article 8 of the Convention. This is further highlighted in the OHCHR’s “Monitoring the Convention on the Rights of Persons with Disabilities” manual¹⁷. Therefore, the CNDH recommends introducing this principle in Article 3 of the draft framework law.

8. The Council also notes that the wording of the fifth principle under Article 3 of the draft framework law reduces the overall scope of the principle of accessibility by limiting the State commitment to “facilitating access to the various public spaces and services”. The CNDH emphasizes in this regard that Article 3 of the Convention enshrines accessibility as a principle of the Convention, and that the scope of accessibility as defined by Article 9 of the Convention¹⁸ goes beyond the concept of “facilitating access to the various public spaces and services”.

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In its General Comment No. 2¹⁹, the Committee on the Rights of Persons with Disabilities explains that it is “important that accessibility is addressed in all its complexity... The focus is no longer on ... the public or private nature of those who own buildings, transport infrastructure, vehicles, information and communication, and services. As long as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise”.

These normative and interpretative elements thus suggest that the accessibility principle set forth in Article 3 of the draft framework law should be reworded to incorporate the same principle as it is under Article 3 of the Convention.

ARTICLES 4, 5, 6 AND 7

9. The CNDH recommends introducing a provision in Article 4 of the draft framework law to recognize the right of persons with disabilities to receive financial support. This disability support should cover the needs for nurse care, medical devices, animal assistance and the adaptation of accommodations or vehicle, depending on the life style chosen by each person with disability. The Council considers that family caregivers should also be eligible by law to this financial support. It should be recalled in this regard that the Committee on the Rights of the Child, in its General Comment No. 9 on the rights of children with disabilities²⁰, recommended States parties to “develop and effectively implement a comprehensive policy by means of a plan of action” which ensures that “a child with disability and her or his parents and/or others caring for the child do receive the special care and assistance they are entitled to under the Convention”.

Enshrining financial support in the law is one of the most appropriate mechanisms for targeted public subsidies to cover the needs of persons with disabilities. For example, French Act No. 2005-102, dated 11 February 2005, on equal rights and opportunities, participation and citizenship of persons with disabilities, provides for the right to compensatory benefits in Articles 11 to 15, and further refers to the Tax Code, the Social Action and Family Code, the Social Security Code and the Civil Code.

10. In order to guarantee effective access of persons with disabilities to insurance services and to prevent any discriminatory practice against them, the CNDH proposes introducing in Article 5 of the draft framework law a provision that explicitly prohibits any form of discrimination denying access of persons with disabilities to insurance, particularly because of discrimination based on health status, age or type of disability. This proposal aims at implementing the positive obligations of the State under Article 25 (e) of the Convention, according to which States are required to “prohibit discrimination against persons with

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disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner”. Several comparative laws have provisions that explicitly prohibit discrimination against persons with disabilities in insurance. This is the case for example in Zambia’s Persons with Disabilities Act of 2012²¹ and South Africa’s Promotion of Equality and Prevention of Unfair Discrimination Act of 2000²². This law includes an annex listing the types of discriminatory practices by sector, including the insurance sector:

11. Regarding the terms used for some rights holders as provided for in particular in Articles 6 and 7 of the draft framework law, the CNDH notes that the terms “needy persons” and “needy family breadwinner (or the head of the family)” may undermine the legal status of persons with disabilities and their families as rights holders contrary to the human rights based approach. In addition, it should be noted that the common meaning of the term “head of the family” is even incompatible with the provisions of Article 4 of the Family Code which stipulates that the family is “headed” by both spouses. In the same context, the Convention calls on States, under point (c) of the second paragraph of Article 28, to take measures to “ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counseling, financial assistance and respite care”.

The CNDH thus recommends replacing the expressions “needy persons” and “needy heads of household” with “persons living in situations of poverty” and “families living in situations of poverty”.

12. The Council also proposes introducing in Article 6 of the bill a provision that specifies the purpose of the social grant system that should be directed towards the full inclusion of persons with disabilities. In this respect, the Council recalls that the Committee on the Rights of Persons with Disabilities recommended several states to develop grant systems with the strategic purpose of enabling persons with disabilities to live independently in their communities.

