

Committee on the Rights of Persons with Disabilities

General Comment on Equality and Non- discrimination (Article 5)

First draft as at 31 August 2017

I. Introduction

1. With this General Comment, the Committee on the Rights of Persons with Disabilities (the Committee) aims to guide State parties and other stakeholders and to clarify the obligations of States parties in relation to non-discrimination and equality as enshrined in article 5 of the Convention. The Committee considers that guidance in this regard is necessary as in carrying out its mandate, it continuously bears witness to discriminatory treatment of persons based only on actual or perceived disability that impairs or nullifies the enjoyment of the rights of persons with disabilities and those associated with them. Having completed more than 60 constructive dialogues with States parties to the Convention representing all regions of the world, the Committee is concerned that discrimination of persons with disabilities persists. The Committee routinely observes discrimination which includes: violations to the right to access the built environment, transportation, information and communications on an equal basis with others; negative portrayals of disability in the media and harmful stereotypes; deprivation of the right to legal capacity; curtailments in access to justice, education, employment; and to the right to participate in cultural life, recreation, leisure and sport, to name but a few examples.
2. The Committee notes with concern that one of the main remaining challenges regarding the persistence of disability-based discrimination is that despite the adoption of the Convention and its ratification by a large number of countries, approaches to disability in laws, policies, the media and practices based on charity and/or medical paradigms to disability commonly continue to be used to a large extent, despite their incompatibility with the Convention. These approaches range from wanting to “care for and protect” persons with disabilities from their “tragic and helpless situation”, to assess their incapacity to work or to wanting to fix, cure and make persons with disabilities “as normal as possible”. They fail to acknowledge persons with disabilities as full subjects of rights and rights holders. The Committee assumes that, additionally, efforts carried out in States parties to overcome attitudinal barriers to disability have been insufficient to change the way societies view disability, as exemplified by the enduring prejudice, stigma and negative, humiliating stereotypes against persons with disabilities and the lasting misperceptions of disability as a burden for society or an individual problem.
3. In a large number of States parties, it is encouraging to see that the broadening of anti-discrimination laws and human rights frameworks has led to extended protection to persons with disabilities of their rights. The Committee also welcomes that in many cases, disability has been explicitly included as prohibited grounds for discrimination. Nevertheless, the Committee observes that anti-discrimination laws and regulatory frameworks remain imperfect and incomplete or ineffective. In this regard, they very often lack a recognition of multiple and intersectional discrimination, fail to acknowledge that the denial of reasonable accommodation constitutes discrimination, and lack effective mechanisms of legal redress and reparation, effective compensations included. The Committee regrets that, in general, persons with disabilities, through their representative organizations, are not systematically and meaningfully consulted in decision-making processes on legal and other reforms that affect them directly.

4. In its work, the Committee has encountered that, because of the mix of incompatible approaches to disability described above and the insufficient awareness of the rights of persons with disabilities, opportunities for the domestic implementation of the Convention are missed. Persons with disabilities are faced with discrimination leading to continued exclusion, segregation and lack of redress, particularly women, children and older persons with disabilities, persons with psychosocial and intellectual disabilities and those with high support requirements and those whose disabilities are not visible. The Committee notes that much of this disability-based differential treatment of persons with disabilities with humiliating consequences in terms of legal recognition of disabilities continues with the acquiescence of public authorities. The Committee has observed that often disability-based discrimination, such as inaccessibility, institutionalization or segregation are incorrectly not regarded as discrimination and are wrongly justified as being carried out among others in order to allegedly protect or care for the person with a disability in question, in his or her best interests, or in the interest of public order. Such practices are in direct contravention of the Convention and its principles, including the respect for the inherent dignity, autonomy, and freedom to make one's choices.

II. Equality and non-discrimination for persons with disabilities in international law

5. Equality and non-discrimination are among the most fundamental principles and rights of international human rights law. Equality and human dignity are the cornerstones of all human rights and are interconnected. The Universal Declaration of Human Rights (UDHR, 1948) proclaims that everyone is equal in dignity and rights (art. 1) and prohibits discrimination on a non-exhaustive number of grounds (art. 2 (1)). It further recognizes that all persons are "equal before the law and are entitled to equal protection of the law" and to "equal protection against discrimination".¹ Discrimination is not only a violation of the equality principle. It is also a degradation and a violation of self-respect and the integrity of a person and thus, a violation of human dignity. Negative stereotyping, stigmatization, and prejudices can be harmful to both the perception of one's dignity and one's perception of being equal in rights. Equality, dignity and tolerance are indivisibly linked to each other² and constitute the primary objectives of the international community.³
6. Equality and non-discrimination are also found in other core human rights treaties. The 1966 International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural rights (ICESCR) each contain the prohibition of discrimination on an open list of grounds in relation to civil and political rights and to economic, social and cultural rights, respectively.⁴ Furthermore, the ICCPR has a freestanding non-discrimination clause⁵ and a provision focusing on the prohibition of gender discrimination.⁶ Thematic human rights conventions aimed at eliminating discrimination on a particular ground, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of 1965, the Convention Against All Forms of Discrimination Against Women (CEDAW) of 1979, or the Convention on the Rights of the Child (CRC) of 1979, all contain various equality and

¹ See Universal Declaration of Human Rights, Art. 7

² Vienna Declaration and Programme of Action, 25 June 1993, Part B. Equality, dignity and tolerance

³ Further reference to Articles 13, 22, 25 + the Human Rights Committee's GC (CCPR General Comment No. 18: Non-discrimination) adopted in November 1989.

⁴ See International Covenant on Civil and Political Rights, Art. 2 and International Covenant on Economic, Social and Cultural Rights, Art. 2.

⁵ See International Covenant on Civil and Political Rights, Art. 26

⁶ See International Covenant on Civil and Political Rights, Art 3

non-discrimination provisions.⁷ These are the conventions on which the Convention on the Rights of Persons with Disabilities (the Convention) was built.

7. The term “dignity” appears in the CRPD more often than in any other human rights convention of the United Nations, starting in the preamble where the principles proclaimed in the Charter of the United Nations are recalled, which “recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world”⁸. The principle of universality of all human rights is based on this understanding that all human beings have equal worth and dignity and that all human beings should enjoy equal rights.
8. Equality and non-discrimination are at the heart of the Convention and run like a golden thread through all its substantive articles via the phrase “on an equal basis with others”. It links all substantive rights of the Convention to the non-discrimination principle. Throughout the ancient and contemporary history of the world, dignity, integrity and equality have been denied to persons with actual or perceived disabilities and discrimination has occurred in all its brutal and less brutal forms, including non-consensual and/or forced mass sterilizations and medical or hormone-based interventions (e.g. lobotomy, Ashley-treatment), mass murder called “euthanasia”, , mutilation and trafficking in body parts, particularly of persons with albinism⁹, and confinement. Despite progress in disability law and policy, persons with disabilities continue to be systematically excluded from many areas of life, often based on notions of dominance, power and devaluation such as racism, sexism and ableism. As stated in the thematic study of the Office of High Commissioner on Human Rights: “National laws and policies generally perpetuate exclusion, isolation, discrimination and violence against persons with disabilities, despite international human rights law standards. Factors such as deprivation of legal capacity, forced institutionalization, exclusion from general education, pervasive negative stereotypes, prejudices, and lack of access to employment prevent persons with disabilities from enjoying their rights fully, on an equal basis with others. In particular, women and girls with disabilities face considerable restrictions on the exercise of their rights relative to men and other women and girls, due to, for instance violence, abuse or neglect, and have fewer opportunities in terms of education and employment.”¹⁰

III. The history of article 5 and article 2 of the Convention and the human rights model of disability

9. For a long time the medical model of disability prevented the application of the equality principle to persons with disabilities. Under the medical model of disability, persons with disabilities are not rights holders but are seen as problems and are reduced to their impairments. Discrimination against and exclusion of persons with disabilities is seen as the

⁷ See International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5; Convention on the Elimination of All Forms of Discrimination against Women, Art. 1 and Art. 2; Convention on the Rights of the Child, Art. 2

⁸ See Convention on the Rights of Persons with Disabilities, Preamble to the Convention, rec. (a)

⁹ See, Report of the Office of the United Nations High Commissioner for Human Rights, Persons with albinism, 12 September 2013, A/HRC/24/57, paras 33 to 42

¹⁰ See, Report of the Office of the United Nations High Commissioner for Human Rights, Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities, 9 December 2016, A/HRC/34/26, para 6

norm and is legitimized by a medically driven incapacity approach to disability.¹¹ The medical model determined early international law and policy on disability, even when first attempts were made to apply the concept of equality to the context of disability. The 1971 Declaration on the Rights of Mentally Retarded Persons and the 1975 Declaration on the Rights of Disabled Persons were the first pre-treaty human rights instruments that contained equality and non-discrimination provisions for persons with disabilities.¹² While these early soft law human rights instruments paved the way for an equality approach to disability, they were still based on the medical model of disability as impairment was seen as a legitimate ground for restricting or denial of rights. A further step was taken by the 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities. They proclaimed “equality of opportunities” a fundamental concept of disability policy and law and defined it as: “the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities.

