Towards Inclusive Equality:

10 Years Committee on the Rights of Persons with Disabilities



CRPD10YEARS

disability rights are human rights

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I. Introduction

1. October 2018 marks the 10th anniversary of the Committee on the Rights of Persons with Disabilities (the "CRPD Committee"). This Committee composed of 18 elected and independent disability rights experts was established in October 2008 to monitor the implementation of the Convention on the Rights of Persons with Disabilities (the "CRPD") and its Optional Protocol both adopted on 13 December 2006 and in force since 3 May 2008.

2. The CRPD is the most swiftly ratified international human rights treaty with, as of May 2018, 161 signatories and 177 ratifications/accessions. Its Committee holds two regular sessions per year in Geneva during which it considers and reviews periodical reports of States Parties, produces guidelines and general comments, and considers individual communications and inquiries related to violations of provisions of the Convention. Between February 2009 and March 2018, it has held nineteen sessions and reviewed the implementations of the CRPD by sixty-eight States Parties. Once a year in New York, the Conference of States Parties to the Convention convenes, where States who ratified the Convention meet to consider matters related to the implementation of the Convention. It is the most vivid and active Conference of States Parties with more than 800 participants each year taking up many substantive issues in relation to the rights enshrined in the CRPD. Until 2017 the Chair of the CRPD Committee has participated in the Conference of States Parties.

3. The work of the Committee is thus dense and diverse. This report gives an overview of the last ten years of work of the Committee and how the provisions of the CRPD must be understood.

II. Activities carried out by the CRPD Committee under the Convention

A. General Comments and guidelines

4. In order to give guidance to States Parties on how specific provisions of the Convention of the Rights of Persons with Disabilities should be interpreted, the Committee on the Rights of Persons with Disabilities has adopted documents called "general comments." The first general comments were adopted in April 2014, at the eleventh session of the Committee. As of July 2018, six general comments have been adopted. These general comments focus on the following provisions of the Convention: article 5 on equality and non-discrimination (CRPD/C/GC/6), article 6 on women and girls with disabilities (CRPD/C/GC/3), article 9 on accessibility (CRPD/C/GC/2), article 12 on equal recognition before the law (CRPD/C/GC/1), article 19 on living independently and being included in the community, (CRPD/C/GC/5) and article 24 on the right to inclusive education (CRPD/C/GC/4). A draft general comment on articles 4 (3) and 33 (3) of the

Convention was endorsed in April 2018, at the nineteenth session of Committee, and should be adopted in September 2018.

5. In parallel, the Committee adopted documents called “guidelines”, which are also useful tools for States Parties, persons with disabilities and their representative organizations to understand the Convention and their own engagements in the work of the Committee. As of July 2018 the following seven guidelines are available: reporting guidelines (CRPD/C/2/3; A/66/55, annex V) and revised guidelines of periodic reporting (CRPD/C/3), guidelines on communication (CRPD/C/5/3/Rev.1), guidelines on the participation of disabled persons’ organizations and civil society organizations in the work of the Committee (CRPD/C/11/2, annex II), guidelines on follow-up to concluding observations (CRPD/C/12/2, annex II), guidelines on article 14 of the Convention on the right to liberty and security of persons with disabilities (A/7255, annex), and guidelines on independent monitoring frameworks (CRPD/C/1/Rev.1, annex).

B. Consideration of reports submitted by States Parties

6. One of the major and most consuming tasks of the Committee is to monitor the implementation of the Convention by States that ratified it. To do so, the Committee examines reports submitted by States Parties, as required by article 35 of the CRPD, and adopts concluding observations that include recommendations for better implementation of the Convention. As of 9 March 2018, date on which the nineteenth session of the CRPD Committee closed, the Committee had considered sixty-eight reports of States Parties, including one report of a regional integration organization, the European Union.[1] It produced an equal amount of lists of issues containing questions on substantive issues arising from report submitted by States Parties, and concluding observations containing suggestions and general recommendations on the report.[2]

7. The first review of all States Parties by the Committee, called “first cycle of review,” is still on going. It is due to the growing number of States who ratified the Convention as well as late submission of reports by some States Parties. The periodic review following the initial review of States Parties may follow a “simplified reporting procedure” established by the Committee in 2013. In April 2017, at its seventeenth session, the Committee adopted the first list of issues prior to reporting in accordance to this procedure. During the periodic reporting, States report on the implementation of the recommendations issued in the Committee’s concluding observations and new development that have occurred. Further information can be found in the Committee’s 2009 reporting guidelines

[1] These reports and the concluding observations adopted by the Committee are available on the website of the Committee at http://www.ohchr.org/EN/HRBodies/CRPD/.

[2] For more information see Rule No. 5 and Rule No. 42 (2) of the Rules of Procedure of the Committee on the Rights of Persons with Disabilities (CRPD/C/4/2), and paragraphs 5 and 13-16 of the Working methods of the Committee on the Rights of Persons with Disabilities (CRPD/C/5/4).

(CRPD/C/2/3; A/66/55, annex V) and 2016 revised guidelines of periodic reporting (CRPD/C/3).

C. Follow up to concluding observations

8. In its concluding observations, the Committee identifies specific topics of concern on which States Parties are requested to focus. To ensure adequate implementation, it may request the reviewed States Parties to provide written information on the implementation of these recommendations as part of a follow-up procedure. This procedure is described in paragraphs 19-22 of the Working methods of the Committee (CRPD/C/5/4) and in the 2014 guidelines on the procedure for follow-up to concluding observations (CRPD/C/12/2, Annex II). These guidelines address the role of the country rapporteur vis-à-vis the rapporteur on follow-up, the criteria for identifying recommendations for follow-up and the criteria for assessing the replies of States Parties. The Committee may consider the replies "satisfactory", "partially satisfactory" or "unsatisfactory".

9. The Committee has only dealt with follow-up activities on two occasions: in a private meeting in April 2015 at its thirteenth session, and in February 2018 at its nineteenth session.[3] In the report of the nineteenth session, the Committee noted that in the future, it foresees that the time allocated to consider follow-up activities to concluding observations of States Parties will continue to be scarce, and reports on follow-up will be considered only once a year or every two years.

III. Activities carried out by the CRPD Committee under the Optional Protocol

A. Views on communications

10. Under the Optional Protocol of the CRPD, the Committee may receive and consider communications from or on behalf of individuals or groups of individuals who are under the jurisdiction of States that ratified the Convention and its Optional Protocol. [4] As of July 2018, the Committee had considered twenty-four communications under Article 5 of the Optional Protocol after submission by individuals or groups of persons alleging that a State Party violated their rights under the Convention. Among these twenty-four communications, two were discontinued and eights were deemed inadmissible. Another twenty-two cases are still waiting to be examined by the Committee.[5]

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[3] See Report on Follow-up to Concluding Observations (CRPD/C/19/R.2).

[4] See Optional Protocol to the Convention on the Rights of Persons with Disabilities.

[5] The State Party, communication number, subjects and articles of the Convention invoked are available on the website of the Committee at: http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Tablependingcases.aspx.

11. The majority of communications examined by the Committee concerned issues of discrimination (seven communications),[6] accessibility (six communications)[7], access to justice (five communications)[8] and participation in political and public life (five communications)[9]. Other violations concerned the rights to equal recognition before the law, liberty and security, prohibition of torture/cruel, inhuman or degrading treatment or punishment, integrity of the person, living independently and being included in the community, freedom of expression and opinion and access to information, health, habilitation and rehabilitation, and work and employment.

B. Follow-up procedure for implementation of the views

12. In the same way the Committee follows-up concluding observations, it adopted a procedure to follow-up the implementation of its views on individual communications. Between September 2013 and March 2018, it adopted nine interim reports on follow-up to views on individual communications[10] in which it established the measures to be taken by States Parties to give effect to its views. The reports describe measures taken by the State and include authors' comments and recommendations from the Special Rapporteur for follow-up on views. It uses an assessment system to determine the effectiveness of the measures taken by the States concerned, from satisfactory (A), partially satisfactory (B1, B2), not satisfactory (C1, C2), no cooperation with the Committee (D1, D2), to contrary to the recommendations of the Committee (E).

13. As of the end of its nineteenth session, the Committee had followed-up the implementation of nine views on individual communications. It discontinued the follow-up procedure of two views on individual communications with in one case satisfactory measures taken by the State (Communication 08.2012) and in the other unsatisfactory measures (Communication 03.2011). In another case, the Committee discontinued the follow-up procedure regarding individual recommendation but not on implementation of general recommendations (Communication 02.2010).

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[6] See *H.M vs. Sweden* (CRPD/C/7/D/3/2011), *Jungelin* v. *Sweden* (CRPD/C/12/D/5/2011), *F. v. Austria* (CRPD/C/14/D/21/2014), *Beasley v. Australia* (CRPD/C/15/D/11/2013), *Lockrey v. Australia* (CRPD/C/15/D/13/2013), *Noble v. Australia* (CRPD/C/16/D/7/2012), *X. v. Tanzania* (CRPD/C/18/D/22/2014).

[7] See *Nyusti and Takács v. Hungary* (CRPD/C/9/D/1/2010), *X v. Argentina* (CRPD/C/11/D/8/2012), *F. v. Austria* (CRPD/C/14/D/21/2014), *Beasley v. Australia* (CRPD/C/15/D/11/2013), *Lockrey v. Australia* (CRPD/C/15/D/13/2013), *Bacher v. Austria* (CRPD/C/19/D/26/2014).

[8] See *A.M. v. Australia* (CRPD/C/13/D/12/2013), *Beasley v. Australia* (CRPD/C/15/D/11/2013), *Lockrey v. Australia* (CRPD/C/15/D/13/2013), *Noble v. Australia* (CRPD/C/16/D/7/2012), *X. v. Tanzania* (CRPD/C/18/D/22/2014), Makarov v. Lithuania (CRPD/C/18/D/30/2015).

[9] See *Bujdosó et al. v. Hungary* (CRPD/C/10/D/4/2011), *A.M. v. Australia* (CRPD/C/13/D/12/2013), *Beasley v. Australia* (CRPD/C/15/D/11/2013), *Lockrey v. Australia* (CRPD/C/15/D/13/2013), *Fiona Given v. Australia* (CRPD/C/19/D/19/2014).

[10] See the following reports: CRPD/C/10/3, CRPD/C/11/3, CRPD/C/12/3, CRPD/C/13/4, CRPD/C/14/3, CRPD/C/15/3, CRPD/C/16/3, CRPD/C/17/3, CRPD/C/19/3.

