



## **Elections 2016**

### **Committee on the Rights of Persons with Disabilities (CRPD)**

### **Committee on the Elimination of Discrimination Against Women (CEDAW)**

### **Human Rights Committee (HRCttee)**

### **Committee on the Rights of the Child (CRC)**

#### *Questionnaire for candidates*

Four UN Treaty Bodies (Committee on the Rights of Persons with Disabilities (CRPD), Committee on the Elimination of Discrimination Against Women (CEDAW), Human Rights Committee (HRCttee) and Committee on the Rights of the Child (CRC)) will have elections organised in June 2016.

In order to ensure the strengthening of the treaty body membership by promoting a merit-based and transparent elections process, Child Rights Connect, IWRAW Asia-Pacific and the Centre for Civil and Political Rights have launched a joint initiative to enable all States and other stakeholders to better understand the skills and experiences of the current candidates running for election to CEDAW, HRCttee and the CRC.

This questionnaire is part of this joint initiative; it is sent to all nominated candidates and is based on the criteria set forth in the relevant treaty. It echoes a similar questionnaire prepared by the International Disability Alliance (IDA) and submitted to the candidates running for election to the CRPD.

The responses to both questionnaires will be available on the website [www.untbelections.org](http://www.untbelections.org). The responses will also be shared with all UN Member States.

This initiative does not imply that we support or oppose any individual candidates.

## Open questionnaire to all candidates

### Generic section

1. Name: José Manuel de Morais dos Santos Pais

2. Nationality: Portuguese

3. Current position: Assistant Attorney General at the Portuguese Constitutional Court since 2009

4. a. Are you currently holding any position on behalf of, or for, your Government? If so, please give details: No

4. b. Have you held any position on behalf of, or for, your Government? May any of your previous positions compromise your actual or perceived independence and impartiality? If so, please give details:

I have been a member of the Portuguese public prosecution (Ministère Public) since 1977, which is independent from Government, in Portugal.

For a short period (2003-2006) I was Head of the Bureau for International, European and Legal Cooperation of the Ministry of Justice, coordinating legal cooperation with UN, Council of Europe, EU, *i.a.*, and international judicial cooperation, e.g. creation of judicial networks (European, Ibero American and Lusophone).

I have also been entrusted, for several years, by the Ministry for Foreign Affairs, to help prepare reports, on behalf of Portugal, to several UN treaty monitoring bodies and to participate in their discussion in Geneva, mainly coordinating technically, in recent years, Portuguese delegations responsible for presenting those reports.

However, none of the positions, held so far, compromise my independence and impartiality if elected as a member to the HRC.

4. c. Please indicate any current or potential conflict of interest that may prevent you from exercising independence and impartiality in your work as a member of a UN treaty body.

I see none.

5. What was the nomination process for your candidacy? Was civil society consulted?

The Ministry for Foreign Affairs asked me whether I would be willing to be presented as a candidate for election to the HRC, which I accepted.

6.a. UN languages spoken fluently: English, French, Spanish (I have also some knowledge of Italian and German)

6.b: Level of English: Good

7. Link to your full resume: See Annex

8. Please summarise your experience relevant to this position (100 words):

- Assistant Attorney General at the Constitutional Court, dealing with civil and political rights issues;
- Director (1978-2003), Comparative Law Office, national institution for Human Rights (HR), dealing with promotion and dissemination of information on HR and international legal cooperation; working to achieve conformity of national legislation with international treaties and implementation processes; coordinating HR advocacy initiatives on discrimination and racism; coordinating training initiatives on HR and international cooperation for the judiciary and legal professions;
- Participation, as an expert, in international standard-setting processes, including on protection of minorities' rights and human rights in criminal justice and criminal judicial cooperation;
- Cooperation with legislative reform commissions and participation in bilateral and multilateral processes on legal and judicial cooperation and assistance;
- Editor of several advocacy materials (UN) to raise awareness of existing human rights standards and remedies (<http://direitoshumanos.gddc.pt/6/VIPAG6.htm>);

9. During your possible service as a Committee member, what other positions or professional activities do you intend to engage in?