The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation.

Persons with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services.

As persons with disabilities achieve equal rights, they should also have equal obligations. As those rights are being achieved, societies should raise their expectations of persons with disabilities. As part of the process of equal opportunities, provision should be made to assist persons with disabilities to assume their full responsibility as members of society.”¹³

10. This definition of equalization of opportunities marks a significant development from a formal model of equality to a substantive model of equality. While formal equality seeks to combat direct discrimination by treating persons in a similar situation similarly and persons in different situations differently, substantive equality seeks to address structural and indirect discrimination and takes into account power relations. Formal equality helps to combat negative stereotyping and prejudices, but it cannot offer solutions for the “dilemma of difference.” Substantive equality acknowledges that the “dilemma of difference” requires both, ignoring and acknowledging differences among human beings in order to achieve *de facto* equality. However, in order to overcome deeply entrenched disability-based discrimination, States and local authorities, devolved governments need to do more than combat discriminatory behaviour, structures and systems. In order to change discriminatory structures and systems, positive measures are necessary. The Convention is based on this new model of equality, which is also known as transformative or inclusive equality. Inclusive equality is not to be misunderstood as being a model specifically related to disability, but rather a model that acknowledges that individuals, on a general basis, experience discrimination as members of a (or several) social group(s) and that these groups are not

¹¹ Quinn, Gerard /Degener, Th. (2002) Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability, OHCHR, United Nations, New York and Geneva (U.N. Sales No: E.02.XIV.6)

¹² Declaration on the Rights of Mentally Retarded Persons, General Assembly Resolution 2856 (XXVI) of 20 December 1971; Declaration on the Rights of Disabled Persons, General Assembly resolution 3447 (XXX) of 9 December 1975.

¹³ Standard Rules on the Equalization of Opportunities for Persons with Disabilities, General Assembly resolution 48/96 of 20 December 1993, Paras 24 to 27

homogeneous. Hence, non-discrimination measures need to target individuals as well as groups. Furthermore, the Convention is the first human rights treaty to acknowledge explicitly intersectional discrimination.¹⁴ All group members are individuals with multiple layers of identities, statuses and life circumstances. Inclusive equality provides for a new concept, which takes into account individual, and structural as well as intersectional discrimination and power relations. It is evident that the goal of inclusive equality is far-reaching and that fundamental systemic and structural changes cannot be realised in one day but require time. Corresponding non-discrimination obligations, however, are of immediate legal nature.

11. Inclusive equality corresponds to a new model of disability, the human rights model of disability, which leaves charity, welfare, and medical approaches behind and is based on the assumption that disability is not primarily a medical issue. Rather, disability is a social construct and impairment must not be taken as legitimate ground for the denial or restriction of human rights. The human rights model further acknowledges that disability may be only one of several layers of identity, and hence disability law and policy need to take the diversity of persons with disabilities into account. The human rights model of disability fully endorses that human rights are interdependent, interrelated and inseparable. Impairment or chronic illness as a human condition is the best example for understanding that civil and political rights can only be enjoyed, if economic social and cultural rights are granted and vice versa. The Convention enshrines many provisions¹⁵ containing both sets of rights. The human rights model of disability embraces the human rights-based approach to disability in law, policy and practice, and it corresponds to an inclusive equality model offering a roadmap for change in this regard.
12. With regard to the negotiation history of article 5 and 2 of the Convention, it is worth mentioning, that the term “specific measures” in art. 5 (4) was drafted on the basis of article 1 (4) of ICERD and article 4 (1) and (2) of CEDAW but that the term “special” was altered because of negative connotations this wording has in the context of disability.¹⁶ Other terms, such as the list of grounds of prohibited discrimination, the personal scope of the non-discrimination protection, and questions related to reasonable accommodation duties were explicitly left by the negotiators to the interpretation of the Committee.

IV. Legal character of non-discrimination and equality

13. Non-discrimination and equality are both, a principle¹⁷ and a right. They are also an interpretative tool for all other rights enshrined in the Convention. The principles of equality, non-discrimination and the obligation to provide reasonable accommodation are a cornerstone of the international protection guaranteed by the Convention. It is a right to be protected against discrimination and to be provided reasonable accommodation, applicable to all the Convention. Non-discrimination represents a crosscutting obligation of immediate realisation which applies to all human rights, not just civil and political rights. It is not subject to progressive realisation.¹⁸

¹⁴ See Convention on the Rights of Persons with Disabilities, Art. 6, and Preamble (p)

¹⁵ e.g. Convention on the Rights of Persons with Disabilities Article 19 on living independently and being included in the community

¹⁶ ### REFERENCE FROM NEGOTIATION ARCHIVE ##

¹⁷ See Convention on the Rights of Persons with Disabilities, Art. 3 b), e), g).; Human Rights Committee, General Comment No. 18: Non discrimination, 1989, Para 1

¹⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), United Nations Doc. E/C.12/GC/20, 2009, Para 7; Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights), United Nations Doc. E/1991/23, 1990, Para 1.

14. Article 5 of the Convention, like article 26 ICCPR does not merely duplicate equality guarantees in other provisions of the Convention but provides in itself an autonomous right independent from other provisions. It prohibits discrimination *de jure* or *de facto* in any field regulated and protected by public authority. Read together with article 4 (1) (e) it is also evident that it extends to the private sector.

V. Normative Content

i. Art. 5 (1) Being equal before and under the law

15. Several international human rights treaties include the term “equal before the law”,¹⁹ which is usually interpreted as meaning equal treatment by the judiciary or law enforcement officers.²⁰ The recognition that all persons with disabilities are equal before the law thus means that the justice system, all law enforcement officers and the administration, do not discriminate against persons because of their actual or perceived disability.
16. “Equality under the law” is unique to the Convention. The *travaux préparatoires* reveal that this guarantee reflects the wording of section 15 (1) of the Canadian Charter of Rights and Freedoms. During the fifth negotiation sessions, the term was interpreted as demanding “strict respect for non-discrimination”²¹ It appears, then, that “being equal under the law” refers to the substance of the law as such. The law itself shall be equal in the sense that all groups of a given society are treated fairly under the law, that the legal standards are the same for all to whom they apply and that all persons in a given jurisdiction are included. Thus, the recognition that all persons with disabilities are equal under the law means that there should be no laws that allow for specific denial, restriction or limitation of the rights of persons with disabilities, and that disability should be mainstreamed in all legislation and policies.
17. This interpretation of the terms “being equal before” and “being equal under the law” is in line with article 4 (1) (b)-(c) of the Convention, according to which States parties have to ensure that, “public authorities and institutions act in conformity with the present Convention”²², that “existing laws regulations customs and practices that constitute discrimination against persons with disabilities” are modified or abolished,²³ and that the protection and promotion of the human rights of persons with disabilities is taken into account in or policies and programs.²⁴

ii. Art. 5 (1) Equal protection and equal benefit of the law

18. “Equal protection of the law” and “equal benefit of the law” include related but distinct concepts of equality and non-discrimination. The phrase “equal protection of the law” is well known in international human rights treaty law²⁵ and addresses the national legislatures. It demands that they refrain from any discrimination against persons with disabilities when enacting laws and policies. The term “equal benefit of the law” derived from the Canadian jurisdiction in which it was interpreted as relating to a more substantive equality model. The

¹⁹ See International Covenant on Civil and Political Rights, Art. 14 (1) and Art. 26, Art. 5 (a) CERD and Convention on the Elimination of All Forms of Discrimination against Women, Art. 15

²⁰ United Nations Nations Committee on Economic, Social and Cultural rights, General Comment N. 16 (2005), E/C.12/2005/3, para. 9

²¹ First session of the Ad Hoc Committee, Daily summary of discussion at the fifth session 24 January 2005, Volume 6 #1, AB 87 F 46

²² See Convention on the Rights of Persons with Disabilities, Art. 4 (1) (d).