C. Inquiry procedure

14. Under the Optional Protocol, the Committee may also conduct inquiries with respect to States Parties that have ratified the Optional Protocol, if it is provided with "reliable information indicating that the rights contained in the Convention it monitors are being systematically violated by the State party."[11]

15. As of July 2018, the Committee had examined two inquiries. In September 2016, at is sixteenth session, the Committee adopted a report on the inquiry against the United-Kingdom (CRPD/C/15/4) on alleged violation of articles 19, 27 and 28 of the CRPD. It concerned the alleged negative impact of social welfare reforms on the rights of persons with disabilities to live independently and be included in the society, to an adequate standard of living and social protection, and to work and employment. In March 2018, at its nineteenth session, it adopted a report on the inquiry against Spain (CRPD/C/18/R.2) on alleged violation of article 24 of the Convention regarding the alleged structural exclusion and segregation of persons with disabilities from the mainstream education system on the basis of disability. In both reports the Committee found violations of the Convention with both States Parties.

IV. Overviews of the Committee's opinions, recommendations and views

A. Understanding the rights of persons with disabilities

i. New understanding of disability: the human rights model of disability

16. The Convention on the Rights of Persons with Disabilities reflects the shift of understanding of disability from medical and charity models of disability that used to focus on personal impairments as the cause of social exclusion and persons with disabilities as objects to be "protected", to the human rights model of disability. The preamble[12] and the definition of persons with disabilities in article 1 of the Convention[13] reflect this new understanding according to which disability is a social construct and that it is the barriers within society, rather than personal impairments, that exclude persons with disabilities.

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[11] See article 6, paragraph 1 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

[12] The preamble (e) of the Convention on the Rights of Persons with Disabilities recognizes that disability is an evolving concept and that disability "results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others."

[13] In Article 1 CRPD persons with disabilities are defined as persons with disabilities as "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

17. The Committee on the Rights of Persons with Disabilities endorsed and stressed the importance of this new understanding. In its first statement, the Committee highlighted the importance of immediate transition from the medical model to the human rights model of disability.[14] At several occasions, the Committee noted that the failure to understand and implement the human rights model of disability is the major cause of exclusion of persons with disabilities in society. For instance, this is reflected in the difficulties States Parties have to ensure access to inclusive education for persons with disabilities.[15] In General Comment No. 4 (2016) on the right to inclusive education (CRPD/C/GC/4), the Committee stressed that States Parties should adopt the human rights model of disability,[16] introduce or implement of legislation based on the human rights model of disability,[17] and organize trainings based on the human rights model of disability.[18]

18. Over time the Committee brought specific clarification on how States Parties must understand and implement the human rights model of disability. In General Comment No. 5 on living independently and being included in the community (CRPD/C/GC/5), it stressed that the human rights model of disability "does not allow the exclusion of persons with disabilities [from society] for any reason, including the kind and amount of support services required."[19] In General Comment No. 6 on equality and non-discrimination (CRPD/C/GC/6), the Committee reiterates its position from its 2014 views on communication *S.C. v. Brazil* (CRPD/C/12/D/10/2013) according to which the human rights based model of disability requires taking into account the diversity of persons with disabilities as "disability is one of several layers of identity."[20]

19. The human rights model of disability is consistently mentioned in the concluding observations of the Committee under articles 1-4 of the Convention, and more infrequently under article 8 on awareness raising, article 14 on liberty and security of the person (in particular in relation to deinstitutionalization), article 25 on health and article 28 on adequate standard of living and social protection.[21]

ii. Application of a human rights based approach to disability

20. In parallel to the human rights model of disability, the Committee applies a human rights based approach to disability. While the human rights model focuses on the concept of disability, the human rights based approach focuses on persons with disabilities, acknowledging them as full rights-holders.[22] Although there has

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[14] A/66/55, Annex IX, paragraph 3.
[15] See General Comment No. 4 (CRPD/C/GC/4), paragraph 4 (a).
[16] General Comment No. 4, paragraph 44.
[17] General Comment No. 4, paragraph 62.
[18] General Comment No. 4, paragraph 36.
[19] General Comment No. 5 (CRPD/C/GC/5), paragraph 60.
[20] General Comment No. 6 (CRPD/C/GC/6), paragraph 9.
[21] Other articles under which the Committee mentioned the human rights model of disability in one or a couple of concluding observations are articles 7, 12, 15, 19, 24, 27, 31 and 32.
[22] General Comment No. 5, paragraph 2.

been some confusion between these two concepts, as they both impacts each other (i.e. because of the failure to adopt a human rights model of disability, persons with disabilities are not recognized as full rights-holders), the Committee continuously stressed the importance of applying a human rights approach to disability.

21. The Committee stressed that States Parties must apply the provisions of the Convention in line with the human rights based approach. In General Comment No. 3 on women and girls with disabilities (CRPD/C/GC/3), the Committee recalled the duty of States Parties to promote, protect and fulfill the human rights of women and girls with disabilities from a human rights-based approach and to recognize them as distinct rights holders.[23] It entails for instance promoting the participation of women with disabilities in public decision-making.[24] In both General Comments No. 5 and No. 6, the Committee refers to the application of the human rights based approach when States Parties define eligibility criteria and procedures for accessing support services in a non-discriminatory way.[25]

22. In the concluding observations of the Committee, the human rights based approach was mainly mentioned under articles 1-4, article 5 on equality and non-discrimination, article 8 on awareness-raising and article 31 on statistics and data collection. It is also mentioned more sporadically under articles 13 on access to justice, article 15 on freedom of torture or cruel, inhuman or degrading treatment or punishment, article 19 on living independently and being included in the community, article 22 on respect for privacy, article 25 on health and article 29 on participation in political and public life. The 2016 revised guidelines on periodic reporting refer to the human rights based approach under articles 1, 8 and 19, and regarding the implementation of the SDGs (para. 1 (d)).

B. Principal obligations of States Parties

i. General obligations (article 4)

23. Article 4 of the CRPD addresses the general obligations of States Parties under the Convention. These obligations can be divided in a duty to respect (i.e. modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities and refrain from engaging in act or practice inconsistent with the Convention), a duty to protect (i.e. take appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise) and a duty to fulfill (e.g. adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention, provide accessible information, promote training etc.).

[23] General Comment No. 3, paragraph 7.
[24] General Comment No. 3, paragraph 23.
[25] General Comment No. 5, paragraphs 61 and 71; General Comment No. 6, paragraph 59.

24. The Committee has made various recommendations in relation to the general obligations of States Parties in its concluding observations. While in some cases recommendations might be of a general nature, for instance to "initiate a comprehensive cross-cutting review of its legislation and policies to bring them into line with the Convention,"[26] in many other cases the Committee suggests precise measures such as the abolishment or amendment of particular laws.[27]

ii. Progressive realisation of economic, social and cultural rights (article 4.2)

25. Under Article 4 paragraph 2 of the Convention, States Parties must take measures to the maximum of their available resources to achieve progressively the full realization of economic, social and cultural rights (such as the right to work, right to education, right to take part in cultural life, etc.) Over time the Committee explained how "progressive realisation" should be understood. In its 2009 guidelines on periodic reporting, the Committee requested States Parties to mention in their initial report which rights they undertake to implement progressively, and which they commit to implement immediately. In its very first declaration, it stressed that States Parties should refrain from letting economic and financial instabilities affect the full enjoyment of the rights of persons with disabilities.[28]

26. In General Comment No. 4 on inclusive education, the Committee specified that progressive realization means that States Parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of the rights in question. It must be read in conjunction with the overall objective of the Convention to establish clear obligations for States Parties in respect of the full realization of the rights in question.[29] Moreover progressive realization does not prejudice obligations that are immediately applicable, noting that States Parties have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each aspect of the right in question.[30]

27. In addition, the Committee later indicated that the duty of progressive realization entails a presumption against retrogressive measures, meaning measures that lower the level of existing rights.[31] When retrogressive measures are adopted, States Parties should demonstrate that they have been introduced after careful consideration of all alternatives and that they are duly justified in the context of the use of their maximum available resources.[32] The Committee also clarified that progressive realization does not apply to the provisions of article 12

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[26] See for instance concluding observations on Haiti (CRPD/C/HTI/CO/1), paragraph 5.
[27] See for instance concluding observations on Oman (CRPD/C/OMN/CO/1), paragraph 10.
[28] See first declaration by the Committee "Committee on the Rights of Persons with Disabilities: Looking forward" of 27 February 2009 (A/66/55, Annex IX), paragraph 6.
[29] General Comment No. 4, paragraph 40.
[30] General Comment No. 4, paragraph 41.
[31] General Comment No. 5, paragraph 44.
[32] See Report on the Inquiry concerning the United Kingdom (CRPD/C/15/4).

on equal recognition before the law[33] and to the States Parties' duty to provide reasonable accommodation.[34]

iii. National implementation and monitoring (article 33)

28. In order to ensure the full and adequate implementation of the Convention, article 33 requires States Parties to designate focal points within government for matters related to the implementation of the Convention and to establish coordination mechanism to facilitate action in different sectors and at different levels (article 33(1)). Moreover, they have to establish a framework, including one or more independent mechanisms, to promote, protect and monitor the implementation of the Convention (article 33(2)), with the full involvement and participation of civil society, in particular persons with disabilities and their representatives organizations (article 33(3)).

