

THE LEGAL RECOGNITION OF THE HUMAN RIGHTS SITUATION OF WOMEN WITH DISABILITIES IN THE STATE OF QATAR¹

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Abstract: From the continental law, this paper analyses the situation regarding the rights and fundamental freedoms of women with disabilities in Qatar. The analysis uses as the main reference, Article 6 of the Convention on the Rights of Persons with Disabilities (CRPD) and the General Comment that the CRPD Committee has made to this article. In this aspect, it tries to outline the difficulties that Qatar, as a State party, has in order to be able and take the very first steps towards a real inclusion for women with disabilities.

Keywords: Women with Disabilities, Qatar, Article 6 CRPD, Equality and Non-Discrimination.

Summary: I. INTRODUCTION; II. THE CONCEPT OF DISABILITY AND THE RIGHT TO EQUALITY IN QATAR: RELATIONSHIPS BETWEEN THE DOMESTIC AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM; II.1 Disability; II.2 Equality and non-discrimination; III. THE OMISSION OF WOMEN WITH DISABILITIES IN QATAR; IV. ARTICLE 6 AND ITS RELATIONSHIP WITH QATAR'S DOMESTIC LEGAL SYSTEM; V. HOW CAN QATAR IMPLEMENT THESE MEASURES ON THE BASIS OF ITS DOMESTIC AND INTERNATIONAL LEGAL SYSTEM?

I. INTRODUCTION

The guarantee of protection and the promotion of human rights is applied in a less comprehensive way with regards to women and girls with disabilities than for other social groups, even those in vulnerable situations. Their status as women combined with the concept of their disability gives rise to certain prejudices and stereotypes that, in a

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discriminatory context, can result in a lack of protection of their human rights and fundamental freedoms, that is to say inequality of opportunities in both the public and private spaces.

The Ministerial Declaration of July 2010 of the Economic and Social Council (ECOSOC) recognizes disability as a cross-cutting issue essential for the attainment of the MDGs, emphasizing the need to ensure that women and girls with disabilities are not subject to multiple or aggravated forms of discrimination, or excluded from participation in the implementation of the MDGs. Also, the 2030 Agenda for Sustainable Development provides the global community with an opportunity to work towards achieving the Sustainable Development Goals (SDGs) for all women and girls, and address the rights and demands of women with disabilities as a matter of priority.

The Convention on the Rights of Persons with Disabilities (CRPD) uses a twin-track approach with regards to the protection of human rights for certain social groups in vulnerable situations, such as children (Article 7) and women (Article 6), but it also refers to all persons with disabilities facing situations of risk, including armed conflict, humanitarian emergencies, and natural disasters (Article 11). This twin-track approach aims at guaranteeing human rights for all persons, thereby giving visibility to their situation as in the case of women with disabilities.

Article 6 of the CRPD recognizes that women with disabilities are subject to multiple forms of discrimination. Hence, the CRPD is the first and only human rights treaty with an explicit reference to multiple discrimination against women and girls with disabilities. In this regard, Article 6 states that States Parties to the CRPD –including Qatar– shall “take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention”.

Article 6 is based on certain principles established in the CRPD (Article 3), which provide guidelines for the interpretation and implementation of the Convention, including Article 6 thereof. Likewise, the rights and freedoms of persons with disabilities included in the CRPD, as well as the obligations of the States Parties, arise from these principles. Article 6’ text represents the basis of a mandate imposed to the States Parties concerning the adoption of measures to ensure all human rights and fundamental freedoms for women and girls with disabilities, but such mandate stems from the acknowledgement that women and girls with disabilities face multiple forms of discrimination.

The inclusion of an Article on women with disabilities in the CRPD was deemed necessary to provide visibility: the fact that women and girls with disabilities face discrimination becomes only visible when addressed in a specific provision. However, Article 6 also works in a mainstream manner, aligning with gender-sensitive considerations in some other articles of the Convention, particularly in fields such as health, violence, family rights, and participation in public life, among others (Arnade

and Häfner, 2005). The General Comment No. 3 of the CRPD Committee states that this provision is a response to the lack of recognition of the rights of women and girls with disabilities.

Through an assessment of Qatar's legal framework, this paper addresses the legal situation of women with disabilities by using Article 6 of the CRPD as a reference. The analysis has a general scope, including a review of domestic legislation on the promotion and protection of rights of women with disabilities.