²³ See Convention on the Rights of Persons with Disabilities, Art. 4 (1) (b)

²⁴ See Convention on the Rights of Persons with Disabilities, Art. 4 (1) (c).

²⁵ E.g. See International Covenant on Civil and Political Rights, Art. 26

landmark case *Eldridge vs. British Columbia (Atty. Gen.)*²⁶ entails a ruling of the Supreme Court of Canada that when the State provides a service or benefit to the public, it must ensure that all persons have equal opportunities to take advantage of that service or benefit. The case involved the provision of sign language interpretation during childbirth in a hospital. Bearing in mind that this legal interpretation from the Canadian jurisdiction cannot be translated automatically to article 5 (1) of the Convention, the drafting history of the Convention discloses that “equal benefit of the law” goes beyond a guarantee of mere formal equality. A contextual interpretation of the wording in line with article 1, article 3 and article 4 of the Convention clarifies that in order to facilitate the enjoyment of rights guaranteed by the legislation to persons with disabilities on an equal basis with others, positive measures are often required. Such measures include the provision of accessibility and reasonable accommodation as well as individualized supports. Accessibility can be implemented by adopting building, transportation, Information, and Communications Technology (ICT) laws, which incorporate legal accessibility standards for the built environment, for transportation and information and communications.²⁷ Reasonable accommodation may be incorporated into employment laws that prohibit discrimination through denial of reasonable accommodation. Education laws shall ensure individualized education for each child without relegating children with disabilities to special education schools or classrooms. Support measures relate to the exercise of specific rights.²⁸ As support systems or services are not yet developed, reasonable accommodation may function as a means of providing support in a particular case.²⁹ In order to ensure equal opportunity for all persons with disabilities, the term “equal benefit of the law” means that States parties have to break down barriers to ensure the equal benefit of the law. In that sense, the guarantee is based on a transformative or inclusive model of equality.

iii. Art. 5 (2) Prohibition of discrimination and equal and effective legal protection

19. Article 5 (2) contains the legal requirements for achieving equality rights for persons with disabilities. The obligations to “prohibit all discrimination on the basis of disability” and “guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds” is far-reaching and imposes positive duties of protection on States parties. Disability-based discrimination is defined in article 2 as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing on 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”. Although this definition is based on legal definitions of discrimination in international human rights treaties, such as ICERD³⁰ and CEDAW³¹, it goes beyond these definitions in two aspects. First, it includes “denial of reasonable accommodation” as a form of disability-based discrimination, which will be elaborated on in later paragraphs. Secondly, the phrase “on an equal basis with others” is also a new component. Only CEDAW contains a

²⁶ *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624

²⁷ Committee on the Rights of Persons with Disabilities, General Comment No 2 (2014, on Article 9: Accessibility, para 28 CRPD/C/GC/2.

²⁸ Such as the right to exercise legal capacity (art. 12 (3)), the right to live independently within the community (Art.19) or the right to inclusive education (art. 24).

²⁹ Report of the Office of the United Nations High Commissioner for Human Rights, Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities, 9 December 2016 para 26, A/HRC/34/26

³⁰ See International Convention on the Elimination of All Forms of Racial Discrimination, Art. 1

³¹ See Convention on the Elimination of All Forms of Discrimination against Women, Art. 1

similar but more limited phrase.³² The phrase “on an equal basis with others” is not only limited to the definition of disability-based discrimination but also permeates the whole Convention. The phrase “on an equal basis with others” means, on the one hand, that persons with disabilities shall not be granted more rights or benefits as the general population. On the other hand, the term requires that States parties take positive action to achieve *de facto* equality for persons with disabilities to ensure that they can actually enjoy all human rights and fundamental freedoms.

20. The duty to prohibit “all discrimination” includes all forms of discrimination.³³ In international human rights practise five main forms of discrimination are identified:

- a) “Direct discrimination”, which occurs when persons with disabilities are treated less favorably than another person in a similar situation for a reason related to a prohibited ground. It also includes detrimental acts or omissions based on prohibited grounds where there is no comparable similar situation.³⁴ A public school that refuses to admit a child just because of his or her disability is an example of direct discrimination. Other examples include (disability-based) violence in all its appearances, such as rape, abuse and exploitation, hate-crime, and beatings.
- b) “Indirect discrimination”,³⁵ which means that laws, policies or practices appear neutral at face value, but have a disproportionate negative impact on a person having a status or a characteristic associated with one or more prohibited grounds compared with other persons, unless such laws, policies or practices is objectively justified by a legitimate aim, and the means achieving that aim are appropriate and necessary. For example, government information that is not available in Easy Read would indirectly discriminate against persons with intellectual disabilities.
- c) “Denial of reasonable accommodation”, which according to article 2 of the Convention constitutes discrimination if the necessary and appropriate modification and adjustments (that do not impose a disproportionate or undue burden) are denied and are needed to ensure the equal enjoyment or exercise of a human right or fundamental freedom.³⁶ For instance, denying access to a public theater to a person with a disability just because he or she is accompanied by a guide dog constitutes denial of reasonable accommodation. Denial of reasonable accommodation does not refer to groups but always to an individual in a given particular situation. As any such denial meets a justification test which is different from the justification of indirect discrimination, denial of reasonable accommodation constitutes a form of discrimination distinct from other forms, such as direct or indirect discrimination.
- d) “Harassment”, which shall be deemed a form of discrimination when unwanted conduct related to disability or other prohibited grounds, takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating

³² See in Convention on the Elimination of All Forms of Discrimination against Women, Art. 1 and Art. 3: “*on a basis of equality of men and women*”

³³ Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, Art. 6 (1), para. 14, CRPD/C/GC/3.

³⁴ See Committee on Economic, Social and Cultural rights, General Comment no. 20, Non-discrimination in economic, social and cultural rights, para. 10, E/C.12/GC/20.

³⁵ See Committee on Economic, Social and Cultural rights, General Comment no. 20, Non-discrimination in economic, social and cultural rights, para. 10, E/C.12/GC/20.

³⁶ Convention on the Rights of Persons with Disabilities, Art. 2.

or offensive environment. Making fun of a disability or abusive and threatening comments about someone's disability are examples of harassment. "Bullying" and its online form, "cyber bullying and cyber hate", also constitute particularly violent and harmful forms of harassment.

e) Intersectional discrimination when a person having a status or a characteristic associated with one or more prohibited grounds is discriminated on several prohibited grounds or statuses. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation and as harassment.

21. "On the basis of disability" includes not only persons who presently have an impairment, but also who have had an impairment in the past, have a disposition to an impairment which lies in the future, and persons who are presumed to have an impairment or those who are associated with a persons with disabilities,³⁷ the latter known as "discrimination by association". The reason for this wide personal scope of article 5 lies in the goal of subparagraph (2) to eradicate and combat all discriminatory situations and/or discriminatory conduct that are linked to disability.