29. The Committee provided information on how to monitor specific articles of the Convention, such as article 9 on accessibility,[35] article 19 on living independently and being included in society,[36] and article 24 on inclusive education.[37] In 2016, the Committee published guidelines on independent monitoring framework and their participation in the work of the Committee (CRPD/C/1/Rev.1, Annex). Because monitoring frameworks must be fully independent, national human rights institutions have a crucial role in practice in the implementation and monitoring of the Convention. [38] The Committee held meeting with national human rights institutions and national independent monitoring mechanisms,[39] and they have been encouraged to engage in the work of the Committee including in all stages of the reporting procedure, days of general discussion and general comments, communication and inquiry procedures under the Optional Protocol, and capacity-building activities.[40] As of the nineteenth session of the Committee an annual interactive debate was undertaken in collaboration with GANHRI, the General Alliance of National Human Rights Institutions.

iv. Awareness-raising (article 8)

30. The Committee noted that awareness-raising is one of the preconditions for the effective implementation of the Convention.[41] As such, it was addressed by the Committee countless times over the last ten years. In practice, it entails a variety of obligations for States Parties, as it relates to raising awareness not only of

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[33] General Comment No. 1 (CRPD/C/GC/1), paragraph 30.
[34] Concluding observations on Spain (CRPD/C/ESP/CO/1), paragraph 44 in relation to inclusive education; General Comment No. 4, paragraph 31; General Comment No. 5, paragraph 46.
[35] General Comment No. 2, paragraph 48.
[36] See "Joint statement CRPD-GANHRI on monitoring article 19 at the national level", of March 2018.
[37] General Comment No. 4, paragraph 74.
[38] See Guidelines on independent monitoring frameworks, paragraph 5.
[39] The Committee held its first ever meeting with NHRIs and NMMs in September 2014, at its twelfth session. See: Outcome of the meeting between the Committee and NHRIS (CRPD/C/12/2, annex V).
[40] See Guidelines on independent monitoring frameworks.
[41] See General Comment No. 2, paragraph 35.

persons with disabilities about their rights under the Convention, but also of professional and the general public to prevent and eliminate discrimination, and more generally to combat stereotypes, prejudices and harmful practices, including deep-rooted cultural beliefs, negative attitudes, bullying, cyber-bullying, hate crimes and discriminatory language.[42]

31. Awareness-raising is mentioned in all general comments adopted by the Committee. For instance, the Committee stressed that the insufficient or lack of awareness is one of the causes of lack of accessibility[43] and of structural or systemic discrimination[44] linked to stereotypes, misconceptions, prejudices and harmful practices relating to persons with disabilities.[45] Training of all relevant stakeholders on the rights of persons with disabilities and various aspects of the Convention, such as accessibility[46] or reasonable accommodation, is thus essential. The Committee repeatedly indicated that awareness-raising activities should be carried out in cooperation with persons with disabilities and their representative organizations.[47] The Committee also encouraged the media to portray persons with disabilities in a manner consistent with the purpose of the Convention and to modify harmful views of persons with disabilities.[48]

v. Data collection (article 31)

32. The collection and analysis of disaggregated data and statistics by States Parties is essential for the effective implementation and monitoring of the Convention.[49] The Committee requested States Parties to collect disaggregated data on various issues and under different articles of the Convention. In its concluding observations, the Committee recommended States Parties to collect data under articles 1-4, 5, 6, 7, 11, 12, 13, 14, 16, 17, 19, 23, 24, 25, 27, 28, 29, 31 and 32 of the Convention.

33. The Committee noted that data might be collected using surveys and "other forms of analysis",[50] and should be broad and cover statistics, narratives and other forms of data, such as indicators.[51] Data should be disaggregated systematically on the basis of disability and of intersectional categories,[52] including age, sex and other relevant factors.[53] In practice the Committee included race, ethnicity, religion, migratory status, geographic location, socio-economic status, employment status,

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[42] See Guidelines on periodic reporting (CRPD/C/3), paragraph 10.
[43] General Comment No. 2, paragraph 19.
[44] General Comment No. 3, paragraph 17(e); General Comment No. 6, paragraphs 39.
[45] General Comment No. 4, paragraph 48; General Comment No. 5, paragraph 77.
[46] General Comment No. 2, paragraphs 19 and 35.
[47] General Comment No. 2, paragraph 35; General Comment No. 4, paragraph 48; General Comment No. 5, paragraph 77; General Comment No. 6, paragraph 73(f).
[48] General Comment No. 6, paragraphs 39.
[49] General Comment No. 6, paragraph 39; General Comment No. 3, paragraph 62; General Comment No. 4, paragraph 4(d).
[50] See for instance General Comment No. 5, paragraph 68.
[51] General Comment No. 5, paragraph 71.
[52] General Comment No. 5, paragraph 71.
[53] See Guidelines on periodic reporting (CRPD/C/3), paragraph 33 (e).

income, place of residence, indigenous communities and sexual orientation. In General Comment No. 6, the Committee noted that differentiation should be made according to "impairment, gender, sex, gender identity, ethnicity, religion, age or other layers of identity".[54] Representative organizations of persons with disabilities should be involved in the design, collection and analysis[55] and dissemination of data.[56] In 2017,[57] the Committee began recommending States Parties to use the set of questions and tools developed by the Washington Group on Disability Statistics for the collection of comparable disability statistics.[58]

vi. International cooperation (article 32)

34. Under article 32 of the CRPD "States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the […] Convention." International cooperation should be used as a tool to advance the rights of persons with disabilities and implement the Convention. In General Comment No. 2 on accessibility, the Committee indicated that international cooperation might be used as a tool in the promotion of accessibility and universal design.[59] For instance, international cooperation can be used to develop accessibility standards in collaboration with other States Parties, international organizations and agencies.[60] It is also a way to exchange information and "know-how", and to share good practices.[61] The Committee mentioned the same points in General Comment No. 4 on inclusive education[62] while General Comment No. 6 on equality and non-discrimination stresses that all international cooperation efforts must be inclusive of and accessible to persons with disabilities and be guided by the Convention.[63]

35. The Committee stressed that international cooperation measures developed by States Parties must fully comply with the Convention. Public funds cannot be used to perpetuate inequalities.[64] States Parties must ensure that investments and projects undertaken as part of international cooperation do not contribute to the perpetuation of barriers.[65] For instance, in case of international cooperation following situations of disasters, States must ensure that investments are not used to rebuild barriers,[66] such as institutional settings for persons with disabilities.[67]

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[54] General Comment No. 6, paragraph 34.
[55] General Comment No. 5, paragraph 71.
[56] See Guidelines on periodic reporting (CRPD/C/3), paragraph 33(c).
[57] See for instance concluding observations on Jordan (CRPD/C/JOR/CO/1), paragraph 60.
[58] See concluding observations on the United Kingdom (CRPD/C/GBR/CO/1), paragraph 65.
[59] General Comment No. 2, paragraphs 27 and 47.
[60] General Comment No. 2, paragraph 37.
[61] General Comment No. 2, paragraph 47.
[62] General Comment No. 4, paragraph 43.
[63] General Comment No. 6, paragraph 72.
[64] General Comment No. 2, paragraph 47.
[65] General Comment No. 5, paragraph 65.
[66] General Comment No. 5, paragraph 65.
[67] General Comment No. 5, paragraph 96.

C. Role of persons with disabilities and their representative organizations

i. Participation of persons with disabilities in implementation and monitoring of the Convention at national level (articles 4.3 and 33.3)

36. Since its establishment, the Committee repeatedly stressed the fundamental role of persons with disabilities in the implementation and monitoring of the Convention, and advancement of the rights of persons with disabilities.[68] Referring to article 4(3) on implementation of the Convention and article 33(3) on its monitoring, the Committee clarified States Parties' duty to systematically consult and involve organizations of persons with disabilities in all decision-making processes on issues concerning them and in the monitoring of the Convention. By organizations of persons with disabilities, the Committee understands organizations comprising a majority of persons with disabilities (at least half their membership) and governed, led and directed by persons with disabilities.[69]

37. In March 2018, the Committee started drafting a General Comment No. 7 on the participation of persons with disabilities in the implementation and monitoring of the Convention that is scheduled to be adopted in September 2018, at the twentieth session of the Committee.

Diverse range of persons with disabilities

38. The Committee requests States Parties to ensure that diverse ranges of persons with disabilities are involved in the implementation and monitoring of the Convention.[70] In General Comment No. 3 the Committee noted that States must particularly promote the participation of organizations of women with disabilities, for instance "beyond disability-specific consultative bodies and mechanisms",[71] as they have been historically under-represented in the disability movement and encountered many barriers to participation in public decision-making.

39. The Committee has increased its references to diverse groups of persons with disability. In General Comment No. 5 the Committee noted that decision-makers at all levels must actively involve and consult the full range of persons with disabilities including organizations of women with disabilities, older persons with disabilities, children with disabilities, persons with psychosocial disabilities and persons with intellectual disabilities.[72] In General Comments No. 6 it referred to a wider variety of organizations of persons with disabilities, under articles 4(3) and 33(3), including children, autistic persons, persons with a genetic or neurological

[68] The first statement of the Committee (A/66/55, Annex IX) refers twice to the importance of involving organizations of persons with disabilities, see preamble and paragraph 4.
[69] Guidelines on the participation of disabled persons' organizations and civil society organizations in the work of the Committee (CRPD/C/11/2, annex II), paragraph 3.
[70] General Comment No. 5, paragraph 56; see also Guidelines on periodic reporting (CRPD/C/3), paragraph 7, which require States Parties to report on the degree of involvement and the diversity of persons with disability involved.
[71] General Comment No. 3, paragraph 23.
[72] General Comment No. 5, paragraph 70.

condition, persons with rare and chronic diseases, persons with albinism, lesbian, gay, bisexual, transgender or intersex persons, indigenous peoples, rural communities, older persons, women, victims of armed conflicts and persons with an ethnic minority or migrant background.[73]

All matters concerning them

40. Active involvement of persons with disabilities is essential for the implementation of the Convention. The Committee extensively mentioned participation of organizations of persons with disabilities in its general comments. Besides the fact that States Parties should systematically involve and consult persons with disabilities in the design, implementation and monitoring of all programs that have an impact on their lives, the Committee explicitly states that they must be consulted and involved in development and implementation of legislation, policies and other decision-making related to specific areas.[74]

41. In its general comments and concluding observations the Committee indicated numerous matters in which organizations of persons with disabilities should be involved. These include the development, implementation and monitoring of accessibility standards[75] at national and international level;[76] equality policy and strategy; [77] affirmative action measures; [78] deinstitutionalization strategies, [79] including in the development of transitional plans;[80] support services and investing resources in support services within the community; [81] legislation and policies related to all the stages of emergencies; [82] awareness-raising programs and activities; [83] capacity building programs; [84] collection and analysis of data; [85] monitoring of inclusive education;[86] political participation process at the national, regional and international levels.[87]

Adequate funding and capacity building

42. More recently the Committee noted that States Parties should ensure the impartiality, autonomy and sustainable funding of organizations of persons with disabilities.[88] The funding should be adequate in order to enable them to fulfill their

[73] General Comment No. 6, paragraph 33.
[74] See for instance General Comment No.1, paragraph 50 (c).
[75] General Comment No. 2, paragraph 25.
[76] General Comment No. 2, paragraph 47.
[77] General Comment No. 6, paragraph 73(j).
[78] General Comment No. 6, paragraph 29.
[79] General Comment No. 5, paragraph 97.
[80] General Comment No. 5, paragraph 42.
[81] General Comment No. 5, paragraph 56.
[82] General Comment No. 6, paragraph 46.
[83] General Comment No. 2, paragraph 30; General Comment No. 5, paragraph 77.
[84] General Comment No. 6, paragraph 73(f).
[85] General Comment No. 6, paragraph 71.
[86] General Comment No. 4, paragraph 12.
[87] General Comment No. 6, paragraph 70(d).
[88] Concluding observations on Slovenia (CRPD/C/SVN/CO/1), paragraph 5(c).

role under article 4(3)[89] and article 33(3) of the Convention[90] and the funding framework should not impact their independence.[91] In addition, States Parties should provide adequate funding for activities, projects and programs that are designed and implemented by representative organizations of persons with disabilities for the enhancement of their rights.[92] In few instances the Committee specifically mentioned organizations to which States Parties should provide funding.[93] It also recently started to recommend States Parties to support capacity building of organizations of persons with disabilities.[94]

New General Comment on the participation of persons with disabilities and their representative organizations

At the nineteenth session, the Committee started the process of preparing a General Comment on articles 4(3) and 33(3) of the Convention which is expected to be adopted as General Comment No. 7.

ii. Participation of persons with disabilities in the work of the Committee

43. In 2014, the Committee published guidelines on the participation of disabled persons' organizations and civil society organizations in the work of the Committee (CRPD/C/11/2, annex II). These guidelines provide detailed information on how organizations of persons with disabilities and civil society organizations can participate in the reporting procedure for the review of State Parties' reports, in drafting of general comments, in days of general discussion, and in the procedures concerning communications and inquiries.