The Committee thus recommended to New Zealand “that a review be undertaken of disability-related costs to ensure a sufficient allocation of income/pension, in particular for children with disabilities, and their families”²³. In the same framework, the Committee encouraged Korea²⁴ to “ensure that social assistance programmes provide sufficient and fair financial assistance so that persons with disabilities can live independently in the community”. The Committee even proposed to Korea to “base the amount of payment for the personal assistant services on the characteristics, circumstances and needs of the persons with disabilities, rather than on the “degree of impairment”, and on the income of the person with disabilities concerned, rather than on the income of his or her family”.

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The objective of people with disabilities autonomy must influence, according to the Committee, policies and subsidy measures taken by the State. The Committee encouraged Spain²⁵ “to ensure that an adequate level of funding is made available to effectively enable persons with disabilities: to enjoy the freedom to choose their residence on an equal basis with others; to access a full range of in-home, residential and other community services for daily life, including personal assistance; and to so enjoy reasonable accommodation so as to better integrate into their communities”.

In more general terms, the Committee recommended Sweden²⁶ to “ensure that personal assistance programmes provide sufficient and fair financial assistance to ensure that a person can live independently in the community”. Achieving the objectives of the Convention also requires better targeting families eligible for government subsidies. To this end, the Committee urged Paraguay²⁷ “to adopt measures to encourage foster families and to provide financial support to low-income families with children with disabilities to enable the children to live with their families and be active members of the community”. The Committee recommended Belgium²⁸ to “allocate the necessary resources to support families of children with disabilities, in order to prevent the abandonment and placement of those children in institutions and to ensure their inclusion and participation in the community on an equal basis with other children”.

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ARTICLE 8

13. The CNDH notes that it is up to the legislator to provide, in domestic legislations, for ways to implement the public authorities' treaty obligations and commitments regarding access of persons with disabilities to health services. The Council considers, however, that the scope of positive obligations (of public authorities) regarding access to health cannot be reduced to “measures for the prevention, detection and treatment of different types of disability”, as stipulated in Article 8 of the Bill.

The Council thus proposes strengthening Article 8, introducing provisions to honor commitments related to Article 25 of the international Convention. A new broader wording of Article 8 may accordingly guarantee to persons with disabilities:

- Access to free or affordable health care services, with the same range, quality and standard as provided to other persons, including in the area of sexual and reproductive health and population-based public health programs;
- Access to early identification and intervention services as appropriate and to services designed to minimize and prevent further disabilities, including among children and older persons;
- Access to health services as close as possible to people's own communities²⁹;

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and

- Information, training, assistance and support for families and caregivers of persons with disabilities³⁰.

These commitments, which can be enshrined in the Bill, complement, and are compatible with, the objectives of the public health policy on the prevention of causes of disability, as provided for in Article 8 of the Bill. The CNDH also emphasizes in this regard that States are required under the Standard Rules for the Equalization of Opportunities of Persons with Disabilities, adopted on the 20th of December 1993 by the 48th United Nations General Assembly, to “work towards the provision of programmes run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment. This could prevent, reduce or eliminate disabling effects. Such programmes should ensure the full participation of persons with disabilities and their families at the individual level, and of organizations of persons with disabilities at the planning and evaluation level”³¹.

14. The CNDH also recommends introducing in Article 8 of the draft framework law two fundamental guarantees: (1) the explicit requirement of free and informed consent of persons with disabilities before receiving health care services (points (d) of Article 25 of the Convention) and (2) the obligation to inform the persons concerned of the results of their early detection programs (implementing the right of access to health information). For comparison, the European Court of Human Rights, in its judgment in the case of *RR v. Poland* of 26 May 2011, has held that the right of access to health information, which pertains to the sphere of private life, includes the right to obtain available information on one’s condition; on the basis of such information one can decide and make choices that will affect one’s quality of life (e.g. by refusing consent to medical treatment or by requesting a given treatment)³².

Similarly, the OHCHR recommends, in its thematic study on the issue of violence against women and girls and disability, “prohibiting compulsory/forced treatment of persons with disabilities and ensuring adequate procedural safeguards to protect the right to prior informed consent”³³.