22. "Protection against discrimination on all grounds" means that all possible grounds of discrimination and their intersections have to be taken into account. Possible grounds include but are not limited to: race, colour, descent, sex, pregnancy and maternity, civil, family or carer status, gender identity, sexual orientation, language, religion, political or other opinion, national, ethnic, indigenous or social origin, migrant, refugee or asylum status, association with a national minority member, economic status or property, health status, genetic or other predisposition towards illness, birth, and age, or a combination of any of these grounds, or characteristics associated with any of these grounds.³⁸ In many cases persons with disabilities experience discrimination on multiple grounds and in such cases it is difficult to separate these grounds. States parties must address multiple and intersectional discrimination against persons with disabilities. "Multiple discrimination" has been defined by the Committee as "a situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded or aggravated. "Intersectional discrimination" refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable".³⁹

23. "Equal and effective legal protection against discrimination" means that states have to take positive measures to protect persons with disabilities against discrimination. Explicit prohibition of disability-based and other discrimination against persons with disabilities in legislation has to be accompanied by provision of effective legal remedies and sanctions in civil, administrative and criminal proceedings, including protection from any acts of

³⁷ Committee on the Rights of Persons with Disabilities, Sixth Session, Concluding observations of the Committee on the Rights of Persons with Disabilities on Spain, 2011, para. 20, CRPD/C/ESP/CO/1; Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, para. 17 (c) and para. 53, CRPD/C/GC/3.

³⁸ See Convention on the Rights of Persons with Disabilities, preamble to the Convention, para. (p); Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, para. 4 (c), CRPD/C/GC/3.; Equal Rights Trust, Declaration of Principles on Equality, part II Non-Discrimination, 5. Definition of Discrimination, p. 6.

³⁹ Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, para. 4, CRPD/C/GC/3; See Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on temporary special measures, para. 12; General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 18.

discrimination carried out by private entities and/ or individuals. It further means that effective protection against discrimination carried out by private parties and organizations is provided by the State party. Often disability-specific services are provided by private organizations or parties and persons with disabilities are at high risk of being discriminated in the private sector.

iv. Art. 5 (3) Reasonable Accommodation

24. Reasonable accommodation is an intrinsic part of the duty of non-discrimination in the context of disability.⁴⁰ Examples of reasonable accommodations include making existing facilities and information accessible to the individual person with a disability; modifying equipment; reorganizing activities; rescheduling work; adapting curricula and learning materials; adjusting medical procedures; implementing specific medication modalities; or enabling access to support personnel.⁴¹ Other examples may be: giving the person with a disability training, modifying procedures for testing or assessment providing supervision, modifying instructions or reference manuals.
25. Reasonable accommodation duties are different from accessibility duties. Accessibility is related to groups, whereas reasonable accommodation is related to individuals. The duty to provide accessibility is an *ex ante* duty, which means that it has to be provided before a person with a disability wants to use exercise his or her right, for example to enjoy access to a building, service or product, on an equal basis with others. States parties need to set accessibility standards that must be developed and adopted in consultation with organizations of persons with disabilities (DPOs). In contrast, the duty to provide reasonable accommodation is an *ex nunc* duty. It applies in a particular situation and in a particular context, often, but not necessarily, upon request by the person with a disability. Reasonable accommodation needs to be negotiated with the individual person with a disability concerned. Reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination is ensured, taking the human dignity, autonomy, and choices of the individual into account.⁴²
26. The Committee observes that there exists a lot of confusion with respect to the duty to provide reasonable accommodation in accordance with articles 2 and 5 CRPD. “Disproportionate or undue burden” should be understood as a single concept that sets the limit of the duty to provide reasonable accommodation. Both terms should be considered synonyms insofar as they refer to the same idea: that the request for reasonable accommodation needs to be bound by a possible excessive burden on the accommodating party. “Reasonable accommodation” is a single term and “reasonable” should not be misunderstood as another exception clause referring to the costs of accommodation, but rather to its effectiveness. “Reasonable accommodation” should also not be confused with “specific measures”, including “affirmative action measures” or similar positive duties. While both concepts aim at achieving *de facto* equality, reasonable accommodation is a non-discrimination duty, whereas specific measures imply a preferential treatment of persons with disabilities over others. Examples of specific measures include: temporary measures for countering the low numbers of women with disabilities employed in the private sector, and support programmes to increase the number of students with disabilities in tertiary education. Similarly, reasonable

⁴⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 5: Persons with disabilities, United Nations Doc. E/1995/22, 1994, Para 15

⁴¹ Report of the Office of the United Nations High Commissioner for Human Rights, Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities, 9 December 2016, para. 28, A/HRC/34/26

⁴² Committee on the Rights of Persons with Disabilities, General comment No. 2, Article 9: Accessibility, para. 26

accommodation should not be confused with the provision of support such as personal assistants under the right to live independently and being included in the community, or support to exercise legal capacity. Along the same lines, “procedural accommodations” in the context of access to justice should not be confused with reasonable accommodation. While the latter is limited by the concept of disproportionality, procedural accommodations are not.

27. Key elements that guide the implementation of the duty to provide reasonable accommodation include:⁴³
- a. The identification and removal of barriers that impact on the enjoyment of human rights for persons with disabilities in dialogue with the person with a disability concerned;
 - b. Proving that an accommodation is feasible (legally or in practice). An accommodation that is legally or materially impossible is unfeasible. For example, breaching a law that is in alignment with the Convention cannot be required as a reasonable accommodation. Moreover, [the ways in which] a reasonable accommodation [can be provided] must exist and be available. [The cost of the accommodation shall not play a role in deciding whether the accommodation is reasonable since cost factors are to be considered under the undue burden test].
 - c. Proving that the accommodation is relevant, meaning necessary and appropriate, or effective in ensuring the realization of the right in question.
 - d. Assessing whether the modification imposes a disproportionate or undue burden on the duty bearer; the determination of whether a reasonable accommodation is disproportionate or unduly burdensome requires an assessment of the proportional relationship between the means employed and its aim, which is the enjoyment of the right concerned. Although reasonable accommodation is in principle an individual measure, assessments also need to take into account the potential beneficial effects of the accommodation in question for the future enjoyment of the right concerned by other persons with disabilities.⁴⁴
 - e. Ensuring that the reasonable accommodation has, as the essential objective, the promotion of equality and the elimination of discrimination against persons with disabilities. A case-by-case approach based on consultations with the person concerned is therefore required. Potential factors to be considered include financial costs, resources available (public subsidies), the size of the accommodating party, the effect of the modification on the institution or the enterprise, third-party benefits, as well as negative impacts on other persons, and health and safety requirements.⁴⁵
 - f. Dispensing the person with a disability concerned from proving that the desired accommodation would not impose a disproportionate or undue burden. The burden of proof in this regard should instead rest with the duty bearer who claims that his or her burden would be disproportionate or undue.

⁴³ Report of the Office of the United Nations High Commissioner for Human Rights, Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities, 9 December 2016, para. 55-61, A/HRC/34/26; Committee on the Rights of Persons with Disabilities, *Jungelin vs. Sweden*, Communication No. 5/2011, 2014, CRPD/C/12/D/5/2011, para. 2-6,.

⁴⁴ Committee on the Rights of Persons with Disabilities, *Jungelin vs. Sweden*, Communication No. 5/2011, 2014, para. 2-6, CRPD/C/12/D/5/2011, Joint opinion of Committee members Carlos Rios Espinosa, Theresia Degener, Munthian Buntan, Silvia Judith Quan-Chang and Maria Soledad Cisternas Reyes (dissenting), para. 5.

⁴⁵ Ibid. (note 42)

28. While duty bearers must make good faith efforts to provide reasonable accommodation, there might be legal or material limits. Any justification of the denial of reasonable accommodation must be based on objective criteria and analysis and communicated in a timely fashion to the person with a disability concerned. A justification that perpetuates negative stereotypes or discrimination against persons with disabilities cannot be deemed legitimate. For example, the assumption that including students with disabilities in the classroom would have a detrimental effect on other students is in itself discriminatory.

v. Art. 5 (4) Specific measures

29. Specific measures not to be regarded as discrimination are positive or affirmative measures that aim to accelerate or achieve *de facto* equality of persons with disabilities. Such measures are known to other international human rights treaties, such as CEDAW⁴⁶ or ICERD⁴⁷ and entail adopting or maintaining certain advantages in favour of an underrepresented, or marginalized group. They are linked to the inclusive model of equality insofar as they seek to correct or compensate for a past or present discrimination or to overcome structural or systemic discrimination. They are usually temporary in nature, however some instances demand permanent positive action measures, depending on context and circumstances, including by virtue of a particular impairment or the structural barriers of society.⁴⁸ Examples of specific measures are outreach and support programs, allocation and/or reallocation of resources, targeted recruitment, hiring and promotion, quota systems, advancement and empowerment measures, but also respite care and technological aids.