Regardless of the geopolitical context, addressing the issue of women with disabilities entails research into equality and non-discrimination, understood not just as a principle but also as a right. The analysis is on civil and political rights as also economic, social, and cultural rights. At the regional level, Qatar has ratified the Arab Charter on Human Rights which enshrines the right to equality and non-discrimination before the law (Article 11), the right to recognition as a person before the law (Article 22); and equality before the courts and tribunals (Article 12), among other rights.

Qatar is an Arab country, in which a traditionally Muslim society coexists with groups of expatriates from different regions, mostly from India and the Philippines, who adhere to different religions. Qatar has a dual legal system. Hence, since its independence (in 1971) from the British Empire, a large part of its jurisdiction has been governed by continental law (the Adlia court)⁷ and the Sharia law applies to several areas in which women, when viewed as subjects of rights, are considered to be below men. Although, the new Constitution of 2005 is slightly hints a more liberal society within the context of the Arab region, "Sharia law is recognized in the Constitution as the principal source of legislation (Article 1)"⁸. In this regard, Amnesty International (2016, p.300) on its annual report on the state of the world's human rights stated that "women in Qatar face discrimination in law and in practice, and are inadequately protected against violence within the family".

This paper is built on a theoretical basis, but it cannot be denied that it has been written from a western perspective. In any case, its purpose is to describe and identify the legal situation of women with disabilities in Qatar according to the continental law of Qatar and the Human Rights Treaties that it has ratified.

Hence, the work is divided into two parts: the first addresses how disability is tackled in Qatar, as well as the right to equality and non-discrimination. The second analyzes both paragraphs of Article 6 of the CRPD in more detail with relation to Qatar's legislative framework, in order to identify both legal gaps in Qatar's continental law in relation to the CRPD and potential improvements.

The right to equality is a fundamental principle designed to protect human rights and it is essential for the exercise of other human rights. In addition to the CRPD, the

⁷ For further information on Qatar's legal dualism, see, for instance, Hamzeh (1994).

⁸ A/HRC/29/26/Add.1, para. 9.

Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) specify and guarantee the right to equality, thus shaping part of the applicable legal framework – within the international human rights system– with regard to equality and non-discrimination for women with disabilities. Of the aforementioned treaties, Qatar has only ratified the CEDAW (without having signed nor ratified its Protocol) and the CRPD (having signed but not ratified its Protocol). It has also ratified the CERD, the CRC (and two of its Protocols), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the United Nations Convention against Torture).

It is important to emphasize that discrimination is often enshrined in law, as well as in practice. However, Qatar’s legal reality makes it slightly more complicated to talk about equality and non-discrimination in practice for women with disabilities in Qatar, since the Economic and Social Council (ECOSOC) Committee –not ratified by Qatar– has conceptualized equality and non-discrimination in practice mainly through general considerations. This is all the more relevant regarding women and girls with disabilities, who have a long history of facing discrimination and oppression⁹. The fact that the CEDAW Protocol has not been ratified further hinders the protection and promotion of the rights of women (with and without disabilities), since the Optional Protocol to the CEDAW establishes, among other things, CEDAW’s own complaints and investigation procedures through its Committee. Also, according to Facio and Obando (2004, pp.15-16) ratifying the Protocol “would promote a more effective implementation of the CEDAW through a wider interpretation and actual application of the Convention [...], it could also raise public awareness on the international guarantees regarding women’s human rights, as well as drawing attention to the CEDAW [...]”. It is worth noting that Qatar is not the only State –others include western countries– that have not ratified certain human rights treaties and/or their optional protocols. However, the problem in Qatar is more acute due to the combination of this lack of ratification and the country’s domestic legislation, which lacks an integrated gender approach to disability, and where disability is conceived from a perspective somewhat removed from that endorsed by human rights.

⁹ In this regard, *General Comment No. 20* of the UN Committee on Economic, Social and Cultural Rights (2009) highlights the fact that merely addressing formal discrimination will not ensure substantive equality. This Committee emphasizes that eliminating discrimination in practice requires paying sufficient attention to groups of individuals that suffer historical or persistent prejudice.