44. The Committee condemned all acts of intimidation and reprisals towards individuals and organizations for their contribution to the work of the Committee. It appointed, from among its members, a focal point on reprisals with the mandate to follow-up and provide advice on situations involving such cases. In order to ensure the safety of human rights defenders, organizations may request their written submissions or participation in briefings to be confidential.[95]

D. Main crosscutting issues

[89] Concluding observations on Hungary (CRPD/C/HUN/CO/1), paragraph 14.
[90] Concluding observations on Nepal (CRPD/C/NPL/CO/1), paragraph 50; Concluding observations on the Federation of Russia (CRPD/C/RUS/CO/1), paragraph 67; Concluding observations on the Republic of Moldova (CRPD/C/MDA/CO/1), paragraph 59.
[91] Concluding observations on the Federation of Russia (CRPD/C/RUS/CO/1), paragraph 12.
[92] Concluding observations on Latvia (CRPD/C/LVA/CO/1), paragraph 7(e).
[93] Concluding observations on Slovenia (CRPD/C/SVN/CO/1), paragraph 5(c); Concluding observations on New Zealand (CRPD/C/NZL/CO/1), paragraphs 71-72.
[94] Concluding observations on Cyprus (CRPD/C/CYP/CO/1), paragraph 8; Concluding observations on Bosnia and Herzegovina (CRPD/C/BIH/CO/1), paragraph 6; Concluding observations on Turkmenistan (CRPD/C/TKM/CO/1), paragraph 12.
[95] Guidelines on the participation of disabled persons' organizations and civil society organizations in the work of the Committee, paragraph 33.

i. Equality, non-discrimination and reasonable accommodation (article 5)

Inclusive equality and non-discrimination

45. Equality and non-discrimination are the basis and one of the main principles of the Convention.[96] According to the Committee, equality and non-discrimination constitute principles and rights, cornerstone of international protection guaranteed by the Convention and "interpretative tool for all other principles and rights enshrined" therein.[97] They constitute obligations of immediate application in both the public and the private sectors.[98]

46. In March 2018, the Committee adopted General Comment No. 6 on equality and non-discrimination that is now the main interpretative document on article 5 of the Convention and that advances a concept of inclusive equality which "embraces a substantive model of equality and extends and elaborates on the content of equality in: (a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity."[99]

Prohibition of "all forms discrimination on the basis of disability"

47. Discrimination on the basis of disability is defined in article 2 of the Convention, which explicitly refers to "all forms of discrimination, including denial of reasonable accommodation." The Committee elaborated on the various forms of discrimination on the basis of disability in its General Comment No. 3 on women with disabilities,[100] and General Comment No. 6 on equality and non-discrimination.[101] As such are prohibited as forms of discrimination: direct discrimination, indirect discrimination, discrimination by association, [102] denial of reasonable accommodation, [103] structural or systemic discrimination, [104] harassment, [105] multiple discrimination and intersectional discrimination.[106]

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[96] Equality and equal treatment are mentioned in the preamble of the Convention and under articles 1, 3, 5, 6, 7, 9, 10, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29 and 30. Non-discrimination and reasonable accommodation are mentioned in the preamble of the Convention and under articles 2, 3, 4, 5, 6, 14, 23, 24, 25, 27, 28 and 29.
[97] General Comment No. 6, paragraph 12.
[98] General Comment No. 6, paragraph 12.
[99] General Comment No. 6, paragraph 11.
[100] See General Comment No. 3, paragraph 17.
[101] General Comment No. 6, paragraph 18.
[102] General Comment No. 3, paragraph 17(c).
[103] General Comment No. 6, paragraph 18(c).
[104] General Comment No. 3, paragraph 17(e).
[105] General Comment No. 6, paragraph 18(d).
[106] General Comment No. 6, paragraph 19.

48. As of July 2018, among the twenty four individual communications examined by the Committee, seven constituted discrimination based on disability. The violations of article 5 concerned failures to provide reasonable accommodation,[107] denial of access to information and communication technologies and facilities and services open to the public on an equal basis with others,[108] arbitrary detention based on disability,[109] and failure to take all necessary measures to prevent, efficiently investigate and punish acts of violence.[110]

Reasonable accommodation

49. The Committee made important clarifications regarding the duty to provide reasonable accommodation. Reasonable accommodation is defined in article 2 of the CRPD[111] and mentioned under articles 5, 14, 24 and 27 of the Convention. The Committee also mentioned sporadically reasonable accommodation in its concluding observations under articles 6, 8, 9, 11, 12, 15, 16, 18, 19, 21, 25, 28 and 29.

50. The Committee stressed the distinction between reasonable accommodation and accessibility,[112] procedural accommodation,[113] "specific measures", including "affirmative action measures,"[114] and support measures, such as personal assistants,[115] or support to exercise legal capacity.[116] Contrary to the former measures, reasonable accommodation is an *ex nunc* (future) duty applicable directly to individuals and bound by a possible excessive or unjustifiable burden on the accommodating party.[117]

51. In General Comment No. 4 on inclusive education, the Committee provided information on how to interpret the "reasonableness of a measure." It describes "reasonableness" as the result of a contextual test that involves an analysis of the relevance and the effectiveness of the accommodation and the expected goal of countering discrimination,[118] also stressing that the proportionality depends on the

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[107] *H.M vs. Sweden* (CRPD/C/7/D/3/2011), *Jungelin* v. *Sweden* (CRPD/C/12/D/5/2011), *Beasley v. Australia* (CRPD/C/15/D/11/2013), *Lockrey v. Australia* (CRPD/C/15/D/13/2013).
[108] *F. v. Austria* (CRPD/C/14/D/21/2014).
[109] *Noble v. Australia* (CRPD/C/16/D/7/2012).
[110] *X. v. Tanzania* (CRPD/C/18/D/22/2014).
[111] "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.
[112] See General Comment No. 2, paragraphs 25-26, and General Comment No. 6, paragraph 24.
[113] General Comment No. 6, paragraph 25(d).
[114] General Comment No. 6, paragraph 25(c).
[115] General Comment No. 6, paragraph 25(c).
[116] General Comment No. 2, paragraph 34.
[117] General Comment No. 6, paragraph 25(b).
[118] General Comment No. 4, paragraph 28.

context.[119] Key elements guiding the implementation of the duty to provide reasonable accommodation are provided in General Comment No. 6.[120]

ii. Accessibility (article 9)

52. Accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society. As such, it is one of the main crosscutting articles of the Convention.[121] The Committee addressed accessibility in all its general comments and concluding observations, as well as in six views on communication.[122] General Comment No. 2 adopted in April 2014 at the eleventh session of the Committee is the principal document elaborating on accessibility.

Accessibility, universal design and reasonable accommodation

53. The Committee noted that accessibility must be addressed in all its complexity, encompassing the physical environment, transportation, information and communication, and services.[123] The approach adopted stems from the prohibition to non-discrimination: persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner that ensures their effective and equal access and respects their dignity. As such, products and services open to the public must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private company.[124] Further, the Committee noted that the right to access is ensured through strict implementation of accessibility standards. Barriers to access should be removed gradually in a systematic and continuously monitored manner, with the aim of achieving full accessibility.[125]

54. Universal design is an important component of accessibility which application would make society accessible for all human beings.[126] It is defined by article 2 of the Convention as "the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design." In General Comment No. 2, the Committee noted that the strict application of universal design to all new goods, products, facilities, technologies and services should ensure full, equal and unrestricted access for all potential consumers, including persons with disabilities, and

[119] General Comment No. 4, paragraph 30.
[120] General Comment No. 6, paragraph 26.
[121] Accessibility is mentioned in the preamble of the Convention and in article 2 on definitions, article 3 on general principles, article 4 on general obligations, article 21 on freedom of expression and opinion, and access to information, article 24 on inclusive education, article 27 on work and employment, article 30 on participation in cultural life, recreation, leisure and sport and article 31 on data collection.
[122] *Nyusti and Takács v. Hungary* (CRPD/C/9/D/1/2010), *X v. Argentina* (CRPD/C/11/D/8/2012), *F. v. Austria* (CRPD/C/14/D/21/2014), *Beasley v. Australia* (CRPD/C/15/D/11/2013), *Lockrey v. Australia* (CRPD/C/15/D/13/2013), *Bacher v. Austria* (CRPD/C/19/D/26/2014).
[123] General Comment No. 2, paragraph 13.
[124] General Comment No. 2, paragraph 13.
[125] General Comment No. 2, paragraph 14.
[126] General Comment No. 2, paragraph 16.

contribute to the creation of an unrestricted chain of movement for an individual from one space to another, including movement inside particular spaces, with no barriers.[127] It noted that accessibility is related to groups and, contrary to reasonable accommodation, the duty to provide accessibility is an ex ante duty and is unconditional.[128]

55. In addition to ensuring the universal design of new goods, products, facilities, technologies and services, accessibility entails the removal of remaining barriers. States Parties should establish definite time frames and allocate adequate resources for their removal.[129] States Parties should adopt legal provisions on accessibility or review their current accessibility legislation in line with the Convention[130] as well as their law on public procurement to incorporate accessibility requirement,[131] establish minimum standards on accessibility[132] and develop an effective monitoring framework with efficient monitoring bodies with adequate capacity and appropriate mandates to make sure that plans, strategies and standardization are implemented and enforced.[133]