30. Unlike reasonable accommodation duties, specific measures are generally not mandatory and it is up to the State party to decide whether, when and how to adopt and implement specific measures. However, there may be circumstances in which the adoption of temporary and permanent specific measures under article 5 (4) of the Convention is required. States parties are required to adopt temporary or permanent specific measures where they are deemed necessary to accelerate or achieve *de facto* equality, particularly where discrimination is structural or systemic in nature. In instances where the essence of protection of a human right would be rendered meaningless in the absence of such measures, specific measures may become mandatory in order to achieve the objective and purpose of the Convention.

31. Specific measures adopted by States parties under article 5(4) of the Convention must be consistent with all its principles and provisions. Particularly, they must not result in perpetuation of segregation, stereotyping, stigmatization or otherwise discrimination of persons with disabilities. Thus, States parties have to closely consult with and actively involve DPOs when they adopt specific measures.⁴⁹ Specific measures must be carefully monitored and evaluated.⁵⁰

⁴⁶ Convention on the Elimination of All Forms of Discrimination Against Women, Art. 4..

⁴⁷ Convention on the Elimination of All Forms of Racial Discrimination, Art. 1 (4).

⁴⁸ See, Human Rights Committee, General Comment No. 18: Non discrimination, 1989, Para 10; Committee on the Elimination of Racial Discrimination, General recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination, United Nations Doc. CERD/C/GC/32, 2009, Para 27; Committee on the Elimination of Discrimination against Women, General recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures), United Nations Doc. CEDAW/C/GC/25, 2004, Para 15 to 17;

⁴⁹ See Convention on the Rights of Persons with Disabilities, Art. 4 (3).

⁵⁰ Report of the Office of the United Nations High Commissioner for Human Rights, Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities, 9 December 2016, para. 20, A/HRC/34/26

VI. General obligations of States parties under the Convention relating to non-discrimination and equality

32. States parties have an obligation to respect, protect and fulfil the right of all persons with disabilities to non-discrimination and equality. In this regard, States parties must refrain from any action that discriminates against persons with disabilities. In particular States parties shall modify or abolish existing laws, regulations, customs and practices that constitute such discrimination. The Committee has on several occasions given examples in this regard: guardianship laws and other rules infringing upon the right to legal capacity,⁵¹ mental health laws which legitimize forced institutionalization and forced treatment,⁵² non-consensual sterilization of women and girls with disabilities,⁵³ inaccessible housing and institutionalization policy,⁵⁴ segregated education laws and policies⁵⁵ or election laws disenfranchising persons with disabilities.⁵⁶
33. Article 5 and 4 (1) (a) CRPD demand that States parties adopt anti-discrimination legislation that is both, comprehensive and specific. Comprehensive anti-discrimination law relating to disability has a broad material scope, covering education, employment, social protection, and goods and services, for example IT services and housing. Specific disability discrimination law covers past, present, presumed and future disabilities, as well as associates of persons with disabilities. It also encompasses denial of reasonable accommodation as a specific form of discrimination, as well as multiple and intersectional discrimination. Anti-discrimination laws must also ensure that representative DPOs can effectively participate in the implementation and monitoring of these laws (art. 5 and art. 4 (3) CRPD).
34. States parties also have institutional obligations relating to article 5 CRPD in that States parties must provide a system of entities, that are available, accessible and acceptable to persons with disabilities to guard and protect their rights to non-discrimination and equality. These institutions might include courts, National Human Rights Institutions, or Equality Bodies. Experiences with anti-discrimination laws have proven that all of these institutions have a role to play and their staff must be properly trained in disability-specific equality law.
35. Enforcement obligations of States parties cover a broad area of measures, such as access to justice, protection from victimization, rules on legal standing, burden of proof, remedies and sanctions, and specialised bodies of enforcement. All of these measures must be inclusive and accessible. In case of discrimination, including denial of reasonable accommodation, specific remedies shall be available and not be reduced to monetary damages only. All persons with disabilities, regardless of their legal capacity status, should also have access to effective legal remedies.
36. The effective enjoyment of the rights to equality and non-discrimination calls for the adoption of a set of enforcement measures, such as:

⁵¹ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), Article 12: Equal recognition before the law, para. 26, CRPD/C/GC/1

⁵² Committee on the Rights of Persons with Disabilities, Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, The right to liberty and security of persons with disabilities, 2015, para. 6 and 14

⁵³ Committee on the Rights of Persons with Disabilities, ###

⁵⁴ General comment No. 5, Article 19: Right to independent living, para. ?, CRPD/C/GC/5

⁵⁵ Committee on the Rights of Persons with Disabilities, General comment No. 4 (2016) on the right to inclusive education, para. 24, Accessibility, CRPD/C/GC/4

⁵⁶ *Bujdosó v. Hungary*, Communication adopted at 10th session (2-13 September 2013), CRPD/C/10/D/4/2011.

- a. Measures to ensure access to justice for all persons who have experienced discrimination, including effective access to judicial and/or administrative procedures and appropriate legal aid;
 - b. Protection from victimisation or retaliation through adverse treatment or adverse consequences as a reaction to a complaint or to proceedings aimed at enforcing compliance with equality provisions;
 - c. The legal right to bring a lawsuit to court for associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality;
 - d. Specific rules relating to evidence and proof to ensure that victims of discrimination are not unduly inhibited in obtaining redress;
 - e. Effective, proportionate and dissuasive sanctions for breach of the right to equality and provide for adequate remedies;
37. States parties need to identify areas and subgroups of persons with disabilities that need specific measures to accelerate or achieve *de facto* equality. While discretionary in nature, specific measures might become mandatory under certain conditions.⁵⁷
38. Regarding the consultation obligations of States parties, article 4 (3) and article 33 (3) of the Convention emphasize the decisive role that DPOs have to play in the implementation and monitoring of the Convention. This is particularly true for any non-discrimination and equality measure. States parties must ensure that they closely consult and actively involve DPOs who represent the vast diversity in society, including children, the LGBTI community, and indigenous and rural communities. Only then can it be expected that all discrimination, including multiple and intersectional discrimination will be tackled. Furthermore, involvement of DPOs is important in order to ensure that specific measures are designed to achieve *de facto* equality and do not create sub-standard, segregated areas of law or policy or exacerbate existing inequalities.
39. States parties have information obligations in relation to article 5 CRPD in that they must collect and analyse appropriate data and research information in order to identify inequalities, discriminatory practices and patterns of disadvantage and analyse the effectiveness of measures promoting equality. The Committee has observed that in many State parties there is a lack of updated data on disability discrimination, and that often there is no disaggregation according to impairment, gender, different identities (trans, intersex, or sexual orientation or gender identity), ethnicity, age and other layers of identity and life circumstances. Such data and its analysis is of paramount importance for developing effective anti-discrimination and equality measures.
40. States parties should also instigate appropriate research on disability discrimination and equality rights for persons with disabilities. Research agendas must embed persons with disabilities in research processes from the agenda-setting stage to ensure their meaningful participation in research. Inclusive and participative research processes should centre around the lived experiences and requirements of persons with disabilities and ensure that national monitoring procedures identify the areas of inequality and discrimination that affect the lives of persons with disabilities.

⁵⁷See para. V. Art. 5 (4) Specific measures ##### see para REFERENCE TO A PARA IN THIS DOCUMENT

VII. Relationship with other specific articles of the Convention

i. Article 6 – Women with disabilities

41. As set out in the Committee's general comment No. 3 on women and girls with disabilities (2016), women with disabilities are among those groups of persons with disabilities who most often experience multiple and intersectional discrimination.⁵⁸ Article 6 is a cross-cutting article and needs to be taken into account in relation to all provisions of the Convention.⁵⁹ While only article 6 mentions the term multiple discrimination, multi-dimensional discrimination may occur in any combination of two or more grounds. Moreover, article 6, like article 7, must be regarded as illustrative, rather than exhaustive, setting out obligations in respect of two prominent examples of multiple and intersectional discrimination.

ii. Article 7 – Children with disabilities

42. Like women with disabilities, boys, girls, and intersex children with disabilities, often experience multiple and intersectional discrimination. Discrimination and harmful treatment suffered by children with disabilities are exacerbated by virtue of their age. In addition to the guarantees and protection afforded to adults, States parties must prohibit all forms of discrimination on the basis of disability that are specific to children; provide effective and accessible remedies; raise awareness among the public and professionals to prevent and eliminate discrimination; and implement a national policy and plan of action to this end.

