|  |  |
| --- | --- |
| To the attention of:Committee on the Rights of Persons withDisabilitiesHuman Rights Treaties DivisionOffice of the United Nations High Commissioner for Human RightsUnited Nations Office at GenevaCH – 1201 Geneva 10 |  |

Vienna, 24 November 2017

Ref: 2017-outgoing-001730

**Subject: Comments on the Draft General Comment on the right of persons with disabilities to equality and non-discrimination**

Dear Ms Degener,

The European Union Agency for Fundamental Rights (FRA) very much welcomes the opportunity to submit its comments on the CRPD Committee’s draft General Comment on the right of persons with disabilities to equality and non-discrimination (Article 5). All the publications mentioned in this submission can be [downloaded from the FRA website](http://fra.europa.eu/en/theme/people-disabilities/publications).

**Background**

FRA has focused extensively on the principles of equality and non-discrimination in its work on the rights of persons with disabilities. A great deal of information can be found in:

* FRA’s annual [Fundamental Rights Report](http://fra.europa.eu/en/publications-and-resources/publications?title=&year%5Bmin%5D%5Byear%5D=&year%5Bmax%5D%5Byear%5D=&related_content=&field_fra_publication_type_tid_i18n%5B%5D=82&language=All&countries_eu=All&publisher=81&=Apply) (chapters 1 and 9)
* Paper on [Implementing the UN CRPD – An overview of legal reforms in EU Member States](http://fra.europa.eu/en/publication/2015/implementing-un-crpd-overview-legal-reforms-eu-member-states)
* [Opinion on the situation of equality in the European Union 10 years on from initial implementation of the equality directives](http://fra.europa.eu/sites/default/files/fra-2013-opinion-eu-equality-directives_en.pdf)

Additionally, FRA’s contribution draws on our work in relation to the development of human rights indicators on [Articles 19](http://fra.europa.eu/en/project/2014/rights-persons-disabilities-right-independent-living/indicators) and [29 of the CRPD](http://fra.europa.eu/en/publication/2014/indicators-right-political-participation-people-disabilities), as well as findings of the Agency’s past research in relation to the rights of of persons with disabilities, in particular its reports on:

* [Legal protection of persons with mental health problems under non-discrimination law](http://fra.europa.eu/en/publication/2011/legal-protection-persons-mental-health-problems-under-non-discrimination-law)
* [Involuntary placement and involuntary treatment of persons with mental health problems](http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems)
* [Legal capacity of persons with intellectual disabilities and persons with mental health problems](http://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health-problems)
* [Inequalities and multiple discrimination in access to and quality of healthcare](http://fra.europa.eu/en/publication/2013/inequalities-discrimination-healthcare)
* [Violence against children with disabilities](http://fra.europa.eu/en/publication/2015/children-disabilities-violence)

FRA is a member of the EU Framework to promote, protect and monitor the implementation of the CRPD, established under Article 33(2). The EU framework complements [national monitoring frameworks](http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations/crpd) responsible for promoting, protecting and monitoring the CRPD in EU Member States. It consists of the [European Parliament](http://www.europarl.europa.eu/portal/en), the [European Ombudsman](http://www.ombudsman.europa.eu/home.faces), the [European Agency for Fundamental Rights](http://fra.europa.eu/en/theme/people-disabilities) (FRA) and the [European Disability Forum](http://www.edf-feph.org/). More information on the EU framework’s activities can be found on its [webpage](http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework).

**General comment on the draft General Comment on Article 5**

One consistent issue emerging from FRA’s research concerns the potential for a ‘hierarchy’ of discrimination grounds, where higher levels of protection against discrimination are afforded on certain grounds. For example, in the EU, protection against discrimination based on ethnicity covers more areas of life than does the protection against discrimination based on grounds such as sexual orientation, age or disability. FRA’s [Opinion on the situation of equality in the European Union 10 years on from the initial implementation of the equality directives](http://fra.europa.eu/en/opinion/2013/fra-opinion-situation-equality-european-union-10-years-initial-implementation-equality) explores this issue in some depth.

In addition, as the comments below on para. 19 indicate, in some cases not all persons with disabilities are afforded equal protection against non-discrimination.

