World Blind Union

 Union Mondiale Des Aveugles

 Unión Mundial de Ciegos

WORLD BLIND UNION

1929 Bayview Avenue

Toronto Ontario Canada M4G 3E8

www.worldblindunion.org

World Blind Union (WBU) Submission to the Day of General Discussion on UNCRPD Article 5 Equality and Non-discrimination

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I. Introduction

The World Blind Union is a global organization that represents the worldwide community of 285 million blind and partially sighted persons. “We envision a world where blind and partially sighted persons can participate fully in any aspect of life we choose. We have been working for more than three decades to make a significant difference in the lives of millions of Blind and partially sighted persons through our work in the areas of Representation, Capacity Building, Resource Sharing and Accessibility, making great efforts to influence the policies and regulations of the UN and other international agencies to reflect the needs and views of blind and partially sighted persons. WBU operates through six regional unions, which are made up of organizations of and for the blind in about 190 countries.

The WBU is one of the key, active and founding members of the International Disability Alliance and has also consultative status with UN ECOSOC, World Bank, WHO and a number of other relevant UN and international agencies.

Furthermore, the WBU works closely with its national members around the globe to promote the effective implementation of all human rights instruments, among many other objectives.

Our work is always based on the deep conviction that a more inclusive, accessible and equal society will lead to better living conditions for our community.

The WBU wholeheartedly welcomes and sincerely appreciates the initiative of the United Nations Committee on the Rights of Persons with Disabilities to celebrate a Day of General Discussion on UNCRPD Article 5 Equality and Non-discrimination and the consequent development of a General Comment on Article 5.

II. Analysis of the proposed Draft Outline

The WBU, following the guidance of the UNCRPD Committee in the elaboration of written submissions, has submitted each and every paragraph of the present draft outline to the consideration of different experts and they have come up with a compilation of different comments, which are listed below with an identification to which paragraph they are referred to.

Under Heading I, Introduction

Paragraph 1: it is highly recommended that when elaborating the present General Comment, concepts and ideas already developed by the OHCHR Thematic Study on Article 5 Equality and Nondiscrimination (A/HRC/34/269), Universal Declaration of Human Rights (Article 1), and the jurisprudence produced by other Human Rights Treaty Bodies such as CEDAW, CRC, HRC, ICCPR etc., be included. Furthermore, we recommend the inclusion of an exhaustive explanation and inter.-connection between equality, human dignity and universality in this first and introductory paragraph.

Paragraph 3: Here, and as an initial approach to highlighting the extreme intersectionality between Article 5 Equality and Non-Discrimination and other provisions of the present convention, it would be of much help to deeply explore the evolution of the Human Rights- based approach and how it is intimately linked to the notion of equality and non-discrimination.

Paragraph 4: WBU welcomes the initiative of the Committee to early introduce the debate around immediate versus progressive realization. Thus, it becomes crucial for the Committee to clearly establish the main features of cases where one or the other concept must be applied. WBU understands an immediate action as a measure which must not only be in place in a very short period of time but, first and foremost, as a remedy, for instance, for a form of discrimination that must be urgently ended. On the other hand, a progressive measures implies a long term action which aims at improving conditions towards a better fulfillment of all human rights by all. Here, it becomes relevant to incorporate under the notion of progressive the fact that there must be a proven commitment by the requested party that it is undertaking all the measures up to its maximum available resources to ensure the obligation prescribed.

Under heading II, Normative Content

Paragraph 7: Besides describing the listed forms of discrimination, it becomes extremely important to include the denial of access as a form of discrimination. WBU highlights that the denial of access to transportation, financial services, cultural events, education, employment, etc. constitutes a clear violation of the right to equality and non-discrimination.

Another concept that WBU believes must be explicitly mentioned in this paragraph is the Disability Based Violence. This form of discrimination constitutes, among others, one of the most frequent ones and it has negative effects. That includes social stereotypes, denial of access to public or private services and facilities etc.

Daily examples of what has been described above are: The denial of access to airplane by a blind and partially sighted person traveling by him or herself; the denial of opening a bank account by a blind and partially sighted person due to different ways of signing documents; the denial of full access to cinemas or theatres due to the lack of audio description, the denial of access to restaurants or shopping malls by a blind or partially sighted person with a guide dog; the denial of the full enjoyment of the right to vote due to the lack of braille, large print or alternative formats.

Paragraph 8: WBU observes a weak approach and an underestimation of the relevance of reasonable accommodation as a fundamental component of the right to Equality and Non-Discrimination. Furthermore, WBU strongly encourages the Committee to deeply analyze and to provide clear guidance on the scope of reasonable accommodation based on individualized negotiation. In this line, WBU regards reasonable accommodation as a temporary individualized measure that should not last for a long period of time but, rather, it must be seen as a path forward to the application of accessibility as a broad concept. Nevertheless, WBU recognizes that in specific circumstances a reasonable accommodation can be permanent according to the need of the person.

Additionally, WBU clearly establishes its position on the fact that reasonable accommodation must be of immediate application, otherwise its denial constitutes a form of discrimination based on disability.

In connection with the previous point, WBU would highly appreciate the guidance of the Committee on the concept of disproportionate and undue burden which is under discussion especially when allocating resources for reasonable accommodation.

Finally, WBU would like to bring the attention of the committee to include the concept of reasonable accommodation by association. WBU stands for the inclusion of this concept, especially in those cases when circumstances require this type of intervention.

Under heading IV State Party obligations

Paragraphs 19, 20, 21 and 22: WBU celebrates the inclusion by the Committee in the present General Comment of the issues addressed in these paragraphs. At the same time, WBU calls for the need for clear and useful guidance, both for governments and disabled people organizations, when designing, implementing and monitoring laws, policies and programs related to the right of Equality and Non-Discrimination.

III. Recommendations

According to what has been described above, the WBU strongly encourages the UNCRPD Committee to include the following requests in its forthcoming General Comment 6 on Article 5 Equality and Non-discrimination:

-Develop a General Comment on Article 5 Equality and Non-discrimination that can provide further explanation of different types of discrimination, including substantive, systemic or procedural discrimination.

-Include the Sustainable Development Goals perspective in the elaboration of the present General Comment.

-Bring the attention of States to the need for more effective consultations with persons with disabilities and their representative organizations with regard to the main core of the present General Comment.

-Elaborate clear distinctions between reasonable accommodation and accessibility and how to prevent potential conflicts of interpretation when states have to apply both obligations contained in the Article under revision.

-Accelerate the elaboration of jurisprudence that can support the advocacy work of representative organizations in the implementation and monitoring of Article 5 Equality and Non-Discrimination, especially at the national and sub-national level.

-Call states to accelerate the provision of reasonable accommodation when applicable and consider the denial of this prevision as a form of discrimination.

-Elaborate further explanation with regards to the differentiation between immediate and progressive realization, with special attention to the scope of Article 5 Equality and Non-discrimination.

-Remind states of their obligation to end all forms of discrimination.

-Promote through the present General Comment the obligation of all States under the present Convention to take all measures to ensure equal recognition of persons with disabilities before and under the law, as well as to ensure full and equal access to justice.

-Elaborate further explanation with regard to disproportionate and undue burden as a barrier to ensure reasonable accommodation.

-Provide further explanation as regards the concept of support measures and how they are linked to accessibility and individualized measures.

-Provide further explanation with regard to financial feasibility in the provision of reasonable accommodation.

-Insist on the need of collection of disaggregated data included in cases of discrimination or denial of reasonable accommodation.

-Highlight the extreme intersectionality of Article 5 Equality and Non-discrimination and other provisions contained in the present convention.