43. The principle of the best interests of the child is rarely applied to children with disabilities. Many children with disabilities do not have access, on an equal basis with others, to education, housing, or goods and services. General laws concerning childhood rarely consider children with disabilities. When designing and implementing anti-discrimination and equality measures under article 5, States parties should consider the situation of children with disabilities into account. In particular, States parties should address violence and institutionalization of children with disabilities as a matter of discrimination. States parties should also adopt age-appropriate support measures to enable all children with disabilities to exercise their right to be heard, in all procedures that affect them, including in parliament, committees and bodies of political decision-making.⁶⁰ States parties should, in the appropriate cases, foster the provision of or promotion of accessible means, modes and formats of communication to facilitate non-discrimination and equality rights of children with disabilities.

iii. Article 8 – Awareness Raising

44. Discrimination cannot be combatted without awareness raising among all sectors of government and society. Thus, any non-discrimination and equality measure adopted under article 5 needs to be accompanied by adequate awareness raising measures and measures to change or abolish compounded pejorative disability stereotypes, including those based on gender and age, as well as harmful stereotypes⁶¹ In addition, harmful practices and prejudices need to be tackled by awareness raising campaigns. In particular, States parties need to address discriminatory portrayals of persons with disabilities in the media, which perpetuate

⁵⁸ Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, United Nations Doc. CEDAW/C/GC/28, 2010, Para 31

⁵⁹ Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, para. 12, CRPD/C/GC/3.

⁶⁰ Committee on the rights of the child, General Comment No. 9 (2006), The rights of children with disabilities, Article 12 - Respect for the views of the child,

⁶¹ OHCHR Commissioned Study <http://www.ohchr.org/EN/NewsEvents/Pages/GenderStereotyping.aspx>

the charity, welfare and medical approach to disability. States parties should undertake measures to encourage the media to portray persons with disabilities in a manner consistent with the purpose of the Convention and to combat harmful views of persons with disabilities, such as those that portray them as sufferers and dependent objects of care without autonomy. Likewise, States parties should address stigmatization through modern forms of discrimination, such as a disability-selective antenatal screening policy that go against the recognition of the equal worth of every person. States parties should take into account all factors, including the diversity of persons with disabilities and their identities and address multiple and intersecting discrimination when designing and carrying out awareness-raising measures.

45. In particular, States parties should raise awareness of non-discrimination among members of the legal profession, including the judiciary, clearly highlighting the duty to provide reasonable accommodation as an obligation to ensure equality.

iv. Article 9 – Accessibility

46. Accessibility is a precondition and a means to achieve de facto equality for all persons with disabilities. For persons with disabilities to effectively participate in the community, States parties must address accessibility of the built environment, public transport, as well as information and communication services, which need to be available and usable for all persons with disabilities on an equal basis with others.
47. As noted earlier in paragraph ..., accessibility and reasonable accommodations are two distinct concepts of equality laws and policies. Accessibility duties relate to groups and have to be implemented progressively but unconditionally.⁶² The duty to provide reasonable accommodation, on the other hand, is individualized, applies immediately to all rights and may be limited by its disproportionality. Because the progressive realization of accessibility in the built environment, public transportation and information and communication services may take time, reasonable accommodation may be used as a means to provide access to an individual in the meantime.⁶³
48. The Committee calls on States parties to be guided by its general comment No. 2 (2014) on accessibility, when carrying out measures to fulfill their obligations under article 5 in relation to article 9.

v. Article 11 – Situations of risk and humanitarian emergencies

49. Article 11 obliges States parties to ensure the protection and safety of persons with disabilities in situations of risk, such as situations resulting from armed conflicts, humanitarian emergencies or natural disasters. This includes effective measures to address the increased risk inherent in such situations, of discrimination against persons with disabilities.
50. In line with Goal 11 of the Global Agenda for Sustainable Development and guided by the Sendai Framework for Disaster Risk Reduction 2015-2030,⁶⁴ States parties shall take all

⁶² See *ibid* para. 20

⁶³ Committee on the Rights of Persons with Disabilities, General comment No. 2, Article 9: Accessibility, para. 25-26, CRPD/C/GC/2

⁶⁴ General Assembly Resolution of 25 September 2015, Transforming our world: the 2030 Agenda for Sustainable Development, United Nations Doc. A/RES/70/1, goal 11; United Nations Office for Disaster Risk Reduction (2015): Sendai Framework for Disaster Risk Reduction 2015-2030, United Nations Doc. UNISDR/GE/2015, Paras 7 and 19.

necessary measures to ensure the safety of persons with disabilities and facilitate their equal access to the full array of emergency responses and services provided. The delivery of humanitarian aid should consider the urgent requirements of persons with disabilities and should ensure their access to disability-specific services, including support.

51. The Committee notes with concern that internationally displaced persons with disabilities and/or refugees with disabilities often do not have equal access to basic necessities, such as water, sanitation, food and shelter. For example, accessible hygiene facilities like latrines and showers often do not exist or are insufficient.
52. As outlined in General Comment No. 3, women with disabilities in situations of risk and humanitarian emergencies are at a particularly increased risk of violence, including sexual violence, exploitation or abuse and are less likely to be able to have access to recovery and rehabilitation services or access to justice.⁶⁵ Refugee camps often lack protection mechanisms or other programmes inclusive of women and children with disabilities. For example, efforts to expand access to education for child refugees often overlook children with disabilities, leaving them among the most invisible and at risk children. There are additional barriers faced by displaced girls with disabilities, to access formal and non-formal education, especially in crisis settings.
53. In such contexts, inadequate planning and lack of consideration of persons with disabilities when setting up programmes or measures for situations of risk may in itself amount to discrimination. States parties are therefore required to ensure the principle of non-discrimination in all programs and actions. This includes, inter alia, to equally include persons with disabilities in national emergency protocols, to consider persons with disabilities in evacuation scenarios, to provide for accessible information and communication helplines and hotlines, to ensure that humanitarian aid relief is distributed in an accessible, non-discriminatory way to people with disabilities caught in humanitarian emergencies, and to ensure that sanitation and latrine facilities in emergency shelters and refugee camps are available and accessible for persons with disabilities.

vi. Article 12 – Equal recognition before the law

54. Legal capacity is fundamental for the full and effective participation of persons with disabilities in society on an equal basis with others. The right to legal capacity is a threshold right, that is, it is required for the enjoyment of all other rights in the Convention, including the right to equality and non-discrimination. Article 12 provides that persons with disabilities have the right to recognition everywhere as persons before the law, which includes the right to legal capacity on an equal basis with others. The application of article 5 to legal capacity encompasses both legal personhood and legal agency as elaborated in the Committee's General comment No. 1 (2012).⁶⁶ Article 5 recognizes that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. States parties must prohibit all discrimination on the basis of disability and guarantee equal and effective legal protection against discrimination. These two articles are fundamentally connected, because equality before the law must include the enjoyment of legal capacity by persons with disabilities on an equal basis with others. In other words,

⁶⁵ Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3, para. 49 and 50

⁶⁶ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), Article 12: Equal recognition before the law, para. 13-14, CRPD/C/GC/1.

denying legal capacity on the basis of disability is discriminatory. Discrimination through denial of legal capacity may be present in different ways, including status-based, functional and outcome-based systems. Denial of decision-making on the basis of disability through any of these systems is discriminatory.⁶⁷

55. A key difference between the reasonable accommodation obligation under article 5 of the Convention and the support that must be provided for persons with disabilities exercising their legal capacity under article 12(3) is that there is no limit on the obligation under Article 12(3). The fact that support to exercise capacity may impose a disproportionate or undue burden does not limit the requirement to provide it.

56. To ensure consistency with Article 5 and Article 12 of the Convention, States parties must:

- a. Reform existing legislation premised on status, functional or outcome based models;
- b. Replace those with models of supported decision making; and
- c. Provide resources to systems of supported decision making to assist persons with disabilities to navigate existing legal systems. Legislating and resourcing such services should be consistent with the key provisions identified in General Comment No. 1.⁶⁸ This includes basing any systems of support on giving effect to the rights, will and preferences of those receiving support rather than what is perceived as being in their best interests.

