



APIMUD - Associação Cabo-verdiana de Promoção e Inclusão das Mulheres com Deficiência

ACRIDES Associação de Crianças Desfavorecidas



Joint Shadow Report Submitted to the 64th Session of the Committee on Economic, Social and Cultural Rights in relation to the Initial State Party Report prepared by:

Cabo Verde

September 2018

Statement of Interest

1. This is a joint shadow report prepared by the Equal Rights Trust (the Trust), in partnership with Organização das Mulheres de Cabo Verde (OMCV), Sindicato Livre dos Trabalhadores de Santo Antão (SLTSA), Associação Cabo-verdiana de Promoção e Inclusão das Mulheres com Deficiência (APIMUD), Associação Cabo-verdiana de Luta Contra Violência Baseado no Género (ACLCVBG) and Associação de Crianças Desfavorecidas (ACRIDES) to the Committee on Economic, Social and Cultural Rights (the Committee) in respect of it's review of Cabo Verde.
2. This collaborative submission has been produced in the context of a three-year project funded by the European Union and implemented by the Equal Rights Trust in partnership and collaboration with local civil society organisations and trade unions in Cabo Verde. The objective of the project is to improve the monitoring and effective implementation of Cabo Verde's international obligations in respect of the rights to equality and non-discrimination arising under all UN human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (the Covenant).
3. The Trust is an independent international organisation whose mission is to eliminate discrimination and ensure that everyone can participate in society on an equal basis. We work in partnership with equality defenders around the world to secure the adoption and implementation of equality laws. Over the last decade, we have worked in partnership with

organisations in more than 45 countries to support equality defenders to press for the adoption and effective implementation of comprehensive anti-discrimination law.

4. OMCV is a Cabo Verde-based women's rights organisation established in 1981. A non-governmental organisation, it works throughout the country to promote women's rights through advocacy and by raising awareness around issues including sexual and reproductive health rights, HIV/AIDS and gender-based violence. OMCV provides professional and vocational training to women in Cabo Verde and runs a microfinance program to support economic empowerment. It also provides assistance to victims of gender-based violence.
5. SLTSA is a workers' trade union based on the island of Santo Antão. Work of the union includes training of workers to ensure that they are aware of their rights and can protect themselves against abuse, including discrimination on the basis of gender.
6. APIMUD is a non-governmental organisation which works to promote the rights of women and girls with disabilities. This includes work to empower this group and ensure active participation in society. The organisation was established in 2015 and works with members of the target group on all islands of the country. Activities include training workshops, awareness-raising, work to promote access to employment and healthcare, as well as psychological support.
7. ACLCVBG is a non-governmental organisation which works across the country to promote human rights, citizenship, education and to combat all forms of violence and discrimination. Activities also include support for victims of gender-based violence through assistance in judicial proceedings, as well as promoting the implementation by the Government of gender-based violence policies. It also provides support to public and private institutions which implement gender-based violence policies on the ground.
8. ACRIDES is a non-governmental organisation that works with children and young persons in situation of vulnerability, including children in conflict with the law and children living on the streets, with HIV, and those with learning difficulties. It provides support through various activities, including the provision of extracurricular activities for children with learning difficulties, psychosocial support for children subjected to violence and reintegration activities for children in conflict with the law.

Introduction

9. This joint submission provides evidence to the Committee from civil society in respect of Cabo Verde's implementation of the right to non-discrimination provided by the Covenant. Cabo Verde lacks a comprehensive anti-discrimination law, and as such, the state is unable to meet its obligations in respect of the legal framework on equality and non-discrimination, as provided by Article 2(2). In addition to discussing this weakness in the legal framework, the

submission presents evidence of discrimination (including intersectional discrimination) that persist in Cabo Verde in the context of an ineffective equality law framework.

10. Part 1 of the submission examines Cabo Verde's existing legal framework in light of the State Party's obligations under Article 2(2). This part of the submission relies in part on the Committee's 2009 *General Comment No. 20: Non-discrimination in economic, social and cultural rights*¹ and on the *Declaration of Principles on Equality* (the Declaration), a document of international best practice on equality drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts.²
11. Part 2 presents evidence of patterns of discrimination which limit the enjoyment of the right to work and just and favourable conditions of work (Articles 6 and 7), the right to health (Article 12) and the right to education (Article 13). This Part presents expert testimony and information provided by OMCV, SLTSA, APIMUD, ACLCVBG and ACRIDES, as well as additional resources.