The General Comment could specifically address this issue by:

* reinforcing para. 76 (d) by mentioning earlier the importance of ensuring that legal protections against discrimination on the grounds of disability are of an equivalent depth and breadth to protections against discrimination on other protected grounds.
* Specifying that all non-discrimination provisions should apply equally to all persons with disabilities, irrespective of type or severity of impairment.

At several points, the draft General Comment makes reference to the particular discrimination faced by certain groups of persons with disabilities. To ensure an inclusive approach to social groups, FRA suggests that the groups mentioned be broadened, based on the the extensive list of discrimination grounds provided in para. 22.

**Comments on specific paragraphs of the draft General Comment on Article 5**

1. **Introduction**

One of the significant changes prompted by the CRPD is that it introduces equality and non-discrimination principles into areas of law and policy where they were not previously considered. FRA has consistently highlighted the importance of focusing on ensuring that people with disabilities are treated on an equal basis with others, in particular in specific processes examined in the Agency’s reports on [legal capacity](http://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health-problems) and [involuntary placement and treatment](http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems).

The introduction to the draft General Comment could therefore highlight that the concept of equality and non-discrimination set out in Articles 3 and 5 of the CRPD requires a shift in traditional approaches in many areas of law and policy addressing persons with disabilities.

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

**Para. 6**

The draft General Comment makes numerous references to multiple and intersectional discrimination. Para. 6 could specifically acknowledge that the CRPD is the first core human rights convention to include these concepts.

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

**Paras. 10 and 11**

The draft General Comment introduces the notion of ‘inclusive equality’. It would be useful to clarify the distinction between that term and the notion of ‘transformative equality’ as the draft currently speaks at various points of ‘transformative or inclusive equality’, ‘transformative or inclusive model of equality’ and ‘inclusive equality’. Consistency of terminology would help to ensure conceptual and operational clarity.

If the substantive meaning of ‘inclusive equality’ is the same as that of ‘transformative equality’, the Committee could consider simplifying the text by referring only to ‘transformative equality’. This would also contribute to ensuring consistency across the UN treaty bodies, mirroring the language used by the CEDAW Committee.

1. **Legal character of non-discrimination and equality**

**Para. 13**

This paragraph could more explicitly highlight that the CRPD requires other rights to be interpreted from a non-discrimination prespective. This marks a significant change from previous approaches, and represents one of the transformative aspects of the convention (see comments on the introduction above).

1. **Normative Content**

**Para. 19 (also section VIII. Implementation at national level)**

Evidence suggests that mental health problems are not automatically considered as disabilities in some legislation. FRA suggests that the General Comment includes reference to the issue of the scope of non-discrimination and reasonable accommodation provisions, including whether they apply equally to all persons with disabilities.

The Committee could draw on FRA’s [report on the legal protection of persons with mental health problems under non-discrimination law](http://fra.europa.eu/sites/default/files/fra_uploads/1797-FRA-2011-Legal-protection-persons-mental-health-problems-report_EN.pdfhttp%3A/fra.europa.eu/sites/default/files/fra_uploads/1797-FRA-2011-Legal-protection-persons-mental-health-problems-report_EN.pdf), which discusses whether persons with mental health problems (psychosocial disabilities) are protected against discrimination on the grounds of disability. It also highlights that the duty of reasonable accommodation sometimes applies to a different group of persons than the prohibition of discrimination on the grounds of disability, potentially excluding persons with mental health problems.

**Paras. 20 (e), 22 and 41**

FRA very much welcomes the prominent inclusion of the notion of ‘multiple discrimination’ in the Preamble and Article 6 of the Convention. Nevertheless, it would be useful to further clarify the distinction between ‘multiple discrimination’ and ‘intersectional discrimination’ as the draft currently speaks at various points of those two notions separately and in combination as ‘multiple and intersectional discrimination’. FRA suggests that the Committee use the term ‘multiple and intersectional’ discrimination throughout.

It would be useful to clarify the meaning of the term ‘multi-dimensional discrimination’ (para. 41). If this is equivalent to multiple and intersectional discrimination, FRA suggests using this more widely known terminology.

The Committee could consider moving the description of ‘multiple discrimination’ in para. 22 and inserting it as a a new point under para. 20. Similarly, the Committee could combine the two descriptions of ‘intersectional discrimination’ under para. 20 (e) and para. 22 under para 20 (e).