II. THE CONCEPT OF DISABILITY AND THE RIGHT TO EQUALITY IN QATAR: RELATIONSHIPS BETWEEN THE DOMESTIC AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM

II.1 Disability

The CRPD does not define disability as such, but according to its first article, persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. In that same provision, the CRPD states its purpose, which is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

One of the major problems with Qatar's continental law concerning persons with disabilities is structural, as reflected in its conceptual basis. On the one hand, and in spite of the efforts and money invested by the State for persons with disabilities (including the national health and development strategy, the Shafallah Center, and the development of high-technology educational institutions for persons with sensory impairments, generally leaning towards the promotion of services rather than rights), the underlying rationale is (albeit not completely) based on a medical/rehabilitative model instead of the social model of disability. In general terms, the medical model refers to disability as a condition of the person. This model assumes that the person with disabilities must adapt to the environment rather than the other way around. The social model of disability, in contrast, considers disability to be a social construct. Under this model, disability is defined as a person's situation because of their environment and not a condition of the individual. The social model of disability is clearly reflected in Article 1 of the CRPD and the rest of its provisions, and has inspired the negotiation and subsequent signing of the Convention, which, as a human rights treaty, has shaped a model of human rights that accord with this social model.

Among the legal instruments illustrating that Qatar predominantly follows the medical/rehabilitative model are the Qatari *Civil Code* and the Constitution. Whether it is guided by a protective purpose, or simply because it advocates substituted decision-making and thereby restricts the legal capacity of persons with disabilities (in breach of Article 12 of the CRPD), the Qatari *Civil Code* denies access to justice for persons with disabilities (as referred to in Article 13 of the CRPD). For instance, Articles 71, 81, 87, 157, 161, 372, or 458, among others, as well as the National Constitution, equate disability with inability (Articles 15 and 101). Moreover, Law No. 25 of 2001 – Mandatory Education 25/2001–, clearly addresses disability only from a medical perspective (Article 8). The same can be said of Law No. 23 of 2004 –Regarding Promulgation of the Code of Criminal Procedure 23/2004– where a substitutive model prevails, thus denying access to justice for persons with disabilities, particularly those with mental disabilities, according to the law (Article 5), referring to the protection of the person instead of their recognition as legal subjects (Article 20). Section 7 of this

Law, on judicial rulings, is based on the medical model, identifying disability as a feature of the person. It also provides for a disability test.

Notwithstanding this legal framework, Qatar is only amongst the average of the rest of States when measuring the extent to which it follows the medical/rehabilitative model in its domestic legislation. In many societies (including those that have ratified the CRPD and have carried out reforms along the lines it advocates) this model often overlaps with the social model. Sometimes, even certain features of a segregate model remain. This does not justify the fact that Qatar, as a State Party, has not updated its legislation in the light of the CRPD, but illustrates a legal-political mental framework that hampers and slows down the process, showing that continental law progresses at an even slower pace for women and girls with disabilities in an Arab country.

II.2 Equality and non-discrimination

Any intended or unintended action or omission by a person or a group of persons that has the purpose or effect of impairing the dignity of another person or group of persons may be considered discrimination. Equality does not lie in the description of a person, since we all have unique characteristics that distinguish us from one another; equality refers to a legal concept. We are all equal before the law.

Equality can be understood both as a normative and a tangible concept. Thus, there is a formal equality –an equality that is expressed before the law– and a substantive equality, according to which the State should promote certain conditions in order to achieve a real equality that materializes in the daily life of every person. Substantive equality requires a greater effort than simply amending the law.

Eliminating formal discrimination requires ensuring that a State's constitution, laws, and policy documents do not discriminate on prohibited grounds. Addressing formal discrimination alone will not ensure substantive equality. Eliminating discrimination in practice requires paying sufficient attention to those groups of individuals that suffer historical or persistent prejudice, instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish, and eliminate the conditions and attitudes that cause or perpetuate substantive or *de facto* discrimination¹⁰. Putting an end to the violation of the rights of women and girls with disabilities is not only necessary to achieve a formal equality but is important and crucial to achieve substantive equality.

III. WOMEN WITH DISABILITIES IN QATAR

In the concluding observations from the CRPD Committee on the initial report presented by the State of Qatar, the Committee shows “concerned about the multiple forms of discrimination that women and girls with disabilities experience. It is

¹⁰ See the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

concerned about the overall lack of information on the social, economic and political situation of women and girls with disabilities, and on the limited participation of women with disabilities in making decisions affecting them in general. It is also concerned that measures to mainstream the rights and needs of women and girls with disabilities in strategies have not been implemented”.