Part 1: Article 2(2) - Legal Framework Related to Equality

12. Under Article 2(2) of Covenant, State Parties undertake to guarantee the rights in the Covenant "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". As set out under Principle 15 of the Declaration of Principles on Equality and as elaborated by the Committee in General Comment 20, compliance with this obligation necessitates, *inter alia*, the adoption and effective implementation of specific, comprehensive non-discrimination legislation.³ Indeed, this is reflected in the Committee's routine recommendation that State Parties adopt comprehensive anti-discrimination law protecting against discrimination on all grounds and in all areas of life in order to meet its obligations under Article 2(2).⁴
13. In order to be genuinely comprehensive, anti-discrimination legislation should reflect the principles set out in the *Declaration of Principles on Equality* developed and launched in 2008 by 128 prominent human rights and equality advocates and experts convened by the Equal

¹ Committee on Economic, Social and Cultural Rights, *General Comment 20: Non-discrimination in economic, social and cultural rights*, UN Doc E/C.12/GC/20, 2009.

² *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

³ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 37; *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 15.

⁴ See *inter alia*, UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Concluding Observations on the initial report of Bangladesh*, 18 April 2018, E/C.12/BGD/CO/1, Para 24; UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Concluding Observations on the initial report of the Central African Republic*, 4 May 2018, E/C.12/CAF/CO/1, Para 18; UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Concluding Observations on the initial report of Niger*, 4 June 2018, E/C.12/NER/CO/1, Para 21.

Rights Trust. The Declaration is based upon existing international legal standards on the rights to equality and non-discrimination and seeks to provide principles for the proper interpretation of these rights, in particular with reference to the requirement to adopt and implement equality laws. It sets out the essential elements of a comprehensive and effective system of equality law. Comprehensive equality legislation, as understood in the Declaration, should *inter alia* provide protection from direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation, on the basis of all grounds recognised in international law and in all areas of life governed by law.⁵ It should require positive action measures (that is, measures “to overcome past disadvantage and to accelerate progress towards equality of particular groups”).⁶ It should also contain those procedural guarantees – ranging from the establishment of legal aid systems to provisions for the transfer of the burden of proof – to ensure that the protections which it provides are effective in practice.⁷

14. Cabo Verde does not have comprehensive anti-discrimination legislation prohibiting all forms of discrimination, on all grounds and in all areas of life and providing for the adoption of positive action measures. The Constitution protects against discrimination only on limited grounds.⁸ Other laws – such as Law 40/VIII/2013 on the rights of persons with disabilities and Special Law nr. 84/VII/2011 of January 10 combating gender-based violence – are limited to providing protection either only to certain groups or in certain areas of life.⁹ Furthermore, interviews conducted by the Trust for this submission underline that laws which aim to protect certain groups are in any case not effectively implemented and many lack accompanying regulations.¹⁰ Indeed, the State Party has itself acknowledged the lack of implementing regulations in its initial report.¹¹
15. In light of the fact that comprehensive anti-discrimination legislation is necessary for State Parties to meet their Covenant obligations under Article 2(2), as well as to ensure equal enjoyment of the other Covenant rights, we urge the Committee to recommend that the State

⁵ For a more detailed elaboration of the principles which should be reflected in comprehensive equality legislation, see: *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

⁶ *Ibid.*, Principle 3, p. 5.

⁷ *Ibid.*, Principles 18-25. pp. 12-14.

⁸ Constitution of the Republic of Cape Verde, Article 24.

⁹ See *inter alia* as referenced by the State Party in UN International Human Rights Instruments, *Common core document forming part of the reports of State Parties: Cabo Verde* HRI/CORE/CPV/2017, 16 November 2017, Paras 227 and 235 respectively.