**Paras. 26 and 27 (e)**

The draft General Comment highlights that ‘disproportianate and undue burden’ should be interpreted as a “single term”. However, subsequent paragraphs do not always use this term as such e.g. para. 27. (b).

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

**Para. 38**

To reflect the diversity in society and avoid the impression of giving preference to certain groups, the sentence “States parties must ensure that they closely consult and actively involve DPOs who represent the vast diversity in society, including children, the LGBTI community, and indigenous and rural communities” could be extended to include other groups, including: older persons, women persons with an ethnic minority or migrant background, etc. In this respect, it could make reference to the extensive list of grounds set out in para. 22.

**Paras. 39, 40 and 75**

FRA very much welcomes the importance attached to collecting and analysing data as a tool to promote and assess implementation of Article 5. This could be further strengthened by adding specific reference in paras. 29 and 75 to the development of human rights indicators to assess implementation of the right to equality and non-discrimination.

FRA has developed [human rights indicators on Articles 19](http://fra.europa.eu/en/project/2014/rights-persons-disabilities-right-independent-living/indicators) and 29. The structure, process and outcome indicators were refined on the basis of input gathered during extensive consultation with stakeholders and with the active involvement of disabled persons’ organisations (DPOs). While designed with EU Member States in mind, FRA believes these indicators could be applied more widely.

1. **Relationship with other specific articles of the Convention**

As a general principle of the convention, non-discrimination is relevant to all articles of the CRPD. Reflecting this focus, specific references to ‘discriminatory denial’ and ‘on an equal basis with others’ are found throughout the convention.

FRA suggests that Article 25 on health be included in this section, as evidence suggests persons with disabilities face discrimination in access to and use of healthcare services. [FRA’s report on inequalities and multiple discrimination in access to and quality of healthcare](http://fra.europa.eu/en/publication/2012/choice-and-control-right-independent-living) looked at specific barriers experienced by young people with intellectual disabilities and a migrant background. The evidence points to communication and language barriers, leading to indirect discrimination of people with disabilities while also affecting health practitioners’ ability to assess effectively and diagnose correctly patients with disabilities.

**Para. 56 (a)**

To ensure conceptual and operational clarity, with reference to para. 54, FRA suggests amending para. 56 (a) to read as follows: “Reform existing legislation to prohibit discriminatory denial of legal capacity, premised on status, functional or outcome based models”.

**Paras. 63 and 64**

FRA’s evidence shows that persons with disabilities can experience violence and torture, inhuman or degrading treatment or punishment in any institutionalised setting. In addition to persons with psychosocial disabilities, persons with intellectual disabilities are particularly at risk of experiencing such abuse due to higher levels of institutionalisation. Currently the distinction between the general “prohibition on the institutionalisation” of persons with disabilities and the specific situation of persons deprived of liberty and subject to forced placement or treatment on mental health grounds is not sufficiently clear.

The text of para. 63 could therefore be expanded as follows: “in and outside institutionalised settings, including mental health facilities”. Similarly, the text of para. 64 can be amended to read “The institutionalisation of persons with disabilities contravenes multiple articles of the Convention”.

The specific risks faced by persons deprived of liberty on mental health grounds can then be expanded as a separate point.

1. **Implementation at the national level**

**Paras. 76 (c) and (m)**

Reflecting the horizontal relevance of Article 5, the list of areas to be covered by non-discrimination legislation specified in para. 76 (c) could be kept open: “Non-discrimination legislation should be broad in scope, extend to private and public speheres and cover areas including, but not limited to: …”.

The list of persons with disabilities who experience multiple and intersectional discrimination set out in para. 76 (m) could be extended to incorporate other groups, such as older persons with disabilities, or persons with disabilities with an ethnic mintority or migration background. To insure inclusivity, reference could be made to the extensive list of grounds provided in para. 22.

I hope the information provided is useful for the preparation of the draft General Comment on Article 5 of the CRPD. FRA remains at your disposal to provide further information if necessary under disability@fra.europa.eu.

Yours sincerely,

Ioannis Dimitrakopoulos

Head of Equality and Citizens’ Rights Department

cc: OHCHR Regional Office for Europe