57. Additional measures may include training and education for the relevant agencies such as legal decision makers, service providers and other stakeholders.

vii. Article 13 – Access to justice

58. The rights and obligations with respect to equality and non-discrimination outlined in article 5 raise particular considerations with respect to article 13, which among others, call for the provision of procedural and age-appropriate accommodations. These accommodations are distinguishable from reasonable accommodation in that procedural accommodations are not subjected to a proportionality test and they have a dual character: one is that of systemic realization in terms of transforming judicial systems to be accessible for and inclusive of persons with disabilities, and another that provides for the immediate provision of accommodation in legal proceedings in order to avoid that the right to access to justice becomes void in a particular situation. An illustration of a procedural accommodation is the recognition of diverse communication methods of persons with disabilities standing in courts and tribunals. Age-appropriate accommodations may consist of disseminating information about available mechanisms to bring complaints forward and access to justice using age-appropriate language.

59. In understanding their own obligations under article 13, States parties should consider the following:

- i. Article 13(1)*

⁶⁷ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), Article 12: Equal recognition before the law, para. 15, CRPD/C/GC/1.

⁶⁸ Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), Article 12: Equal recognition before the law, para. 29, CRPD/C/GC/1.

60. Ensuring effective access to justice means that processes both allow participation and are transparent. State party actions that will enable participation include:
- a. Reasonable avenues to ensure the delivery of information in an understandable and accessible manner;
 - b. Communication and accommodation of will and preference as to the procedure in general (including supports);
 - c. Reasonable accommodation for the person with disabilities to attend or be alternatively present in the process;
 - d. Physical accessibility and accommodation of physical constraints such as fatigue, and an appropriate physical environment;
 - e. A process that doesn't limit engagement, which might include timing;
 - f. Financial assistance.
61. Furthermore, State party actions that will also enable transparency include ensuring that all relevant information is accessible and available and that there is adequate recording and reporting of all relevant claims, cases and court orders.

ii. Article 13(2)

62. In order to realise the right of equality and non-discrimination, awareness-raising amongst agents of the law and rights holders and capacity building of duty bearers to encourage appropriate respect for and fulfilment of rights and obligations is necessary. Appropriate training of those working in the field of administration of justice should include:
- a. The complexities of intersectionality, including the individual's cultural, religious and social identifications and the fact that persons should not be identified purely on the basis of disability;
 - b. The diversity of the disability community and their individual requirements in order to effectively access all aspects of the justice system on an equal basis with others;
 - c. The autonomy of persons with disabilities and the importance of legal capacity for all;
 - d. The centrality of effective and meaningful communications to successful inclusion.

viii. Article 14 – Liberty and security of person, article 15 – freedom from torture or cruel, inhuman or degrading treatment or punishment, article 16 – Freedom from exploitation, violence and abuse and article 17 Protecting the integrity of the person

63. The Committee is particularly concerned about discriminatory deprivation of liberty, discriminatory torture or cruel, inhuman or degrading treatment or punishment, violence against persons with disabilities and discriminatory forced treatment of persons with disabilities in and outside mental health facilities.

64. The institutionalisation of persons with psychosocial disabilities contravenes multiple articles of the Convention. Article 14(1)(a) provides that persons with disabilities must enjoy the right to liberty and security of person on an equal basis with others, while article 14(1)(b) specifies that the existence of a disability shall in no case justify a deprivation of liberty. As noted by the Committee, article 14 imposes an absolute prohibition on the institutionalisation of a person on the grounds of their “actual or perceived impairment”.⁶⁹ The Committee has noted that article 14 “is, in essence, a non-discrimination provision” and deprivations of liberty in violation of article 14 will also violate the right to non-discrimination contained in article 5 of the Convention.⁷⁰

ix. Article 19 – Living independently and being included in the community

65. Article 19 of the Convention reaffirms non-discrimination and recognition of the equal right of persons with disabilities to live independently in the community. In order for the right to live independently and be included in the community to be realized, state parties have to take effective and appropriate measures to facilitate the full enjoyment of the right and the full inclusion and participation of persons with disabilities in the community.

66. Eligibility criteria and procedures for accessing support services need to be defined in a non-discriminatory, objective way, and focus on the requirements of the person rather than the impairment, following a human rights-based approach. Setting up specific services for particular groups of persons with disabilities in accordance with their requirements, such as services for children, students, or employees with disabilities, is not considered as a discriminatory violation of the Convention but rather as fulfillment of the rights under article 19. Persons with disabilities who are facing discrimination in relation to article 19 must have effective and affordable legal remedies at their disposal.⁷¹

67. The duty to protect also includes the prohibition of discriminatory practices, such as the exclusion of individuals or groups from the provision of certain services. States parties should prohibit and prevent third parties from imposing practical or procedural barriers to living independently and being included in the community, such as ensuring that services provided are in line with independent and community living and that persons with disabilities are not denied the possibility to rent or disadvantaged in the housing market. General community services open to the public such as libraries, swimming pools, public parks/spaces, shops, post offices or cinemas must be accessible and responsive to the requirements of persons with disabilities⁷²

68. Decentralization, resulting in disparities between local authorities and unequal chances of independent and community living in a State party must be addressed by State Parties, in particularly those who have federal systems.

⁶⁹ Committee on the Rights of Persons with Disabilities, *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities*, Adopted at the Committee’s 14th session, September 2015, Para 6.

⁷⁰ Committee on the Rights of Persons with Disabilities, *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities*, Adopted at the Committee’s 14th session, September 2015, Paras 4 and 5.

⁷¹ Committee on the Rights of Persons with Disabilities, General comment No. 5, Article 19: Right to independent living, para. ?, CRPD/C/GC/5

⁷² Committee on the Rights of Persons with Disabilities, General comment No. 5, Article 19: Right to independent living, para. ?, CRPD/C/GC/5

69. State parties need to ensure that all measures adopted to implement Article 19 are gender and age sensitive.

x. Article 24 – Education

70. The failure of some States parties to provide students with disabilities with access to mainstream, inclusive education is discriminatory, contrary to the objectives of the Convention, and in direct contravention of articles 5 and 24. Article 5(1) interacts with article 24 of the Convention and requires States parties to remove all types of discriminatory barriers, including legal and social barriers, to inclusive education. Equality cannot be achieved for students with disabilities as long as they continue to be segregated from mainstream education settings and so all students, including students with disabilities, must be welcomed and supported to participate in the classroom setting and school on an equal basis with others.

71. Article 5(2) of the Convention requires that States parties prohibit all forms of discrimination on the basis of disability. Segregated models of education, which exclude students with disabilities from mainstream education on the basis of disability, contravene articles 5(2) and 24(1)(a) of the Convention. Article 5(3) of the Convention requires State parties to take all appropriate steps to ensure reasonable accommodation is provided to promote equality and eliminate discrimination. This right is strengthened for persons with disabilities in article 24(2)(b) which requires States parties to ensure an inclusive education on an equal basis with others in the communities in which they live by providing reasonable accommodation of an individual's requirement in accordance with article 24(2)(c). States parties' obligations extend beyond the school. States parties must ensure school transportation is provided to all students with disabilities where transportation options are limited due to social or economic barriers.