56. In General Comment No. 2, the Committee stressed that States Parties often fails to include ICT[134] (umbrella term that includes any information and communication device or application and its content) in its disability laws. It stressed the importance to review this law to include ICT which encompasses a wide range of access technologies, such as radio, television, satellite, mobile phones, fixed lines, computers, network hardware and software.[135] For instance, since 2014, the Committee recommended to States Parties to be in compliance with the Web Content Accessibility Guidelines.[136] It also continuously underlined that all information and communications should be provided in accessible formats including Braille, sign language, captioning, easy-to-read and augmentative and alternative modes of communication. Since 2014, the Committee consistently recommended States Parties to take the appropriate steps to ratify and implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled in its recommendations under article 30 on participation in cultural life, recreation, leisure and sport.[137]

Accessibility of the work of the CRPD Committee

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[127] General Comment No. 2, paragraph 15.
[128] General Comment No. 2, paragraph 25. See also General Comment No. 4, paragraph 29.
[129] General Comment No. 2, paragraph 24.
[130] General Comment No. 2, paragraph 31.
[131] General Comment No. 2, paragraph 32.
[132] General Comment No. 2, paragraph 30.
[133] General Comment No. 2, paragraph 33.
[134] General Comment No. 2, paragraph 28.
[135] General Comment No. 2, paragraph 5.
[136] See for instance concluding observations on Ecuador (CRPD/C/ECU/CO/1), paragraph 23; concluding observations on Cyprus (CRPD/C/CYP/CO/1), paragraph 25.
[137] See for instance concluding observations on Costa Rica (CRPD/C/CRI/CO/1), paragraph 62.

57. The Committee commissioned an External Accessibility Team of Researchers from AbilityNet, Microsoft, and Middlesex University to draft a report on accessibility to the meetings of the Committee (2012).

58. The Committee included accessibility in its working methods of 2012. It states that its documents will be disseminated in all accessible formats.[138] The Committee's regular budget provides for the provision of sign language interpretation, captioning, and, to a limited extent, Braille. Documentation in Plain Language and Easy Read has not been included in the budget of the Committee by the UN General Assembly. At the end of 2017, the United Nations Office in Geneva conducted a pilot project to produce some of the core documents of the Committee in Plain English.[139]

iii. Diversity of persons with disabilities

59. In line with the preamble of the Convention, States Parties should recognize the diversity of persons with disabilities.[140] The Committee recognizes this diversity by addressing the multitudes of barriers faced by various groups of persons with all types of impairment.

Persons with all types of impairment

60. The new human rights model of disability is based of a new understanding of disability that contrary to the outdated medical model does not reduce persons with disabilities to their impairment. However, this does not preclude recognizing that persons with different impairments may face different barriers in society. In that context, the Committee stressed that the classification of disability shall be human rights-based and not exclude certain groups of persons with disabilities.[141]

61. Since the beginning of its work, the Committee addressed principally four groups of persons with disabilities according to impairment: persons with physical disabilities/mobility impairment, persons with intellectual disabilities, persons with psychosocial disabilities and persons with sensory impairments, including persons with hearing impairment (deaf or hard of hearing), persons with visual impairment and more sporadically blind[142] or deaf-blind persons.[143] The diversity of these groups is also present in the variety of communication received by the Committee. Among the decisions on communication adopted by the Committee, two cases concern of persons with hearing impairments,[144] three cases concern persons with

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[138] See Working methods of the Committee on the Rights of Persons with Disabilities adopted at its fifth session (11-15 April 2011) (CRPD/C/5/4).
[139] See: https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx (see "all CRPD General Comments").
[140] Convention on the Rights of Persons with Disabilities, Preamble (i).
[141] See for instance concluding observations on Nepal (CRPD/C/NPL/CO/1), paragraph 8.
[142] See for instance concluding observations on Kenya (CRPD/C/KEN/CO/1), paragraph 44.
[143] See for instance General Comment No. 2, paragraph 6; concluding observations on Argentina (CRPD/C/ARG/CO/1), Uganda (CRPD/C/UGA/CO/1) or Belgium (CRPD/C/BEL/CO/1).
[144] *Lockrey v. Australia* (CRPD/C/15/D/13/2013), *Beasley v. Australia* (CRPD/C/15/D/11/2013).

visual impairment,[145] three cases concern persons with intellectual and/or psychosocial disabilities,[146] four cases concern persons with mobility impairment,[147] one case concerns a person with albinism,[148] one other case concerns a person with multiple impairments[149] and finally another case concerns a person with degenerative illness.[150]

62. Over time, the Committee also referred to other groups in its general comments or during its periodic review of States Parties' reports. It referred for the first time to persons with autism in its General Comment No. 4[151] on the right to education and its concluding observations of 2014[152] and to persons with albinism in its General Comment No. 3 on women with disabilities[153] and in its concluding observations of 2016.[154] It also mentioned occasionally "complex physical disabilities",[155] cognitive impairment,[156] motor impairment,[157] multiple forms of disabilities,[158] neurological and cognitive conditions,[159] people with leprosy,[160] and persons with neurodegenerative conditions, including Alzheimer, dementia and multiple sclerosis.[161]

Intersectionality: various groups of persons with disabilities

63. As disability is one of several layers of identity,[162] recognizing various groups of persons with disabilities has also been important to address intersectional and multiple forms of discrimination. While the preamble of the Convention notes the "difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language,

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[145] *Nyusti and Takács v. Hungary* (CRPD/C/9/D/1/2010), *Jungelin* v. *Sweden* (CRPD/C/12/D/5/2011), *F. v. Austria* (CRPD/C/14/D/21/2014).

[146] *Bujdosó et al. v. Hungary* (CRPD/C/9/D/1/2010), *Noble v. Australia* (indigenous person with intellectual disability) (CRPD/C/16/D/7/2012), *Bacher v. Austria* (down syndrome and autism) (CRPD/C/19/D/26/2014).

[147] *A.F. v. Italy* (CRPD/C/13/D/9/2012), *Fiona Given v. Australia* (CRPD/C/19/D/19/2014), *Bacher v. Austria* (CRPD/C/19/D/26/2014), *Makarov v. Lithuania* (CRPD/C/18/D/30/2015).

[148] *X. v. Tanzania* (CRPD/C/18/D/22/2014).

[149] *X v. Argentina* (cognitive disorder, partial loss of vision and mobility problems) (CRPD/C/11/D/8/2012).

[150] *H.M vs. Sweden* (CRPD/C/7/D/3/2011).

[151] General Comment No. 2, paragraphs 6 and 35.

[152] See concluding observations on New Zealand (CRPD/C/NZL/CO/1), paragraph 7.

[153] General Comment No. 2, paragraphs 5 and 30.

[154] See concluding observations on Uganda (CRPD/C/UGA/CO/1), paragraphs 8, 15 and 51.

[155] Concluding observations on Slovakia (CRPD/C/SVK/CO/1), paragraph 60.

[156] See concluding observations on Brazil (CRPD/C/BRA/CO/1), paragraph 54.

[157] See for instance concluding observations on El Salvador (CRPD/C/SLV/CO/1), paragraph 11 and concluding observations on Oman (CRPD/C/OMN/CO/1), paragraph 48.

[158] See General Comment No. 2, paragraph 6; concluding observations on Turkmenistan (CRPD/C/TKM/CO/1), paragraph 24 and concluding observations on Ukraine (CRPD/C/UKR/CO/1), paragraph 22.

[159] Concluding observations on the United Kingdom (CRPD/C/GBR/CO/1), paragraphs 23 and 55.

[160] Concluding observations on China (CRPD/C/CHN/CO/1), paragraphs 31 and 32.

[161] Concluding observations on Canada (CRPD/C/CAN/CO/1), paragraph 12.

[162] General Comment No. 6 (CRPD/C/GC/6), paragraph 9.

religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status", the Committee has over the year added new grounds that it understood under "other status", or referred to in General Comment No. 6 as "other layers of identity".[163]

64. Namely the Committee had referred to: women;[164] girls and boys; children; young people; older people; minority, ethnic, religious and/or linguistic groups (including Roma people);[165] indigenous people; migrants, refugees and asylum seekers; non-national;[166] people living in remote or rural areas; lesbian, gay, bisexual, transgender,[167] queers[168] and intersex people with disabilities;[169] afro-descendent with disabilities[170] and other relevant very specific groups of people, for instance Aboriginal and Torres Strait islander people with disabilities in Australia[171] and Afro-Ecuadorian and Montubio people in Ecuador.[172]

iv. Gender

65. Gender-perspectives have increasingly been included into the work of the CRPD Committee over the years. The Committee recognizes gender as a component of the diversity of persons with disabilities[173] and a ground of intersectional or multiple discrimination, particularly affecting women with disabilities.[174] The Committee stressed that women and girls with disabilities face barriers in most areas of life,[175] in particular gender based discrimination[176] and violence, [177] including forced sterilization, sexual and physical abuse, and isolation.[178]

66. The Committee adopted an advanced definition of gender. In 2016 it adopted General Comment No. 3 on women and girls with disabilities where it distinguishes sex and gender stating that "sex refers to biological differences and gender refers to the characteristics that a society or culture delineates as masculine or feminine."[179] General Comment No. 5 and General Comment No. 6 refer further to

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[163] General Comment No. 6 (CRPD/C/GC/6), paragraph 34.
[164] Understood in a wide sense, see General Comment No. 3, paragraph 5.
[165] See Concluding observations on Hungary (CRPD/C/HUN/CO/1), paragraph 42 and concluding observations on Serbia (CRPD/C/SRB/CO/1), paragraph 59.
[166] Concluding observations on Cyprus (CRPD/C/CYP/CO/1), paragraph 16.
[167] Concluding observations on Colombia (CRPD/C/COL/CO/1), paragraph 57.
[168] General Comment No. 5, paragraph 23.
[169] Concluding observations on Canada (CRPD/C/CAN/CO/1), paragraph 20.
[170] Concluding observations on Brazil (CRPD/C/BRA/CO/1), paragraph 13.
[171] Concluding observations on Australia (CRPD/C/AUS/CO/1), paragraph 12.
[172] Concluding observations on Ecuador (CRPD/C/ECU/CO/1), paragraph 53.
[173] General Comment No. 2, paragraph 29.
[174] General Comment No. 1, paragraph 35.
[175] General Comment No. 3, paragraph 2.
[176] General Comment No. 5, paragraph 72.
[177] General Comment No. 5, paragraph 74.
[178] General Comment No. 5, paragraph 83.
[179] General Comment No. 3, paragraph 4(b).