ARTICLE 11

15. In order to have a legal basis for some commitments of public authorities regarding access of persons with disabilities to education, the CNDH proposes providing in Article 11 of the bill for the following:

- The commitment of public authorities to providing reasonable accommodation for the needs of each learner with disabilities;

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■ The commitment of public authorities to taking measures to:

- Facilitate the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitate peer support and mentoring;
- facilitate the learning of sign language and promote the linguistic identity of the deaf community; and
- ensure that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

12 **16.** Drawn from Article 24 of the Convention, these proposals also reflect the guidelines of the Committee on the Rights of Persons with Disabilities which mainly focus on the structuring concept of inclusive education³⁴. Indeed, on the occasion of examining initial reports submitted by States Parties to the Convention, the Committee has made several observations on both the legal framework and education policies. For example, the comments made to Mexico focused on the entire education system. The Committee³⁵ called on the government to: “(a) Establish, in law and policy, an inclusive education system at all levels — primary, secondary and post-secondary — along with provisions for reasonable accommodations, adequate funding and training for regular teachers; (b) Adopt measures to ensure that all children with disabilities receive an education, especially those with intellectual and psychosocial disabilities, blind-deaf children and those from indigenous communities; and (c) Urgently implement measures for the accessibility of schools and didactic materials, including Braille and sign language, and ensure their use from the start of education”. The Committee recommended the systematic inclusion of persons with disabilities in the mainstream education system, while urging the State to make the reasonable accommodations necessary to achieve this. In the same context, the Committee recommended Argentina³⁶ “to take the necessary steps to ensure that pupils with disabilities who attend special schools are enrolled in inclusive schools and to offer reasonable adjustments for students with disabilities within the general education system”. It also recommended to New Zealand³⁷ that “further work be undertaken to increase the provision of reasonable accommodation in primary and secondary education, and to increase the levels of entry into tertiary education for persons with disabilities” and encouraged it to “establish an enforceable right to inclusive education”.

ARTICLE 13

17. Article 13 of the draft framework law provides for the establishment of regional commissions affiliated with the Regional Academies of Education and Training³⁸, with a

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mandate to examine the registration files of school-aged children with disabilities. The CNDH considers that these commissions are in principle mechanisms to ensure effective access of children with disabilities to education; however, it draws the attention of the legislator to the risk that these commissions may become barriers or obstacles to the access of children with disabilities to the general school system.

For the Council, this risk is perceived in light of the joint circular of the Ministers of Health and Education No. 14/721, dated 25 June 2014, on the role of the provincial medical committee and the committee in charge of welcoming, guiding and monitoring the enrollment of children with “specific needs”. In addition to the use of “children with specific needs”, which does not necessarily reflect the status of children with disabilities as right holders, the CNDH notes that the suggested registration procedure of these children allows for the possibility to reject their enrollment applications, since point 7 of the procedure uses the term “selected files”! This possibility is inconsistent with Article 24 (paragraph 2, point (a)) of the Convention according to which States are required to ensure that “persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability”.

To prevent similar gaps in the implementing legislation, the Council proposes adding a provision in Article 13 of the Bill to prohibit any exclusion of children the general education system on the ground of disability.

The CNDH also highlights one of the key recommendations of the OHCHR Thematic study on the right of persons with disabilities to education³⁹. This recommendation, which also concerns the legislator, as an actor and its role in the evaluation of public policies, presents the main guidelines for inclusive education: “Through inclusive education laws, States should establish an inclusive education system under the aegis of their respective ministries of education that prohibits rejection from mainstream schools on the basis of disability and provides for reasonable accommodation. A transformation plan should provide the framework for the implementation of an inclusive education system with measurable goals. States should put in place training programmes for teachers, create reasonable accommodation funds, provide for accessible materials, promote inclusive environments, improve testing methods, promote the transfer from special schools to mainstream schools, promote monitoring through indicators on inclusive education, provide adequate support to students, and use appropriate communication means and formats. Schools need to be properly funded, while at the same time availability of resources should not be a basis for denying access to the right to education for a student with disability.”