¹⁰ See *inter alia* Equal Rights Trust, “Interview with Maria Naldi Furtado da Veiga, Chairwoman of APIMUD, 23 August 2018; Equal Rights Trust, “Interview with Eloisa Cardoso, Executive Secretary of OMCV”, 24 August 2018.

¹¹ UN Economic and Social Council, Committee on Economic, Social and Cultural Rights, *Initial Report submitted by Cabo Verde under articles 16 and 17 of the Covenant, due in 1995*, 27 December 2017, E/C.12/CPV/1, Para 223.

Party adopt comprehensive anti-discrimination law which is consistent with international standards, as reflected in the Declaration of Principles on Equality.

Part 2: Discrimination Affecting the Enjoyment of Other Covenant Rights

16. This Part of the joint submission presents evidence of patterns of discrimination which limit or prevent full enjoyment of the rights guaranteed by the Covenant. The partners in this submission present evidence of discrimination occurs, *inter alia*, on grounds of gender, disability and health status. We acknowledge and welcome the recognition by the State Party of other groups vulnerable to discrimination in Cabo Verde, such as migrants and elderly, as referenced in the State Party initial report and set out in the Common Core Document.¹² We note for the avoidance of doubt that this submission presents a non-exhaustive account of patterns of discrimination which captures discrimination documented by the civil society organisations and trade union which co-author this submission.
17. Based on testimony and information from OMCV, SLTSA, APIMUD, ACLCVBG and ACRIDES, as well as additional resources referenced below, this joint submission finds that discrimination is a major factor in limiting the enjoyment of Covenant rights on an equal basis with others. Due to restricted space in this submission, we have chosen to highlight the impact of discrimination in respect of the enjoyment of the following rights: Articles 6 and 7 (the right to work and the right to just and favourable conditions of work); Article 12 (the right to physical and mental health); and Article 13 (the right to education).

Article 2(2) with Articles 6 and 7: Discriminatory denial of the right to work and the right to just and favourable conditions of work

18. Article 2(2) of the Covenant, read in conjunction with Articles 6 and 7, requires the State Party to guarantee the right to work and the right to just and favourable conditions of work, without discrimination on any grounds.
19. While there are several legislative and policy initiatives by the Government of Cabo Verde to combat gender-based discrimination, our research demonstrates that discrimination on the basis of gender, pregnancy and maternity persist. For example, OMCV has documented instances of discrimination in access to employment on the basis of pregnancy and maternity where employers refuse to employ women who are pregnant or have babies.¹³ In an

¹² UN Economic and Social Council, Committee on Economic, Social and Cultural Rights, *Initial Report submitted by Cabo Verde under articles 16 and 17 of the Covenant, due in 1995*, 27 December 2017, E/C.12/CPV/1, Para 12; UN International Human Rights Instruments, *Common core document forming part of the reports of State Parties: Cabo Verde* HRI/CORE/CPV/2017, 16 November 2017, Paras 249-268

¹³ See above, note 11.

interview with the Trust, the SLTSA Permanent Secretary also noted that there are instances of gender discriminatory criteria being applied in job advertisements.¹⁴

20. In an interview with the Trust, APIMUD noted that persons with disabilities (for example persons with visual disabilities) often do not have access to job advertisements. Accessibility is further inhibited by the lack of reasonable accommodation, including physical accessibility to public and private offices and other spaces of employment.¹⁵ In its report to the Committee, the State Party notes the introduction of a tax incentive scheme for employers who employ persons with disabilities under Article 5 of the Labour Law as an important achievement.¹⁶ APIMUD informed the Trust that there has in fact been little to no use of this measure to enhance recruitment of persons with disabilities in practice.¹⁷
21. In addition to discrimination in access to employment, OMCV has reported that the right to equal remuneration for work of equal value, as provided by Article 7, is often not respected by employers in certain fields, particularly agriculture and domestic work where women receive a lower salary than men for equal work.¹⁸
22. Persons living with HIV/AIDS in Cabo Verde face widespread discrimination, including in the area of employment. OMCV noted that this discrimination stems from stigma and prejudice which make it almost impossible for members of this group to access employment if their health status is known to potential employers.¹⁹
23. Stigma and prejudice also underlie discrimination faced by women with disabilities. According to APIMUD, both family members and decision-makers fail to see persons with disabilities as capable to make their own decisions, which often lead to self-exclusion and isolation from public life.²⁰
24. We urge the Committee to recommend that the State Party take immediate steps to ensure the enjoyment of the rights to work and to just and favourable conditions of work without discrimination, arising under Articles 6 and 7 when taken in conjunction with Article 2(2) of the Covenant This should include *inter alia* taking measures to combat discrimination by private employers and requiring reasonable accommodation.
25. We call on the Committee to recommend that the State Party review existing measures created to enhance equal participation, such as the tax incentive scheme under Article 5 of the Labour Law, and to take steps to ensure that these measures are effective.