"gender identity,"[180] and to "gender expression".[181] As such, gender equality and references to women with disabilities must be understood in a progressive fashion. The Committee explicitly stated that women with disabilities are not a homogenous group and that they include, among others, transgender women and intersex persons with disabilities.[182]

67. To ensure gender equality and the rights of women and girls with disabilities,[183] the Committee noted that States Parties should take into account gender when developing accessibility measures, [184] providing health care, particularly reproductive care, including gynecological and obstetric services,[185] addressing stigma, prejudice and violence, [186] ensuring the realization of the right to education[187] and to independent living and being included in the community.[188] In that context, all measures and their monitoring[189] must be gender sensitive. The Committee also emphasized that women and girls with disabilities should be involved in the design, implementation and monitoring of all programs which have an impact on their lives.[190] In 2017 it called on States Parties to be mindful of the need to promote the inclusion of women with disabilities in future elections of the Committee.[191]

E. Topics addressed by the Committee

i. Adequate standard of living and social protection (article 28)

68. In few occasions the Committee addressed the obligation of States Parties to provide an adequate standard of living and social protection for persons with disabilities, as enshrined in article 28 of the Convention.

69. In General Comment No. 2, it specified that both mainstream and disability-specific social protection measures and services must be provided in an accessible manner, and social housing programs should offer housing that is accessible for persons with disabilities.[192] In General Comment No. 6, it noted that States Parties have the obligation to ensure access to appropriate and affordable services, devices and other assistance for impairment-related requirements, especially for

[180] General Comment No. 5, paragraphs 8 and 60; General Comment No. 6, paragraph 34.
[181] General Comment No. 6 paragraph 21.
[182] General Comment No. 3, paragraph 5.
[183] General Comment No. 5, paragraph 72.
[184] General Comment No. 2, paragraph 29.
[185] General Comment No. 2, paragraph 40; General Comment No. 6, paragraph 66.
[186] General Comment No. 4, paragraph 46; General Comment No. 5 paragraph 35.
[187] General Comment No. 4, paragraph 46.
[188] General Comment No. 5, paragraph 23.
[189] General Comment No. 5, paragraphs 83 and 86,
[190] General Comment No. 3, paragraph 62(a)(iii).
[191] Statement of the CRPD Committee "Achieving gender balance and equitable geographical representation in the elections of members of the Committee", adopted during the Committee's seventeenth session (20 March-12 April 2017).
[192] General Comment No. 2, paragraph 42.

those persons with disabilities living in poverty.[193] It considers contrary to the Convention for persons with disabilities to pay for disability-related expenses by themselves.[194]

70. In 2017, further clarification was provided on article 28 in the Committee's report on the inquiry concerning the United Kingdom.[195] In particular, it noted that the obligation to ensure access of persons with disabilities to quality, adequate, acceptable and adaptable social protection programs[196] is of immediate effect.[197] It stressed that measures aimed at facilitating the inclusion in the labour market of beneficiaries of social security should include transitional arrangements, to ensure income protection while they reach a certain threshold and sustainability in their wages, and that they should become eligible again without delay if they lose their jobs. [198] Reforms of the welfare system and austerity measures must not disproportionately and/or adversely affect the rights of persons with disabilities.[199]

71. In its concluding observations the Committee issued very specific recommendations reflecting on the welfare system of the States Parties being reviewed. For instance, it recommended that family-based assessments for application and eligibility to receive social security assistance be replaced by an individual-based assessment [200] and that discriminatory criteria based on the cause of the impairment (war-related and non war-related disabilities) be repealed.[201]

ii. Access to justice and procedural accommodation (article 13)

72. States Parties have an obligation to ensure that persons with disabilities have access to justice on an equal basis with others. The Committee mentioned this obligation in five of six of its general comments, [202] in five views on communications[203] and extensively in its concluding observations under article 13 of the Convention.

73. The Committee stressed that ensuring accessibility and procedural and reasonable accommodation [204] as well as the right to legal capacity (article 12)[205] is essential for access to justice. In General Comment No. 1, it noted that, beyond

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[193] General Comment No. 6, paragraph 92.
[194] General Comment No. 6, paragraph 92.
[195] Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention (CRPD/C/15/4*).
[196] Inquiry concerning the United Kingdom, paragraph 33.
[197] Inquiry concerning the United Kingdom, paragraph 36.
[198] Inquiry concerning the United Kingdom, paragraph 42.
[199] Inquiry concerning the United Kingdom, paragraph 114.
[200] Concluding observations on China (Hong Kong) (CRPD/C/CHN/CO/1), paragraph 80.
[201] Concluding observations on Bosnia and Herzegovina (CRPD/C/HIH/CO/1), paragraph 51.
[202] All general comments, except General Comment No. 4 on inclusive education.
[203] *A.M. v. Australia* (CRPD/C/13/D/12/2013), *Beasley v. Australia* (CRPD/C/15/D/11/2013), *Lockrey v. Australia* (CRPD/C/15/D/13/2013), *Noble v. Australia* (CRPD/C/16/D/7/2012), *X. v. Tanzania* (CRPD/C/18/D/22/2014), *Makarov v Lithuania* (CRPD/C/18/D/30/2015).
[204] General Comment No. 2, paragraph 37.
[205] General Comment No. 1, paragraph 38.

recognition to legal capacity, States Parties must ensure that persons with disabilities have access to legal representation[206] and that their complaints and statements are given the same weights by police officers, social workers and other first responders. [207] In its view on communication *Noble v. Australia* (CRPD/C/16/D/7/2012), the Committee affirmed that the State Party's decision to declare a defendant in a trial "unfit" to plead on the basis of intellectual disability, and lack of support or accommodation to exercise his legal capacity[208] constituted a violation of article 13.

74. The Committee emphasized the distinction between reasonable accommodation and procedural accommodations.[209] Contrary to reasonable accommodation, procedural accommodation and age-appropriate accommodation are not limited by a proportionality of the measure. [210] States Parties must ensure accessibility, procedural accommodation and reasonable accommodation,[211] as well as other forms of support, so that persons with disabilities have full access to the justice system. Procedural accommodation may include recognition of diverse communication methods, allowing video testimony in certain situations, as well as providing professional sign language interpretation and other assistive methods.[212] In its jurisprudence the Committee condemned the failure of States Parties to provide sign language interpretation[213] and real-time steno-captioning[214] to deaf persons summoned as juror.

iii. Rights to liberty and security (article 14) and living independently and being included in the community (article 19): the road to deinstitutionalization

75. All persons with disabilities, especially persons with intellectual and persons with psychosocial disabilities, are entitled to liberty and security pursuant to article 14 of the Convention. The right to liberty is one of the most precious rights to which everyone is entitled.[215] The Committee affirmed its importance in a statement on article 14 (CRPD/C/12/2, annex IV) delivered in 2014 and in guidelines on the rights to liberty and security of persons with disabilities (A/7255 Annex) adopted in 2015. In these documents, the Committee stressed the absolute prohibition of detention on the basis of actual or perceived disability, including on the basis of perceived danger to themselves or to others.[216] This includes detention in mental

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[206] General Comment No. 1, paragraph 38.

[207] See General Comment No. 1, paragraph 39. In addition, General Comment No. 3, paragraph 52 notes that women with disabilities face barriers to accessing justice which can lead to their credibility being doubted and their accusations being dismissed.

[208] *Noble v. Australia* (CRPD/C/16/D/7/2012).

[209] Also called "procedural adjustments" in some older concluding observations. See for instance concluding observations on Panama (CRPD/C/PAN/CO/1), paragraph 33.

[210] General Comment No. 6, paragraph 51.

[211] Concluding observations on Costa Rica (CRPD/C/CRI/CO/1), paragraphs 26 and 28.

[212] General Comment No. 1, paragraph 39.

[213] *Beasley v. Australia* (CRPD/C/15/D/11/2013).

[214] *Lockrey v. Australia* (CRPD/C/15/D/13/2013).

[215] Guidelines on the right to liberty and security of persons with disabilities (A/7255 Annex), paragraph 3.

[216] Guidelines on the right to liberty and security of persons with disabilities, paragraphs 6-9.

health or other types of institutions, including detention based on declarations of "unfitness to stand trial" or incapacity to be found criminally responsible in the justice system.[217] When persons with disabilities are detained, States Parties must ensure that places of detention are accessible, provide humane living conditions[218] and implement monitoring and review mechanisms of their conditions.[219]

76. Regarding institutionalization, the Committee stressed the relationship of the right to liberty with the right of living independently and being included in society enshrined in article 19 of the Convention.[220] During the periodic review of States Parties, it expressed strong concerns about the institutionalization of persons with disabilities and requested States to adopt deinstitutionalization strategies and programs (principally in its recommendations under article 14). In General Comment No. 5 on living independently and being included in the community adopted in 2017, the Committee defined institutionalization settings [221] and stressed that deinstitutionalization measures must be accompanied by comprehensive services and community development programs.[222]

iv. Equal recognition before the law and supported decision-making (article 12)

77. Equal recognition before the law is a basic general principle of human rights protection, indispensable for the exercise of other human rights.[223] This right and what it entails for States Parties is explained in the first general comment adopted by the Committee in 2014. It stressed that article 12 does not set out additional rights for persons with disabilities but describes elements that States must take into account when ensuring equal recognition before the law, specifying this article is subject of immediate application.[224] The Committee emphasized that denial of the right to legal capacity based on disability, in particular under guardianship, conservatorship and mental health laws, is discriminatory and thus prohibited. States Parties must ensure that in all areas of law that the right of persons with disabilities to legal capacity is not restricted on an unequal basis with others.[225] As such, all persons with disabilities, including persons with intellectual and psychosocial disabilities, have the same legal capacity to exercise their rights as others, in particular the rights to vote, to marry and found a family, reproductive rights, parental rights, rights to give consent for intimate relationship and medical treatment, and right to liberty.[226]

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[217] Guidelines on the right to liberty and security of persons with disabilities, paragraph 16.
[218] Guidelines on the right to liberty and security of persons with disabilities, paragraph 17.
[219] Guidelines on the right to liberty and security of persons with disabilities, paragraph 19.
[220] Guidelines on the right to liberty and security of persons with disabilities, paragraph 9.
[221] General Comment No. 5, paragraph 16.
[222] General Comment No. 5, paragraph 33.
[223] General Comment No. 1, paragraph 1.
[224] General Comment No. 1, paragraph 30.
[225] General Comment No. 1, paragraph 7.
[226] General Comment No. 1, paragraphs 8 and 31.