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ARTICLES 15 AND 16

18. The CNDH proposes strengthening the floor of the rights of persons with disabilities regarding employment and vocational training, in the draft framework law.

It recommends incorporating, in Article 15, a provision that explicitly recognizes the right of persons with disabilities to work in an open, inclusive and accessible environment, as set forth in Article 27 of the Convention.

The Council highlights in this respect one of the conclusions of the OHCHR Thematic study on the work and employment of persons with disabilities⁴⁰. The Office of the United Nations High Commissioner for Human Rights (OHCHR) noted that the initiatives undertaken by States to promote the employment of persons with disabilities “often focus on creating jobs or training opportunities in separate settings and fail to respect the principle of inclusion provided for in the Convention”. Therefore, it recommended that “it is imperative that States parties move away from sheltered employment schemes and promote equal access for persons with disabilities in the open labour market. More importantly, States parties have an obligation to raise awareness among employers of their duty to employ persons with disabilities; employers in both the public and private sectors must proactively seek to create a working environment that welcomes persons with disabilities as employees. Besides ensuring that public-sector workplaces are accessible to persons with disabilities, States should impose accessibility requirements on private-sector employers, including through informing employers about their duty to identify and eliminate barriers that hinder persons with disabilities from accessing the workplace on an equal basis with others.”

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To better clarify the scope of provisions related to the fight against discrimination in the workplace and in the context of protecting the rights of persons with disabilities, the Council recommends introducing in Article 15 a provision that explicitly prohibits disability-based discrimination in everything related to work and in all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions. This recommendation transposes point (a) of the first paragraph of Article 27 of the Convention.

In order to give a general scope to the commitments of public authorities relating to the access of persons with disabilities to their right to work, the CNDH proposes introducing in Article 15 of the draft framework law a provision that explicitly commits public authorities to supporting persons with disabilities in matters concerning self-employment, job search, continuance of employment and return to employment. This recommendation is the result of a combined reading of Article 31 of the Constitution and Article 27 (point (e) of

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paragraph 1) of the international Convention. It also takes into account a recommendation of the OHCHR Thematic study on the work and employment of persons with disabilities which invites States to “adopt positive measures to increase employment of persons with disabilities in the public and private sectors, including through the promotion of self-employment schemes which are non-discriminatory and fully inclusive of persons with disabilities”⁴¹.

The CNDH also recommends adding two provisions to strengthening Article 16 of the draft framework law. These provisions should guide policies aiming at the inclusion of persons with disabilities in the labor market. The first provision concerns the implementation of affirmative action programs and incentives to promote the employment of persons with disabilities in the private sector, as stipulated in Article 27 (point (h) paragraph 1) of the Convention. The second concerns the employer’s obligation (regardless of its public, semi-public or private status) to provide reasonable accommodation to persons with disabilities in the workplace, as referred to in Article 27 (point (i) paragraph 1) of the Convention.

These commitments help incorporate appropriate measures into tax legislation as well as into labor laws and regulations.

Several countries have opted for the integration of these principles into their framework legislations on the rights of persons with disabilities. For example, Article 34 of Tunisian Act No. 2005-83, of 15 August 2005, on the promotion and protection of persons with disabilities provides for partial or total exemptions from the payment of some taxes and/or contributions for each employed person with disabilities. Under articles L. 5212-2 and L. 5212-1 of the French Labor Code, any company that has 20 employees or more is required “to employ a quota of 6%, of the total number of full-time or part-time employees, of persons with disabilities”.

The Council also recommends introducing in Article 16 of the Bill a provision that commits public authorities to developing national standards for disability-friendly companies and employment agencies⁴².

ARTICLE 22

19. The CNDH recommends clarifying the scope of the State’s commitment in the first paragraph of Article 22, ensuring access to all newly designed, built or produced objects, infrastructure, goods, products and services while enshrining the obligation to remove barriers and ensure access to the existing physical environment and existing transportation, information and communication, and services open to the general public. The distinction between these two levels of obligation is established by the Committee on the Rights of Persons with Disabilities in its General Comment No. 2 on Accessibility⁴³.