¹⁴ Equal Rights Trust, "Interview with Carlos Bartolomeu Lima Gomes, Permanent Secretary of SLTSA", 28 August 2018

¹⁵ Equal Rights Trust, "Interview with Maria Naldi Furtado da Veiga, Chairwoman of APIMUD", 23 August 2018

¹⁶ See above, note 8, Para 29.

¹⁷ See above, note 13.

¹⁸ See above, note 11.

¹⁹ *Ibid.*

²⁰ See above, note 13.

26. We suggest that the Committee urges the State Party to take steps to address prejudice and stigma which prevent groups such as persons with disabilities and persons living with HIV from participating in employment, on an equal basis with others.

Article 2(2) with Article 12: Discriminatory denial of the right to physical and mental health

27. Article 12 of the Covenant in conjunction with Article 2(2) obliges Cabo Verde to guarantee the enjoyment of the right to the highest attainable standard of physical and mental health, without discrimination of any kind. As elaborated by the Committee in General Comment 14, this includes ensuring non-discrimination in the availability, accessibility, acceptability and quality of healthcare.²¹
28. In its initial report, the State Party refers to the Stigma and Discrimination Index as reporting that 89.7% of interviewees living with HIV in Cabo Verde in 2015 did not consider themselves subject to stigma and discrimination.²² However, interviews undertaken for this submission identified persisting stigma and discrimination in access to and enjoyment of healthcare for persons living with HIV. Discrimination against persons living with HIV also been found by other researchers; for example, a study by the University of Cabo Verde and Centro de Investigação e Formação em Género e Família funded by UN Women on the access to reproductive healthcare for women living with HIV documented an instance where a patient had to disclose their HIV status in order to access healthcare for their child.²³
29. Persons with disabilities also face barriers to access healthcare. According to OMCV, sign language and information in Braille are not generally available at healthcare facilities.²⁴ APIMUD noted in an interview with the Trust that sexual and reproductive health rights are a particular issue for women with disabilities who are not able to enjoy these rights on an equal basis with other women, with poor training of medical staff to care for women with disabilities.²⁵ Physical access is also a barrier: according to APIMUD, there is for example no access ramp to the rehabilitation centre on the island of São Vicente. Such rehabilitation centres for persons with disabilities are further restricted to only two islands.²⁶
30. According to ACLCVBG, one of the main barriers for women to access medical services and medication during pregnancy relate to employers' failure to comply with registration of workers, especially for those undertaking domestic work or other work in the informal

²¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, Para 12.

²² See above, note 8, Para 223.

²³ Universidade de Cabo Verde and Centro de Investigação e Formação em Género e Família, *Estudo sobre o acesso aos cuidados de saúde reprodutiva prestados às mulheres com Deficiência e VIH*, 2017, p. 41.

²⁴ *Ibid.*

²⁵ See above, note 13.

²⁶ *Ibid.*

sector.²⁷ ACLCVBG also noted in an interview with the Trust that women who are victims of gender-based violence have difficulty accessing healthcare. For example, medical staff do not have adequate training on how to treat, recognise and report gender-based violence.²⁸

31. We urge the Committee to recommend that the State Party take immediate steps to ensure the enjoyment of right to the highest attainable standard of health without discrimination, as guaranteed by Article 12 read in conjunction with Article 2(2). This should include *inter alia* taking measures to combat discrimination by both public and private healthcare providers and requiring reasonable accommodation.
32. We recommend that the Committee urges the State Party to take steps to address stigma and discrimination which prevent groups including persons living with HIV from accessing and enjoying healthcare without discrimination.
33. We call on the Committee to recommend that the State Party ensures that medical professionals receive specialised training to adequately provide care and treatment for all persons without discrimination, including for example women with disabilities and victims of gender-based violence. Such training could benefit from involvement and technical assistance from civil society organisations with the relevant expertise, such as in the area of sexual and reproductive health rights.

