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The UN Convention on the Rights of Persons with Disabilities from a Qatari Human Rights Perspective

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For a long time disability was considered a question of social development, outside the responsibilities of official human rights institutions. Over the last three decades this approach has evolved, and disability is now viewed in terms of human rights, a change that has received important support from the United Nations and its Convention on the Rights of Persons with Disabilities (CRPD) of 2006. Qatar ratified the CRPD in 2008.

The main purposes of the CRPD are “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”. The CRPD embodies the philosophy of the social model of disability; that is, the idea that an individual’s disability is largely the product of a social order in which someone who is different does not fit in. This is clear in the Convention’s definition of disability and in its guiding principles of non-discrimination, universal accessibility and legal capacity, inclusion and diversity.

In its journey towards implementing the CRPD, Qatar will likely face challenges common to all signatory countries: the philosophical questioning of the Convention’s theoretical framework, as well as objections from traditional legal theorists to the Convention’s doctrine.

The challenges to the theoretical basis of the Convention will likely converge around philosophical doubts regarding adopting the social model of disability as a new paradigm and concerns that such a model is impossible to

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implement. The doctrinal legal objections are most often linked to the relative difficulty of applying international mandates to domestic laws. In addition, the rights of persons with disabilities are often considered economic, social and cultural rights, which are provided for depending on the resources actually available; those rights are often not viewed as individual, civil and political rights under the human rights statute, independent of the fact that they need an action or an abstention from the state. Finally, traditional legal doctrine holds that individual legal capacity requires full mental competence as a pre-requisite. The CRPD, instead, advances a model of assisted capacity; this means that a degree of legal capacity is recognized in each individual according to his or her condition. The individual receives assistance in making decisions, while in the classical doctrine the individual is substituted altogether by a guardian.

Other challenges to full CRPD implementation are more specific to Qatar. Qatar has traditionally conceived disability as a medical problem of the individual, who is given support and rehabilitation. The legal framework approaches disability from that perspective, and the medical model seems to be deeply rooted in Qatar. Disability is presented as a problem of individuals with special needs that must be corrected, rectified or tempered by providing as much support as possible. This is not the model of the Convention, and Qatari legislation must be brought into the fold of the social and human rights model in order to be compliant with the CRPD's mandate.

Universal accessibility is presented by the CRPD as a sine qua non condition for the equal exercise of rights by all individuals. In this regard, it cannot be considered a matter subject to political goodwill or to gracious concessions or as a reward for certain individuals or groups. Qatar has made significant but unsystematic efforts towards accessibility, in line with the Convention. However, the Qatari legal system still needs a general law on disability or a specific norm on accessibility that establishes the obligation to remove barriers to accessibility in all areas. This is necessary in light of the CRPD's mandate regarding the state's responsibility in promoting the material conditions needed for the full enjoyment of rights.

Regarding legal capacity, the traditional view of legal incapacitation is based on a conception of disability as a medical problem. The philosophy that informs the CRPD, inspired by the social model and the principle of non-discrimination, supersedes this view, abandoning substitution in the taking of decisions and replacing it with assistance and support in the making of decisions. This is likely to make waves within the domestic legislation of the state parties. The Qatari legislation in general responds to the pre-CRPD substitution mode, both in the Civil Code and the Family Code.

Our studies, though, have found elements in Qatari legislation that are *avant la lettre* compliant with the CRPD, and could represent the seed of a new model that might extend throughout the legislation. The Qatari Civil Code, although anchored in the substitution model, establishes for persons with some types of disability the figure of a judicial assistant to help that person in his or best interests. We maintain that this notion could be extended to all fields where assistance in decision-making is required. In this point we would politely disagree with the UN Committee on the Rights of Persons with Disabilities, which has expressed its "deep concern" about Qatari laws on legal capacity. The Qatari Civil Code already contains, for special cases, a possible notion of supported capacity, and this model, granted in special cases, would merely need to be extended to the rest of those that fall under the protection of the CRPD.

Adopting the CRPD and incorporating the social and human rights model of disability into the legal system are not simple tasks for any signatory state. Theoretical, legal, social and economic issues may stand in the way. Challenges along these lines should be identified and addressed by Qatar in its path towards implementation.

The medical model of disability has been useful in the past, but the legal system, social institutions and the general public should move towards the social and human rights model, which is richer and better protects the rights of persons with disabilities.

The areas of universal accessibility and legal capacity are essential to implementing the CRPD and may encounter serious challenges from the prevalent philosophical and legal cultures.

Qatar has made numerous, albeit unsystematic, efforts to address the principle of universal accessibility. Those efforts would need to be organized under a general law on

accessibility that would impose on the public and private sectors a clear mandate – and certain standards – to eliminate all barriers to accessibility in all areas, from architecture to electronic services.

Regarding universal legal capacity, we maintain that Qatar is very well positioned to fully embrace the mandates of the CRPD, moving from a substitution model to a model of assisted capacity. The Qatari Civil Code already contemplates that notion, and extending it to all areas of disability would place Qatar at the vanguard of most, if not all, signatories of the CRPD.

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