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ARTICLE 23

20. The CNDH proposes introducing a provision in Article 23 on the principle of delivering a special card to persons with disabilities at the territorial level (regional or provincial). Aiming at fostering proximity to persons with disability, this recommendation draws on the recommendations of the Committee on the Rights of Persons with Disabilities to Mexico that generally insist on the role of “federal states” in the implementation of the Convention. This recommendation can be read in the context of the advanced regionalization in Morocco, independently from Mexico’s federal form.

ARTICLE 25

21. The CNDH notes that the wording of the mandate of the national committee provided for in Article 25 of the draft framework law may mix up two levels of institutional monitoring of the implementation of the Convention.

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■ The level provided by the first paragraph of Article 33 of the Convention which requires States to establish or designate a coordination mechanism within their government to facilitate action related to the implementation of the Convention in different sectors and at different levels. For the Council this mechanism should be part of the executive and must be mandated to coordinate and steer public policies in relation to the rights of persons with disabilities;

■ The level provided by the second paragraph of Article 33 of the Convention, according to which states are required to designate or establish a mechanism to promote, protect and monitor the implementation of the Convention. When designating or establishing this mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for the protection and promotion of human rights. We can therefore conclude that this mechanism cannot be designated or established within the Executive Power.

The Council thus proposes rewording Article 25 of the Bill to bring it into alignment with the mandate of the mechanism provided for in the first paragraph of Article 33 of the Convention.

ARTICLE 26

22. The CNDH proposes an alternative to the partial revocation of laws incompatible with the draft framework law. This alternative takes into account the cross cutting issues relating to the rights of persons with disabilities.

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To this end, the Council proposes replacing the second paragraph of Article 26 with a new provision under which a comprehensive review of the national legal system will be carried out in a period not exceeding one year from the publication date of the framework law, to repeal all laws inconsistent with Morocco's constitutional and treaty-related commitments concerning the rights of persons with disabilities as well as laws incompatible with the provisions of the framework law.

The CNDH emphasizes that the legislative and regulatory review is a measure frequently recommended to States by UN treaty bodies. For example, the Committee on the Rights of the Child, in its General Comment No. 9 on the rights of children with disabilities, recommends to States to "undertake a comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, including children with disabilities who should be mentioned explicitly, where appropriate. National laws and regulations should contain clear and explicit provisions for the protection and exercise of the specific rights of children with disabilities, in particular those enshrined in article 23 of the Convention"⁴⁴.

RECOMMENDATIONS FOR PROVISIONS TO BE INTRODUCED IN THE DRAFT FRAMEWORK LAW

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23. The CNDH notes that some provisions necessary to ensure access of persons with disabilities to their rights are not included in the draft framework law. The Council thus proposes introducing these provisions to harmonize the draft framework law with the Convention, in particular Articles 31 and 11:

- Strengthening the provisions of Article 14 by enshrining the commitment of public authorities to collect appropriate information, including statistical and research data, in order to enable them to formulate and implement policies to give effect to the rights of persons with disabilities. The new wording of Article 14 should provide that the process of collecting and maintaining this information must comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities. Similarly, the CNDH proposes to move Article 14, under the new wording, to the final provisions (Chapter IX of the draft framework law);
- Introducing into the final provisions of the draft framework law an article requiring public authorities to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk and emergency;
- Introducing, between Articles 18 and 19 of the draft framework law, an article requiring public authorities to develop the use of both official sign languages, in all aspects of life.

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While recognizing the importance of the framework law in guaranteeing the rights of persons with disabilities, the Council considers that further measures should be adopted as quickly as possible, in order to ensure the effectiveness of the State commitments made under this framework law. These recommendations focus on the public budgeting process, the impact study of bills following a human rights-based approach and reinforcing of Morocco's treaty practice.

The CNDH thus proposes that the Economic and Financial Report, the Gender Budget Report and the Human Resources Report submitted with the Finance Bill should include statistical data and indicators on the impact of budget decisions on access for persons with disabilities to their rights as guaranteed by the Constitution and the international Convention.

The Council also recommends reformulating the objectives of the Social Cohesion Support Fund created under the 2012 Finance Act to include the explicit objective of financing expenses related to the implementation of State commitments under the framework law and other relevant laws.