Women in Qatar are disregarded in their legal situation and equality of opportunities. This disregard is based on certain stereotypes, as explained by Cook and Cusack (2010, p.9), a general understanding or preconception of women’s features, or the assumption of certain roles that should be adopted by the members of a group, in this case women and girls with disabilities.

It is a situation of disregard because Qatar’s domestic legal system is built upon a stereotype of persons with disabilities as being a homogeneous group without sex and/or gender differences. Qatar’s legislation evinces this by ignoring women with disabilities, despite the above-mentioned concept of disability. For instance, Law No. 2/2004, in respect of Persons with Special Needs, enshrines the principles of equality and non-discrimination –Article 2 establishes that “Special Needs Persons shall enjoy the [...] rights in addition to any applicable rights under any other relevant legislation”– but it does not provide any cross-cutting strategy to take into account the rights and needs of women and girls with disabilities (particularly with regard to *special* education).

Furthermore, it is easy to identify that the Qatari legal system disregards women with disabilities when one examines law regarding sexual offences; in this case, the stereotype only affects women with disabilities, who are perceived as non-sexual women. For example, Article 280 of the Criminal Code, on adultery and crimes of honour, establishes that “Whoever copulates with a female without compulsion, duress or ruse knowing that she is of diminished capacity or under sixteen years of age shall be punished with life imprisonment.” This provision clearly reflects a general perception of women with disabilities as being asexual persons, since sexual intercourse with them is considered a crime even in the absence of coercion.

These protective stereotypes are in line with the understanding of disability as being a condition of the person, enshrined in Qatar’s legal system and following a medical/rehabilitative model of disability that is charitable in nature. Such stereotypes, by appealing to paternalistic interests, prevent consideration of the needs of those who are being stereotyped, as well as their capacities and wishes. This can also result in barriers to information for women and girls with disabilities, since they are not only discriminated against, but are also subject to a lack of control over their own bodies and sexual desires and acknowledgement of their sexual and reproductive needs.

This leads us to look at Article 6 of the CRPD to try to see how Qatar could address equal opportunities for women with disabilities from a human rights perspective.

IV. ARTICLE 6 AND ITS RELATIONSHIP WITH QATAR'S DOMESTIC LEGAL SYSTEM

Article 6 is based on the recognition that women with disabilities are subject to discrimination in States Parties that have endorsed the CRPD. What should be understood by “discrimination” and what types of discrimination are referred to by this provision? As noted above, discrimination is any action or omission that has the purpose or effect of impairing the inherent dignity of another person/legal subject.

Qatar has ratified the CERD and the CEDAW. Both human rights treaties define discrimination as any distinction, exclusion, restriction, or preference that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.

The Qatari Constitution acknowledges that persons are equal before the law, and prohibits discrimination on the basis of sex, race, language, or religion (Article 35). Under this perspective, the National Constitution of Qatar does not provide a definition of discrimination, and it fails to include disability or gender as potential grounds for discrimination. It is true that both the CEDAW and the CRPD were ratified after the Qatari constitutional reform, but the constituent powers did not anticipate this by leaving an open clause that could have allowed for a different interpretation. It is, on the contrary, a closed clause.

However, the legal situation of women with disabilities, with regards to equality and non-discrimination, could be safeguarded if the CRPD is taken into consideration. On the one hand, the definition of discrimination is incomplete in the framework of the international legal system in which Qatar participates (since it is the Human Rights Committee, as the competent body designated by the International Covenant on Civil and Political Rights, that is in charge of analyzing this concept in depth¹¹, and Qatar has neither signed nor ratified this Covenant); but on the other hand, in addition to the definition established in the CEDAW and the CERD, Qatar, as State Party to the CRPD can also refer to the definition provided in Article 2 of the CRPD on discrimination on the basis of disability. This definition is wider than just being based upon the condition of the person. The definition of discrimination established in the CRPD raises the issue of the social construction of disability. Disability is not defined as the being the result of any “impairments” (the word used by the CRPD to refer to the individual condition of a person regardless of his/her social context), but it could potentially affect persons without “impairments” who are discriminated against for their relationship with a person with disabilities¹² or because they themselves appear to have a disability. This broader sense of the grounds for discrimination is relevant, differing from the other Conventions mentioned above. Both the CERD and the CEDAW define discrimination

¹¹ See, for instance the General Comment No. 18 of the Human Rights Committee.