78. The right of equal recognition before the law implies a shift from the substitute decision-making paradigm [227] to one that is based on supported decision-making,[228] a recommendation that the Committee also made systematically in its concluding observations to States Parties.[229] In General Comment No. 1, the Committee explained that States have an obligation to provide to persons with disabilities access to support in the exercise of their legal capacity,[230] respecting their rights, will and preferences.[231] For example, persons with disabilities may choose one or more trusted support persons to assist them in exercising their legal capacity for certain types of decisions, or may call on other forms of support, such as peer support, advocacy (including self-advocacy support), or assistance with communication. This also includes measures relating to accessibility and universal design, such as providing information in an understandable format, and development and recognition of diverse, non-conventional methods of communication.[232] The Committee also determined that if it is not practicable to determine the will and preferences of an individual after significant efforts have been made, the "best interpretation of will and preferences" must replace the "best interests" determination from a third party's perspective.[233]

79. Finally, it stressed that States Parties must create appropriate and effective safeguards for the exercise of legal capacity, which should include protection against undue influence.[234]

v. Right to life and freedom from abuses, violence and harmful practices in all settings (articles 10, 16, 17)

80. In its concluding observations, the Committee strongly recommended States Parties to take measures to eliminate practice of "compassionate" or "honour killings" [235] and ritual crimes [236] perpetrated against children [237] and adults with disabilities, as well as violent crimes perpetrated against persons with albinism.[238] States Parties should adopt, monitor and enforce all possible measures to identify causes of death, including suicide,[239] and measures to ensure that persons with

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[227] The Committee describes different forms of substitute decision-making regimes in paragraph 27 of General Comment No. 1.
[228] General Comment No. 1, paragraph 3. The Committee provides detailed information on the key provisions supported decision-making regimes should contain in paragraph 29 of the General Comment.
[229] See for instance the very first concluding observations of the Committee: concluding observations on Tunisia (CRPD/C/TUN/CO/1), paragraph 23.
[230] General Comment No. 1, paragraph 16.
[231] General Comment No. 1, paragraph 17.
[232] General Comment No. 1, paragraph 17.
[233] General Comment No. 1, paragraph 21.
[234] General Comment No. 1, paragraphs 20 and 22.
[235] Concluding observations on Oman (CRPD/C/OMN/CO/1), paragraph 22.
[236] Concluding observations on Gabon (CRPD/C/GAB/CO/1), paragraph 25.
[237] See for instance concluding observations on Bolivia (CRPD/C/BOL/CO/1), paragraph 23.
[238] See for instance concluding observations on Kenya (CRPD/C/KEN/CO/1), paragraph 20.
[239] See for instance concluding observations on Cyprus (CRPD/C/CYP/CO/1), paragraph 30.

disabilities are not subject to arbitrary deprivation of life.[240] It encouraged to replaced death penalty by other criminal sanctions,[241] noting that in practice persons with psychosocial and/or intellectual disabilities may face a greater risk of death penalty due to lack of procedural accommodations in criminal proceedings.[242]

81. In relation to termination or withdrawal of life-sustaining treatment and care, the Committee underlined that the application of substitute decision-making mechanisms is inconsistent with the right to life of persons with disabilities.[243] States Parties should ensure that people who seek "assisted death" have access to alternative courses of action and to a dignified life made possible with appropriate palliative care, disability support, home care and other social measures that support human flourishing.[244] States should also prevent, identify and address situations of risk of suicide of persons with disabilities.[245]

82. The Committee condemned all types of violence against persons with disabilities and recommended States Parties to adopt measures to prevent, investigate and sanction acts of violence. Such acts encompass harassment,[246] including bullying[247] and cyber-bullying,[248] corporal punishment on adults[249] and children with disabilities,[250] sexual violence,[251] including marital rape and incest,[252] and violence taking place in institutional settings.[253] While the Committee used to refer mostly to domestic violence,[254] it now refers more frequently to "violence within and outside the home",[255] as not all cases of violence within the home are domestic violence. As noted in the case *X. v. Tanzania*, States Parties must take all necessary measures to prevent, efficiently investigate and punish acts of violence against persons with disabilities. On that matter, the Committee found that the State's failure to take necessary measures in the case of a Tanzanian national with albinism who had one of his arms cut off by two strangers due to his albinism constituted a failure to protect his physical and mental integrity. Moreover, the Committee recommended States Parties to ensure accessible and inclusive

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[240] Concluding observations on Iran (CRPD/C/IRN/CO/1), paragraph 23.
[241] Concluding observations on Iran (CRPD/C/IRN/CO/1), paragraph 23.
[242] Concluding observations on Iran (CRPD/C/IRN/CO/1), paragraph 22.
[243] Concluding observations on the United Kingdom (CRPD/C/GBR/CO/1), paragraph 26; Concluding observations on Spain (CRPD/C/GESP/CO/1), paragraphs 29-30.
[244] Concluding observations on Canada (CRPD/C/CAN/CO/1), paragraph 24.
[245] Concluding observations on Sweden (CRPD/C/SWE/CO/1), paragraph 30; concluding observations on China, Hong Kong (CRPD/C/CHN/CO/1), paragraphs 63-64.
[246] See for instance concluding observations on Montenegro (CRPD/C/MNE/CO/1), paragraph 13(d).
[247] General Comment No. 4, paragraph 51.
[248] Concluding observations on New Zealand (CRPD/C/NZL/CO/1), paragraphs 49-50.
[249] See for instance concluding observations on Qatar (CRPD/C/QAT/CO/1), paragraph 28.
[250] Concluding observations on Canada (CRPD/C/CAN/CO/1), paragraph 24.
[251] See for instance concluding observations on Cyprus (CRPD/C/CYP/CO/1), paragraph 40.
[252] Concluding observations on United Arab Emirates (CRPD/C/ARE/CO/1), paragraphs 31-32.
[253] See for instance concluding observations on Latvia (CRPD/C/LVA/CO/1), paragraphs 28-29; concluding observations on Bosnia and Herzegovina (CRPD/C/BIH/CO/1), paragraphs 30-31.
[254] See concluding observations on Denmark (CRPD/C/DNK/CO/1), paragraph 40;
[255] Concluding observations on Luxembourg (CRPD/C/LUX/CO/1), paragraph 33.

support services, including confidential complaint mechanisms, as well as shelters and other support measures. It encouraged Member States of the Council of Europe to ratify Convention on Preventing and Combating Violence against Women and Domestic Violence, most commonly referred to as the "Istanbul Convention".[256]

vi. Health (article 25), habilitation and rehabilitation (article 26) and prohibition of forced placement and treatment (articles 12, 14, 15, 16 and 17)

Access to health, including sexual and reproductive health and rights, and habilitation and rehabilitation

83. Under article 25 of the CRPD, persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. This means that States Parties cannot deny access to healthcare, and habilitation and rehabilitation, to persons with disabilities, including in relation to their sexual and reproductive health and rights, as well as their mental health.

84. In General Comment No. 2, the Committee noted that healthcare services must be accessible to persons with disabilities and take into account the gender dimension of accessibility.[257] Later on, in General Comment No. 6, it indicated that general health facilities and services must not only be accessible, but also available, adaptable and acceptable for persons with disabilities in their communities, and include the support required by some persons with disabilities during hospitalizations, surgeries and medical consultations. It noted that the provision of nurses, physiotherapists, psychiatrists or psychologists, in hospitals as well as at home, is a part of the fulfillment of States Parties' obligations under article 25.[258] In the case *H.M v. Sweden*, the Committee found that the local municipality's refusal to grant a building permit to a woman with a degenerative illness, who could not leave her home without great risk, for installation of a hydrotherapy pool on her property for the purposes of rehabilitation and maintaining her health, violated the CRPD.[259]

85. "Reproductive rights" are mentioned in the first general comment of the Committee,[260] which then successively referred to "sexual and reproductive health and rights" in its following concluding observations and general comments.[261] The

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[256] See for instance concluding observations on Cyprus (CRPD/C/CYP/CO/1), paragraph 40; concluding observations on Italy (CRPD/C/ITA/CO/1), paragraph 44.

[257] General Comment No. 2, paragraph 40. This includes accessible reproductive health care for women and girls with disabilities, including gynecological and obstetric services.

[258] General Comment No. 5, paragraph 89.

[259] *H.M vs. Sweden* (CRPD/C/7/D/3/2011). In particular, the State failed to provide reasonable accommodation and to fulfil its obligations concerning non-discrimination, the right of living independently and being included in the community, the rights to health and rehabilitation, in violations of articles 5(1), 5(3), 19(b), 25 and 26, read alone and in conjunction with articles 3(b), (d) and (e), and 4(1)(d) of the Convention.

[260] General Comment No. 1, paragraphs 8, 29 and 35.

[261] See for instance General Comment No. 3, paragraphs 28 and 38-46.

Committee noted that ensuring such rights, especially to women with disabilities is particularly important, as they are often victims of stereotypes that portray them as asexual or hyper sexual,[262] or not able to consent to sexual intercourses.[263] States Parties should ensure both reproductive and sexual health and rights of persons with disabilities. For instance, they should ensure that information on sexual and reproductive health and rights are provided to persons with disabilities, including information on HIV/AIDS and other sexually transmitted infections,[264] and that women with disabilities can access services for safe abortion on an equal basis with others.[265]

Prohibition of involuntary treatment and placement

86. In line with articles 12, 14 and 15 of the Convention, the Committee prohibits all forms of involuntary treatments and detention in health facilities based on the alleged dangerousness of the person, or other elements based on the person's impairment. In General Comment No. 1 on equal recognition before the law, the Committee emphasized that forced treatment by psychiatric and other health and medical professionals constitute a violation of the rights to equal recognition before the law (article 12),[266] personal integrity (article 17), freedom from torture (article 15), freedom from violence, exploitation and abuse (article 16).[267] The Committee also condemned involuntary and non-consensual commitment in mental health institutions and non-consensual treatment during deprivation of liberty in its guidelines on article 14.[268] These last years, the Committee opposed the adoption of an additional protocol to the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (Oviedo Convention) concerning the "protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment" that is contrary to the letter and spirit of the CRPD.[269]

87. Further, the Committee recommended States Parties to prohibiting all forms of forced sterilization and medical or hormone-based interventions (e.g. lobotomy or the Ashley treatment), forced and coerced abortion, non-consensual birth control, forced drugging, including of drugs to "control sexual behaviour",[270] and forced electroshocks.[271] It also condemned female genital mutilations, and surgeries, or

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[262] General Comment No. 3, paragraph 40. See also concluding observations on Canada (CRPD/C/CAN/CO/1), paragraph 45.
[263] General Comment No. 1, paragraph 35.
[264] See for instance concluding observations on Haiti (CRPD/C/HTI/CO/1), paragraph 45.
[265] Concluding observations on Canada (CRPD/C/CAN/CO/1), paragraphs 45-46.
[266] It denies the legal capacity of a person to choose medical treatment in violation of article 12 of the Convention, see reference below.
[267] General Comment No. 1, paragraph 42.
[268] Guidelines on article 14, paragraphs 10 and 11.
[269] See for instance concluding observations on Slovenia (CRPD/C/SVN/CO/1), paragraph 24.
[270] Concluding observations on the Russian Federation (CRPD/C/RUS/CO/1), paragraph 34.
[271] See General Comment No. 3, paragraph 61; General Comment No. 6, paragraph 7; concluding observations on the United Kingdom (CRPD/C/BGR/CO/1), paragraph 37.

treatments performed on intersex children without their informed consent.[272] In many cases, it considered that these practices amounted to torture, cruel, inhuman or degrading treatment of punishment.[273]

vii. Inclusive education (article 24)

88. Article 24 of the Convention requires States Parties to ensure "inclusive education system at all levels and lifelong learning". The Committee provided additional guidance on States Parties' obligation under this article in General Comment No. 4 on inclusive education adopted in 2016.