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The Council also recalls one of the recommendations of its joint memorandum with the Central Authority for the Prevention of Corruption on Draft Organic Law No. 65-13 on the organization and conduct of the government and the legal status of the government members (memo dated 1 August 2013). One of the recommendations of this memo is introducing a provision in article 19 of the Draft Organic Law to study the preliminary impact of bills following a human right-based approach. The Council considers that this recommendation will allow for prior impact assessment of bills on access of persons with disabilities to their rights, as guaranteed by the Constitution and the Convention.

The CNDH also recommends the ratification of two international conventions that have a very important impact on the normative basis of the rights of persons with disabilities:

- The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, adopted by the World Intellectual Property Organization and signed by Morocco on 28 June 2013⁴⁵;
- ILO Convention (No. 159) on Vocational Rehabilitation and Employment of Disabled Persons (1983) which defines the principles of national policies on vocational rehabilitation and employment of persons with disabilities and provides for the adoption of measures to create and evaluate vocational guidance, vocational training, placement and employment services for persons with disabilities.

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Annexes

1. OHCHR, Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors; Professional Training Series, No. 17 (2010): 23.
2. Article 3: d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.
3. A/RES/48/96: Resolution 48/96 adopted by the United Nations General Assembly on 4 March 1994.
4. CRC/C/GC/9, 27 February 2007 (paragraphs 53-55)
5. Adopted at the 58th World Health Assembly (25 May 2005).
6. From the point of view of legislative drafting, “the quality of the law must be assessed in light of this predetermined purpose that makes of the law the “transmission belt” of the constitutionally enshrined rights and freedoms”. See Vito Marinese, “Legistique et effectivité”, in *À la recherche de l’effectivité des droits de l’homme*, Véronique Champeil- Desplats and Daniele Lochak (eds.), Presses Universitaires de Paris X, 2008, pp.89-117.
7. Article 2 of the Convention defines “reasonable accommodation” as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.
8. “Universal design” is defined under Article 2 of the Convention as “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed”.
9. Under Article 2 of the Convention, “Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology”.
10. “Language”, under Article 2 of the Convention, “includes spoken and signed languages and other forms of non spoken languages”.
11. Under Article 2 of the Convention, “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”.
12. CRPD/C/NZL/CO/1: Committee on the Rights of Persons with Disabilities (CRPD), Concluding observations on the initial report of New Zealand, 31 October 2014 (paragraph 12).
13. CRPD/C/DNK/CO/1: CRPD, Concluding observations on the initial report of Denmark, 30 October 2014 (paragraph 15).
14. CRPD/C/SWE/CO/1: CRPD, Concluding observations on the initial report of Sweden, 12 May 2014 (paragraph 8, 10).
15. In its judgment in C-152/11, D. Johann Odar v Baxter Deutschland GmbH of 6 December 2012, the Court of Justice of the European Union considered that “a social plan may provide for a reduction in redundancy compensation paid to workers approaching retirement age. However, taking account of possible early retirement due to disability in the calculation of that reduction constitutes discrimination prohibited by EU law”.
16. For example, Article 11 of the Bulgarian Protection against Discrimination Act (PADA) of 2003 defines multiple discrimination as “discrimination on the grounds of more than one of the characteristics under Article 4 (1)”. Article 4 of the revised Romanian Act on Equal Opportunities of 2000 defines multiple discrimination as “any discriminating action based on two or more discrimination criteria”. Article 3 (1) of the Canadian Human Rights Act provides that “For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds”.

17. OHCHR, *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors*; Professional Training Series, No. 17 (2010): 44.

18. Under the first paragraph of Article 9 of the Convention, "States parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communication, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas".

19. CRPD/C/GC/2: General Comment No. 2 (2014); Article 9: Accessibility (paragraph 13).

20. CRC/C/GC/9, 27 February 2007 (paragraph 13)

21. Art. 27 (e) "prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance, where such insurance is permitted by law, which shall be provided in a fair and reasonable manner;" (The Persons With Disabilities Bill, 2012)

22. Promotion of Equality and Prevention of Unfair Discrimination Act; N°4, 2000

Schedule: Illustrative list of unfair practices in certain sectors

(Section 29)

Insurance services

5. (a) Unfairly refusing on one or more of the prohibited grounds to provide or to make available an insurance policy to any person.