¹² See Quinn (2009, p.102).

on the basis of a specific ground. The CRPD goes a step further by adding “discrimination on the basis of disability”.

The starting-point of Article 6 is therefore the fact that women with disabilities face discrimination. Considering the concept of discrimination defined in both the CEDAW and the CRPD (in the latter case, discrimination on the basis of disability), it must be highlighted that Article 6(1) refers to multiple discrimination.

General Comment No. 3 of the Committee on the Rights of Persons with Disabilities defines multiple discrimination as a situation in which a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated. It then provides a non-comprehensive list of grounds for discrimination: age, disability, ethnic, indigenous, national or social origin, gender identity, political or other opinion, race, refugee, migrant or asylum seeker status, religion, sex and sexual orientation. Hence, multiple discrimination can be described as a situation where a person is discriminated against on two or more grounds, which then accumulate and overlap. Through this statement, the CRPD requires States Parties to take measures against discrimination not only with regard to disability, but also with regard to gender and other identities such as age (Article 7).

The second paragraph of Article 6 refers to the measures to be taken by the States Parties to ensure the full development, advancement, and empowerment of women with disabilities, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention. It is difficult to determine the nature of these measures if such development, advancement, and empowerment are to be not only economic, but also human and social, as can be deduced from a holistic reading of the CRPD. That is the understanding of the Committee in its General Comment No. 3, when it states that although development relates to economic growth and the eradication of poverty, it is not limited to those areas. It also provides that while gender and disability-sensitive development measures in the areas of education, employment, income-generation, and combating violence may be appropriate to ensure the full economic empowerment of women with disabilities, additional measures are necessary with regards to health and participation in politics, culture and sports.

V. HOW CAN QATAR IMPLEMENT THESE MEASURES ON THE BASIS OF ITS DOMESTIC AND INTERNATIONAL LEGAL SYSTEM?

The CRPD recognizes that women and girls with disability face different forms of discrimination, which means that Qatar is not the only State that should devise a direct and indirect action plan to ensure equality of human rights and fundamental freedoms for women with disabilities.

The Special Rapporteur on the rights of persons with disabilities makes it clear that discrimination against women (and girls) with disabilities is enshrined in law and in

practice¹³. In her Report to the General Assembly¹⁴, she establishes that women and girls with disabilities face many difficulties in accessing adequate housing, health care, education, vocational training, and employment, and are more likely to be institutionalized and experience poverty. Also, she says that women with disabilities are often excluded from the labour market.

Consequently, the development, advancement, and empowerment measures to be undertaken by Qatar as a State Party to the CRPD on the basis of Article 6(2) must take into account both formal and substantive equality, and the latter should not remain as an abstract concept. In this regard, equality can be assessed through measures designed to encourage the development, advancement, and empowerment of women with disabilities in Qatar.

In its General Comment No. 3, the CRPD Committee establishes that in order to advance and empower women with disabilities, measures must go beyond development and also aim to improve the situation of women with disabilities throughout their lifespan. It is not enough to take women with disabilities into account when designing development measures; rather, women with disabilities must also [have the tools that allow them to] be able to participate in and contribute to society. At the same time, the human rights-based approach of the General Comment No. 3 of the CRPD Committee provides that ensuring the empowerment of women with disabilities means promoting their participation in public decision-making.

Ultimately, the second paragraph of Article 6 of the CRPD is a guarantee for women with disabilities to enjoy substantive equality of rights. The aim of this provision is for States Parties to take appropriate measures to ensure the full development, advancement, and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms set out in the CRPD, and that is what Qatar should seek. It would be important for Qatar, as a State Party to the CRPD, to set up one or several independent mechanisms within its domestic legal system to promote, protect, and monitor the implementation of equal rights and opportunities for women with disabilities. However, an important first step is to gather the relevant information, particularly from the civil movement where women are in a significant hierarchical position. Also, it is important to gather statistical data (consistent and comparable statistics, disaggregated by gender) and specific information in order to eliminate all types of discrimination now faced by women and girls with disabilities in all areas.

¹³ See UN doc. A/HRC/28/58.

¹⁴ See UN doc. A/70/297.

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