Article 2(2) with Article 13: Discriminatory denial of the right to education

34. Article 13 of the Covenant taken together with Article 2(2) require the State Party to guarantee the enjoyment of the right to education, without discrimination of any kind. As set out in detail in the Trust's report *Learning InEquality: Using equality law to tackle barriers to primary education for out-of-school children*, discrimination is a major factor inhibiting children's access to and completion of primary education.²⁹ Interviews conducted with organisations in Cabo Verde indicate that discrimination is a factor preventing equal enjoyment of the right to education.
35. OMCV and APIMUD note that children with disabilities face significant barriers to access education as a result of failures to make reasonable accommodation.³⁰ APIMUD reported poor accessibility both to schools – as a result of the lack of appropriate transportation to and from

²⁷ Equal Rights Trust, "Interview with Maria Vicenta Cabral Fernandes, President of ACLCVBG", 22 August 2018

²⁸ *Ibid.*

²⁹ Equal Rights Trust: *Learning InEquality: Using equality law to tackle barriers to primary education for out-of-school children*, London, November 2017, available at:

http://www.equalrightstrust.org/ertdocumentbank/Learning%20InEquality_e-version_2.pdf.

³⁰ Equal Rights Trust, "Interview with Eloisa Cardoso, Executive Secretary of OMCV", 24 August 2018; Equal Rights Trust, "Interview with Maria Naldi Furtado da Veiga, Chairwoman of APIMUD", 23 August 2018

school for children with disabilities – as well as within schools – as a result of a lack of adequate chairs and tables.³¹

36. Moreover, OMCV noted that teachers lack the training necessary in order to work with children with disabilities and ensure the support necessary for these children, enabling them to enjoy the right to education on an equal basis as other children.³² Further, APIMUD noted that schools do not teach children about disability; such education could help combat stigma and prejudice against persons with disabilities.³³
37. As noted by the State Party in its initial report, costs to attend school until Year 6 include school materials, uniforms and examination fees.³⁴ Research for this submission has found that such costs act as barriers to access education on the basis of economic and social situation, grounds recognised by the Committee as forms of “other status” in General Comment 20.³⁵ According to ACRIDES, lack of school libraries prevents children from poor families to access books for free. ACRIDES also reported that some children have difficulties to access schools due to the cost of bus passes.³⁶ While we acknowledge the State Party’s reference to programs for donation and subsidised educational materials and uniforms³⁷, the information obtained in interviews for this submission suggest that more must be done to ensure equal enjoyment of the right to education.
38. ACLCVBG noted that many women either did not have the opportunity to attend school or had to drop out in order to support their families by seeking employment as domestic workers at a young age and that there is therefore “a need to implement public policies that support economically vulnerable women to complete their studies”.³⁸
39. We recommend that the Committee encourages the State Party to take immediate steps to fulfil its obligations under Article 2(2) taken together with Article 13 to guarantee access and enjoyment of the right to education for all learners on an equal basis. This should include the adoption of measures to ensure that learners are not excluded from education on the basis of socio-economic disadvantage. It would also include requiring schools to make reasonable accommodation to ensure access for all groups.

³¹ See above, note 13.

³² See above, note 11.

³³ See above, note 13.

³⁴ See above, note 8, Para 238.

³⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 35

³⁶ Equal Rights Trust, “Interview with Lourença Lopes Moreno Tavares, President of ACRIDES”, 25 August 2018

³⁷ See above, note 8, Para 238

³⁸ See above, note 25.

40. We recommend that the Committee urges the State Party to take steps to address stigma and discrimination which prevent groups such as learners with disabilities from accessing and enjoying the right to education.