72. The Committee calls on States parties to be guided by its General comment No. 4 (2016) on inclusive education when carrying out measures to fulfill their obligations under articles 5 and 24.

xi. Article 27 – Work and employment

73. To achieve true equality in terms of the Convention and attain full economic and social participation, State parties need to ensure that there is no discrimination on the grounds of disability in connection to work and employment. In order to ensure reasonable accommodation under Article 5(3) and to achieve or accelerate de facto equality in the work environment under Article 5(4), States parties should:

- a. Facilitate the transition away from segregated work environments for persons with disabilities and support their engagement in the open labour market;
- b. Ensure the availability of supported employment and protection of the rights of workers with disabilities and ensure the right to freely chosen employment;
- c. Recognise multiple discrimination of women with disabilities and take measures to ensure gender equality in the workplace;
- d. Ensure proper transition into and out of employment for persons with disabilities in a non-discriminatory manner;
- e. Promote work in inclusive and accessible, safe and healthy working environments in both the public and private sectors;

- f. Ensure reasonable accommodation regarding access to training and education including vocational training and capacity building with special emphasis on trainings on reasonable accommodation for employers and representative organisations of employees;
- g. State parties should work towards universally applicable occupational health and safety measures for persons with disabilities;
- h. Recognise the right of persons with disabilities to access trade and labour unions;
- i. Ensure protection from dismissal for persons with disabilities on the grounds of discrimination.

xii. Article 29 - Participation in political and public life

74. Exclusion of electoral process and other forms of participation in political life are frequent examples of disability-based discrimination. They are often closely linked to denial or restriction of legal capacity. At a minimum, State parties should:

- a. Reform all laws that exclude persons with disabilities from voting;
- b. Ensure that the whole electoral process is accessible to all persons with disabilities;
- c. Provide reasonable accommodation to individual persons with disabilities;
- d. Encourage and support persons with disabilities to be candidates in elections and representatives in parliamentary and other bodies.

xiii. Article 31

75. Data collection and analysis are important measures to monitor anti-discrimination policy and laws. State parties should collect and analyse data, disaggregated by, *inter alia*: sex, age, ethnicity, type of impairment, socioeconomic status, gender identity, sexual orientation, religion, language. The data collected should be broad and cover statistics, as well as narratives and other forms of data. Design, collection and analysis of data should be participatory, i.e., undertaken in close and meaningful consultation with organizations of persons with disabilities. Data should give information on all forms of discrimination.

VIII. Implementation at the national level

76. In the light of the normative content and obligations outlined above, States parties should take the following steps to ensure the full implementation of article 5 of the Convention:

- a. Carry out studies on harmonization of national legislation and practices with the Convention and repeal discriminatory laws and regulations which are inconsistent with the Convention and to change or abolish customs and practices that are discriminatory against persons with disabilities;
- b. Include in anti-discrimination acts, disability as prohibited ground for discrimination and enact a disability-inclusive anti-discrimination law that has a broad personal and material scope and provides effective legal remedies. Such laws can only be effective if they are based on a broad impairment-related definition of disability and include past, present, future, and presumed disabilities as well as persons associated with persons with

disabilities. Only then will all persons affected by disability-based discrimination be legally protected and redress granted effectively. Persons victimized by disability-based discrimination who seek legal redress should not be burdened by proving that they are “disabled enough” in order to benefit from the protection of the law. Anti-discrimination law that is disability-inclusive seeks to outlaw and prevent a discriminatory act rather than target a defined protected group. In this regard, a broad impairment-related definition of disability does not perpetuate the medical model of disability.

- c. Anti-discrimination legislation should be broad in scope, extend to private and public spheres, cover education, employment, goods and services and tackle disability-specific discrimination such as, segregated education, institutionalization, denial or restriction of legal capacity, denial of sign language (interpretation), denial of Braille or alternative modes of communication.
- d. Protection from discrimination for persons with disabilities should have the same standard as for other social groups and should include protection against all forms of discrimination including direct and indirect discrimination, denial of reasonable discrimination, harassment, and intersectional discrimination.
- e. Develop and carry out awareness and capacity building programmes, including training to public authorities to ensure they act in accordance with the Convention. Awareness and capacity building should be developed and implemented in consultation and meaningful participation with representative organization of persons with disabilities. They are crucial components for establishing a culture of tolerance and diversity which is the bedrock for anti-discrimination law and policy.
- f. Develop clear guidelines for accessibility, reasonable accommodation, and universal design duties and take stock of good practices.
- g. Establish accessible and effective redress mechanisms and ensure access to justice, on an equal basis with others, for victims of discrimination based on disability. This encompasses access to effective judicial and/or administrative procedures, including effective complaint mechanisms, and to appropriate and affordable legal aid, of good quality, for all persons with disabilities. States parties should ensure effective and timely interventions in the event of actions or omissions of public and private actors alike which violate the right to equality and non-discrimination of individual persons with disabilities and groups of persons with disabilities, both in relation to civil and political rights as well as economic, social and cultural rights. The recognition of judicial remedies of a collective nature or class actions is key to effectively guarantee access to justice in situation that affect groups of persons with disabilities. An essential component of the enforceability of the right to equality and non-discrimination is the possibility of having such actions, representing public or collective interests, whatever their procedural design.
- h. National anti-discrimination law should protect individuals from adverse treatment or adverse consequences as a reaction to complaints or to proceedings aimed at enforcing compliance with equality provisions. Anti-discrimination legislation should also ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, procedural rules should shift the burden of proof from the claimant to the respondent in cases where there are facts from which it may be presumed that there has been

discrimination. Sanctions for discriminatory actions or omissions should be effective, proportionate and dissuasive, and should provide for appropriate remedies for those whose right to equality and non-discrimination has been breached.

- i. Develop in close consultation with DPOs, national human rights institutions and other relevant stakeholders, such as equality bodies, an equality policy and strategy that is inclusive of all persons with disabilities. Such a policy and strategy needs to tackle all forms of discrimination and provide legal remedies in a disability-sensitive justice system. It should also contain an accessibility plan for the built environment, the public transportation system and information and communications, in line with General comment No. 2 (2014).⁷³
- j. Raise awareness in all parts of society, including among State officials of all branches of government and within the private sector, about the scope, content and practical consequences of the rights to non-discrimination and equality of all persons with disabilities, with a view to addressing the different types of discrimination and to combating the various attitudinal barriers connected therewith, such as stereotyping and stigmatization. In this respect, targeted and effective awareness raising measures are key preconditions for the exercise of rights by all persons with disabilities and should be at the heart of anti-discrimination policy and programmes.
- k. Adopt appropriate measures to regularly and comprehensively monitor inclusive equality. This includes collecting, and analyzing, disaggregated data on the situation of persons with disabilities, and where necessary improving existing data collection systems for adequate monitoring and evaluation. In this regard, the Committee recommends the Washington Group Short Set of Questions, being an appropriate and broadly tested methodology already in place to disaggregate data by disability, to be used by national authorities as the tool to disaggregate data by disability, particularly in household surveys and national censuses.
- l. Ensure that national monitoring mechanisms in alignment with article 33 of the Convention are adequately resourced to being able to address disability-based and multiple/intersectional discrimination against persons with disabilities in their work. In this regard, ensure that the national monitoring mechanisms closely work together with national equality mechanisms. National monitoring mechanism can play a central role to support the appropriate collection of data, data analysis, and development of indicators and research addressing disability-based discrimination.
- m. Adopt specific measures with a view to achieving inclusive equality in particularly for persons with disabilities, who experience intersectional discrimination, such as women with disabilities, children and elderly with disabilities, indigenous persons with disabilities, persons with disabilities from LGBTI communities.
- n. Ensure that all efforts to implement the 2030 Agenda and Sustainable Development Goals mainstream the rights of persons with disabilities.⁷⁴ In particularly in State parties with a high number of refugees and migrants, States parties should ensure that formal, legally

⁷³ Committee on the Rights of Persons with Disabilities, General comment No. 2, Article 9: Accessibility, CRPD/C/GC/2

⁷⁴ General Assembly Resolution of 25 September 2015, Transforming our world: the 2030 Agenda for Sustainable Development, United Nations Doc. A/RES/70/1

defined procedures are put into place to ensure accessibility for persons with disabilities, including women and children with disabilities and persons with psychosocial and intellectual disabilities, in reception and detention centers. States parties must ensure that psychosocial and legal counselling, support and rehabilitation is provided for persons with disabilities, and that protection services are age, gender and disability sensitive. State parties' duties concerning freedom from exploitation, violence and abuse of persons with disabilities must guide response programmes targeting victims of torture and other forms of violence, including sexual-based violence.⁷⁵

77. The responsibility for the meaningful participation of DPOs throughout the implementation of all parts of article 5 rests with the State party.
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⁷⁵ Committee on the Protection of All Migrant Workers and Members of their Families and Committee on the Rights of Disabilities with Disabilities, Joint Statement (2017) "Addressing disabilities in large scale movements of refugees and migrants"