I will maintain my current position as Assistant Attorney General at the Portuguese Constitutional Court

## Treaty-specific section:

### International Covenant on Civil and Political Rights (ICCPR)

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*Please provide responses that are as precise as possible and in no more than 200 words per question.*

1. Why do you want to be a member of the Human Rights Committee?

Hopefully my experience, both as member of the judicial power (public prosecutor) as also as someone involved, for many years, in implementing human rights instruments, particularly at the UN level, could prove valuable to the HRC

2. What are your specific areas of expertise in relation to the ICCPR? Please provide examples as appropriate. In particular, please specify if you have any expertise or knowledge in handling individual complaints/communications

As Assistant Attorney General at the Constitutional Court, I deal frequently with civil and political rights issues. I have also been involved, for some decades, in the preparation and discussion of Portuguese reports before several UN treaty monitoring bodies. Furthermore, I am professionally obliged and used to respect time limits in procedures running in the judicial system. Finally, as a public prosecutor, I have expertise in handling individual complaints/communications.

3. What do you think are the emerging issues and challenges in the implementation of the ICCPR? Please provide 1-2 examples.

I would highlight the need to assist developing countries more effectively in deepening their expertise in the preparation and discussion of their reports before the HRC and also to significantly reduce the backlog of the Committee in appreciating States' reports and handling individual communications.

Furthermore, particular attention should be given to the problems arising from the refugees' difficult situation in several areas of the world, as well as to the need for adequate evaluation, by the Committee, of special measures adopted by States, for instance to combat terrorism and organised crime, as is the case of the declaration, by some States, of the state of emergency to combat this scourge.

4. What do you think are the challenges in the implementation of the ICCPR at the national level (for example normative, legal, structural, ideological or cultural)? Please provide 1-2 examples.

It depends on the country concerned. It might be the need to continue improving their domestic normative and legal situation, to adopt and better evaluate public policies to help meet the responsibilities raised by the Covenant or, finally, ideological and cultural constraints, which are normally the most resilient to change (for instance, as regards gender perspective).

A constructive and permanent dialogue between the countries and the HRC is therefore essential to help highlight the existing flaws and define the possible remedies to overcome them.

5. State parties to the ICCPR are required to take steps to implement the Covenant. How do you propose that the Committee should help guide States in the effective implementation of Covenant standards?

A major effort should be put into continuing to assist countries in their reporting procedures (through preparing training sessions, producing training materials and adopting e-learning as an alternative tool, etc.). The HRC should also be concerned about adequately highlighting and welcoming/commending the progress already achieved by the countries in order to best define the need for further improvement and to obtain their permanent commitment to it. The preparation of guidelines, periodically reviewed, on the issues to be addressed regarding each article of the Covenant, could prove an invaluable tool for countries with a strong desire to fulfil to the utmost their responsibilities under the Covenant.

6. What can the Committee do to further strengthen its engagement with other stakeholders including National Human Rights Institutions (NHRI), members of Parliament, judicial actors, civil society and UN agencies?

The HRC should focus on the need to convince other stakeholders of their decisive influence in helping spread the knowledge of the Covenant and the responsibilities it entails. Civil society is vital to this purpose, mainly because it can prove invaluable not only to influence the adoption of adequate legislation and public policies, but also to be involved in the preparation of future reports by the States.

The HRC should mainly be seen, by these stakeholders, as a last resort body intervening to complement their efforts to disseminate and raise the knowledge of the Covenant at the domestic level.

7. How do you see the Human Rights Committee strengthening the domestic and international environment for holding business/private actors responsible for violations under the Covenant?

The HRC can have a decisive influence to this effect, not only by the adoption of adequate case law and general comments, but mainly by its serene, objective and firm stance as the guardian of the Covenant. This approach can then spread to business/private actors, if necessary by holding the States responsible for restraining those actors' sphere of influence.