(b) Unfair discrimination in the provision of benefits, facilities and services related to insurance.

23. CRPD/C/NZL/CO/1: CRPD, Concluding observations on the initial report of New Zealand, 31 October 2014 (paragraph 60).

24. CRPD/C/KOR/CO/1: CRPD, Concluding observations on the initial report of the Republic of Korea, 29 October 2014 (paragraph 40).

25. CRPD/C/ESP/CO/1: CRPD, Concluding observations on the initial report of Spain, 19 October 2011 (paragraph 40).

26. CRPD/C/SWE/CO/1: CRPD, Concluding observations on the initial report of Sweden, 12 May 2014 (paragraph 44).

27. CRPD/C/PRY/CO/1: CRPD, Concluding observations on the initial report of Paraguay, 15 May 2013 (paragraph 56).

28. CRPD/C/BEL/CO/1: CRPD, Concluding observations on the initial report of Belgium, 28 October 2014 (paragraph 16).

29. The CNDH considers that these services should meet the criteria defined in General Comment 14 of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health (art. 12 of the ICESCR), namely availability, accessibility (non-discrimination, physical accessibility, economic accessibility or affordability, information accessibility), acceptability and quality. E/C.12/2000/4, 11 August 2000 (paragraph 12).

30. See for comparison the French Act No. 2005–102 of 11 February 2005 on Equal Rights and Opportunities, Participation and Citizenship of Persons with Disabilities, published in the French Official Gazette No. 36 of 12 February 2005, p. 2353 (Article L. 114-3 of the Social Action and Family Code).

31. Rule 2, point 1

32. Paragraph 197

33. A/HRC/20/5, 30 March 2012, (paragraph 53, point e)

34. The CNDH recommends the legislator and education policy makers to consider the inclusion approach as defined by UNESCO in its manual entitled "Guidelines for inclusion: Ensuring access to education for all". Under this approach, inclusion is a process aimed at identifying and removing barriers, concerned about the presence, participation and achievement of all students, and involves a particular emphasis on those groups of learners who may be at risk of marginalization, exclusion or underachievement. (pp. 15-16, 2006).

- 35.** CRPD/C/MEX/CO/1: CRPD, Concluding observations on the initial report of Mexico, 27 October 2014 (paragraph 48).
- 36.** CRPD/C/ARG/CO/1: CRPD, Concluding observations on the initial report of Argentina, 19 October 2012 (paragraph 38).
- 37.** CRPD/C/NZL/CO/1: CRPD, Concluding observations on the initial report of New Zealand, 31 October 2014 (paragraph 50).
- 38.** Regional Academies of Education and Training are created under Law No. 07-00 of 19 May 2000.
- 39.** A/HRC/25/29, 18 December 2013 (paragraph 71)
- 40.** A/HRC/22/25, 17 December 2012, (paragraph 68)
- 41.** A/HRC/22/25, 17 December 2012, (paragraph 70)
- 42.** The CNDH recommends to learn from comparative experiences in this area, such as the French standard NF X 50-783 entitled "Accessibility and inclusion of disabled persons – Disability-friendly organizations - Requirements and recommendations for the inclusion of persons with disabilities in organizations".
- 43.** CRPD/C/GC/2, 22 May 2014 (paragraph 24)
- 44.** The article referred to is that of the Convention on the Rights of the Child. CRC/C/GC / 9, 27 February 2007 (paragraph 17)
- 45.** This Treaty has not yet become effective and has been ratified so far by 6 countries whereas Article 18 of the Treaty stipulates that it shall enter into force three months after 20 eligible parties referred to in Article 15 have deposited their instruments of ratification or accession.

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المجلس الوطني لحقوق الإنسان
Conseil national des droits de l'Homme

PROTECTION AND PROMOTION OF THE RIGHTS
OF PERSONS WITH DISABILITIES

Memorandum - March 2015

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