89. In its oldest concluding observations, the Committee did not explicitly prohibit all forms of segregated education and there was some confusion on whether specialized schools for children with disabilities could be acceptable in some situations. [274] Since then, the Committee has been explicitly stated that exclusionary and segregated education constitutes a form of discrimination based on disability[275] in violation with the Convention. In General Comment No. 4, the Committee defined the right to inclusive education in details,[276] noting that it requires an in-depth transformation of education systems in States' legislation, policies and mechanisms for financing, administering, designing, delivering and monitoring education. [277] It recommended States to fully replace segregated education by inclusive education,[278] stressing that while this obligation is subject to progressive realization, States Parties must immediately ensure non-exclusion of children with disabilities from enrolling in regular schools and provide them with reasonable accommodation.[279]

90. In June 2018, the Committee published a report on an inquiry concerning Spain (CRPD/C/20/3) where it found that the State Party perpetuated a structural pattern of discriminatory exclusion and educational segregation on ground of disability, disproportionately affecting persons with intellectual and psychosocial disabilities and persons with multiple disabilities. It stressed that an inclusive system based on the right to non-discrimination and equal opportunities requires the abolition of the separate education system for learners with disabilities.[280]

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[272] General Comment No. 3, paragraph 44. Regarding corrective surgery on intersex people see also concluding observations on Morocco (CRPD/C/MAR/CO/1), paragraphs 36-37.
[273] See concluding observations of the Committee under articles 15 and 17.
[274] See for instance concluding Observations on Spain (CRPD/C/ESP/CO/1) paragraph 44(b) recommending to "ensure that the decisions to place children with a disability in a special school or in special classes, or to offer them solely a reduced-standard curriculum, are taken in consultation with the parents."
[275] See for instance concluding observations on Croatia (CRPD/C/HRV/CO/1), paragraph 36.
[276] See General Comment No. 4, paragraphs 10-12.
[277] General Comment No. 4, paragraph 9.
[278] For instance concluding observations on Cyprus (CRPD/C/CYP/CO/1), paragraph 50.
[279] See General Comment No. 4, paragraphs 40-41 and Concluding Observations on Kenya (CRPD/C/KEN/CO/1), paragraph 44.
[280] Inquiry concerning Spain (CRPD/C/20/3), paragraph 82.

viii. Situation of risks and emergencies (article 11)

91. The Committee has been particularly reactive in addressing the situation of persons with disabilities in situations of risks and emergencies in line with article 11 of the Convention. It adopted eight statements in relation to article 11, six of them regarding the specific situations of persons with disabilities in countries affected by past or ongoing disasters[281] or armed conflicts.[282] At the international level, it advocated for disability inclusion in the Third World Conference on Disaster Risk Reduction and Beyond[283] and in the World Humanitarian Summit.[284]

92. General Comments No. 2 on accessibility, No. 5 on living independently and being included in the community and No. 6 on equality and non-discrimination particularly elaborated on article 11. The Committee stressed that the principle of non-discrimination must be ensured in all situations of risk and humanitarian emergency,[285] in particular regarding equal access to basic necessities, such as water, sanitation, food and shelter.[286] Emergency services must be accessible to persons with disabilities[287] and support services must be included in all disaster risk management activities.[288] Moreover, accessibility must be incorporated as a priority in post-disaster reconstruction efforts.[289] Since September 2015, the Committee recommends systematically that States Parties implement the Sendai Framework for Disaster Risk Reduction 2015-2030.[290]

ix. Work and employment (article 27)

93. The Committee made some references to article 27 on work and employment in its General Comment No. 2 on accessibility,[291] General Comment No. 3 on women with disabilities,[292] General Comment No. 5 on living independently and being included in the community[293] and General Comment No. 6 on equality and non-discrimination,[294] especially in relation to accessibility, reasonable accommodation and support measures necessary to enable persons with disabilities to fully

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[281] Statement of the CRPD Committee on the situation in Haiti (A/66/55, Annex XI); Statement on the earthquake and tsunami in Chile (A/66/55, annex XII); Statement on the earthquake in Qinghai (A/66/55, annex XIII); Joint statement CRPD/CRC/CEDAW on the Pakistan Floods (A/66/55, annex XIV); Statement on the situation of persons with disabilities affected by disasters in Peru, Ecuador and Colombia.

[282] Statement on persons with disabilities being forgotten victims of the Syrian conflict.

[283] Statement on Disability Inclusion in the Third World Conference on Disaster Risk Reduction and Beyond (2014).

[284] Statement on disability inclusion for the World Humanitarian Summit (September 2015).

[285] General Comment No. 6, paragraph 43.

[286] General Comment No. 6, paragraph 44.

[287] General Comment No. 2, paragraph 36.

[288] General Comment No. 5, paragraph 79.

[289] General Comment No. 2, paragraph 36.

[290] See for instance concluding observations on the European Union (CRPD/C/EU/CO/1), paragraph 33, or on Serbia (CRPD/C/SRB/CO/1), paragraph 19.

[291] General Comment No. 2, paragraph 41.

[292] General Comment No. 2, paragraph 58.

[293] General Comment No. 2, paragraph 91.

[294] General Comment No. 2, paragraph 67.

access work and employment. In General Comment No. 6, the Committee stressed that States Parties should facilitate the transition away from segregated work environments and ensure that persons with disabilities are paid no less than the minimum wage and do not lose the benefit of disability allowances when they start working.

94. The Committee recommended that States Parties adopt affirmative action measures, and incentives to employment to increase the employment of persons with disabilities in the public and private sectors,[295] for instance through the adoption quota systems with effective mechanism and sanctions for non-compliance.[296] They must ensure that affirmative measures such as integration subsidies do not turn into indirect discrimination, for instance when difficulties for the employers to claim the subsidies put applicants with disabilities in a dis-advantageous position.[297]

95. The Committee also emphasised that persons with disabilities should be protected, on an equal basis with others, from forced and compulsory labour,[298] as well as exploitation and harassment in the workplace.[299]

[295] See for instance inquiry concerning the United Kingdom, paragraph 22; concluding observations on Paraguay (CRPD/C/PRY/CO/1), paragraph 64; concluding observations on Croatia (CRPD/C/HRV/CO/1), paragraph 42.
[296] Concluding observations on Kenya (CRPD/C/KEN/CO/1), paragraph 48.
[297] See *Liliane Gröninger v. Germany* (CRPD/C/D/2/2010).
[298] See for instance inquiry concerning the United Kingdom, paragraph 25.
[299] Concluding observations on Mexico (CRPD/C/MEX/CO/1), paragraph 52.

F. Leaving no one behind: the rights of persons with disabilities in the international development agenda

96. In the discussions on the post 2015 development agenda, the Committee advocated for the inclusion of the rights of persons with disabilities. In a statement of May 2013, it stated that, in order to be sustainable, development goals should be rooted in a human rights-based approach and take into account the enjoyment by all persons with disabilities of their civil, political, economic, social and cultural rights.[300] In January 2014, it stressed similar points when addressing the Member States of the United Nations participating at the Eighth Session of Open Working Group on Sustainable Development Goals.

97. Since the adoption of the 2030 Agenda for Sustainable Development in September 2015, the Committee includes references to the agenda and its sustainable development goals in its latest general comments and concluding observations. It recommends in particular that States Parties mainstream the rights of persons with disabilities in implementation and monitoring of the agenda at all levels,[301] and ensure that disability-inclusive indicators be developed and used in a manner consistent with the 2030 Agenda.[302] In its concluding observations, the Committee refers to the 2030 Agenda by alluding to specific goals and targets, namely: Goal 1 on ending poverty and targets 1.2, 1.3 and 1.4;[303] Goal 3 on good health and well being and target 3.7 and 3.8;[304] Goal 4 on quality education and target 4.1, 4.5, 4.a;[305] Goal 5 on gender equality and targets 5.1, 5.2, 5.3, 5.5 and 5.6;[306] Goal 8 on decent work and economic growth and target 8.5;[307] Goal 9 on industry innovation and infrastructure;[308] Goal 10 on reducing inequalities and targets 10.2 and 10.3;[309] Goal 11 on sustainable cities and communities and target 11.2 (transport system for all) and 11.7 (access to public spaces);[310] Goal 16 on peace, justice and strong institutions and target 16.2, 16.3 and 16.7;[311] and Goal 17 on partnerships for the goals and target 17.18.[312]

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[300] See Statement of the CRPD Committee on including the rights of persons with disabilities in the post 2015 agenda on disability and development (May 2013).
[301] See for instance concluding observations on Panama (CRPD/C/PAN/CO/1), paragraph 63.
[302] General Comment No. 6, paragraph 71.
[303] Under article 28 CRPD.
[304] Under articles 23 and 25 CRPD.
[305] Under article 24 CRPD.
[306] Under articles 6, 16, 17 and 25 CRPD.
[307] Under article 27 CRPD.
[308] Under article 9 CRPD.
[309] Under article 5 and 28 CRPD.
[310] Under article 9 and 30 CRPD.
[311] Under articles 7 and 13 CRPD.
[312] Under article 31 CRPD.