

African Disability Forum, Arab Organization of Persons with Disabilities, ASEAN Disability Forum, Down Syndrome International, European Disability Forum, Inclusion International, International Federation of Hard of Hearing People, International Federation for Spina Bifida and Hydrocephalus, Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families, Pacific Disability Forum, World Blind Union, World Federation of the Deaf, World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry

# IDA´s submission on the CESCR Committee’s General comment No. 26 (2021) on land and economic, social and cultural rights

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## Introduction

1. IDA welcomes the initiative by the Committee on Economic, Social and Cultural Rights (hereinafter “the CESCR Committee”) to call for comments to its draft general comment no. 26 (2021) on land and economic, social, and cultural rights. It constitutes a complex topic that relates broadly to social justice and distribution and use of resources, and to environmental issues including climate change.
2. IDA stresses that the general exclusion of persons with disabilities from the economic life, due to lack of education, training and support for work and employment, etc., puts them in a disadvantaged situation compared to others when seeking accessing usable land, in whichever legal status (e.g. property, usufruct or tenancy), and for whatever use aimed at satisfy basic needs (e.g. building shelter, small scale agriculture, etc.). These, and other concerns that will be addressed, highlights the need of including explicit references to persons with disabilities, and their representative organizations, throughout the draft general comment. The inclusion of a paragraph on persons with disabilities after current paragraph 17, would be a great way to reflect the main issues for persons with disabilities.
3. Indeed, IDA regrets that, for now at least, the draft general comment does neither refer to persons with disabilities nor to any of their main cross-cutting concerns. Only the adjective “accessible” is used in some opportunities but it seems used in its broad sense link to geographical location, and not focusing on nor reminding about accessibility for persons with disabilities. Hence, the relevance of this IDA’s submission, which will refer mainly to non-discrimination and recognition of legal capacity of persons with disabilities; ensuring inclusive policy design through the participation of persons with disabilities; accessibility of information on land rights and policies, including in consultation processes; and accessibility of transportation and of the built environment.

## Background: general exclusion and poverty among persons with disabilities

1. Global estimations indicate that 80% of persons with disabilities live in developing countries, where incomes are lower and poverty rates are higher. In addition, persons with disabilities are more likely to be poor.[[1]](#endnote-1) Though scarce, data suggests that the proportion of households with persons with disabilities under the international poverty line is higher compared to other households.[[2]](#endnote-2) Data on six countries indicate that the average percentage of persons with disabilities under the national poverty line is 24% compared to 13% for other persons.[[3]](#endnote-3) Similarly, for 28 European countries the proportion of persons with disabilities with “severe material deprivation” is 11% while it is only 6% for others.[[4]](#endnote-4) Further, persons with disabilities and their households face higher expenditures on goods and services related to disability (e.g. mobility aids, personal assistance, accessible housing) and on general good and services (e.g. health insurance),[[5]](#endnote-5) than others, reducing resources for regular consumption. Thesedisability-related extra costs are roughly estimated to reach between 30% and 40% of the average income, based on data of seven countries.[[6]](#endnote-6)
2. General patterns of exclusion and lack of support in the area of education, training and employment also constrain the economic opportunities of persons with disabilities. Furthermore, worldwide only 27,8% of persons with disabilities with high support needs would benefit from cash benefits,[[7]](#endnote-7) falling to only 9.4% for Asia and the Pacific,[[8]](#endnote-8) which shows that State responses remain insufficient.

## Increased attention to access to land for persons with disabilities

1. While the access to land tenure by persons with disabilities has not received that much attention in research previously, the general exclusion of persons with disabilities from economic life, the specific legal and other barriers they face in accessing, and the low level of participation in political life and public decision making highlights the need of including *explicitly* persons with disabilities in policies for land allocations, administration and registration, and thus, in the draft general comment by this Committee.
2. Indeed, as the former UN Special Rapporteur on the Right to Housing reported,[[9]](#endnote-9) countries started to address explicitly access to land of persons with disabilities. For instance, Kenyan’s national disability policy recognizes that the “ownership of land, housing and property is a fundamental human right of persons with disabilities, essential to security, self-reliance and livelihood”[[10]](#endnote-10) and seeks to “eliminate barriers to acquiring and owning land, housing and property, such as high costs and societal prejudices against the ownership and inheritance of land by persons with disabilities.”[[11]](#endnote-11) The High Court of Bombay in India has applied the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act “to require increased allocations of land (tenements) to persons with disabilities.” [[12]](#endnote-12)

## Human rights standards under the Convention on the Rights of Persons with Disabilities to improve inclusiveness of the CESCR Committee draft general comment

**A) The right to exercise legal capacity of persons with disabilities under Article 12 of the CRPD: a pre-condition for accessing land and exercising ESC rights.**

1. Around the globe, persons with disabilities, especially those with intellectual disabilities and/or psychosocial disabilities, continue to face legal restrictions to the exercise of their legal capacity, due to outdated systems of substituted decision making, such as “guardianship”, “curatorship” and alike. In addition, persons with disabilities also face restrictions of legal capacity in practice. For instance, blind people are often rejected when seeking to open a bank account or banks impose additional requirements to comply with to accept signing a contract for that purpose. These *de jure* and *de facto* restrictions constitute a major barrier for the exercise of many human rights, including those connected to real state, property, and inheritance, especially when they require formal legal acts.
2. Article 12 of the CRPD on “Equal recognition before the law” came to address this situation by recognizing the capacity of persons with disabilities both to be holder of rights and to exercise rights autonomously. Paragraph 5 of the article addresses the right of persons with disabilities “to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit”, which are highly relevant around access to land. The CRPD Committee has elaborated on the content of this right, especially in its general comment no 1 on article 12,[[13]](#endnote-13) and throughout all its concluding observations to States, requiring that substituted decision making regimes (guardianship, curatorship, etc.) are repealed and replace by supported decision making.
3. For *all* persons with disabilities to access land and exercise related economic, social and cultural rights, it is essential that national legal capacity regimes are harmonized with the legal standards of article 12 of the CRPD. Consequently, IDA believes the draft general comment should explicitly address this issue, specific to persons with disabilities, in line with the CRPD.

**B) Participation of persons with disabilities and their representative organizations, in policy design, implementation and evaluation, to ensure disability mainstreaming in land policies**

1. IDA welcomes section III(B) and paragraph 18 of the draft general comment on “Participation, consultation and transparency”, which is very important to ensure that land related policies consider the needs of the diverse sectors of society, in particular those groups who have specific relationships with their lands, resources and territories, but also of those who present a lower access to land and higher levels of exclusion from economic life, including persons with disabilities. In this case, participation in policy making is a key facilitator of inclusion and mainstreaming of diverse groups of society.
2. Enshrining the importance of participation of rights holders in decision making and implementation of policies, Article 4(3) of the CRPD provides that “[i]n the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.” This article came to address the low level of participation of persons with disabilities and the low level of awareness of decision makers on the needs of persons with disabilities, enshrining the motto “Nothing about us, without us”. The CRPD Committee has further developed the content of this obligation in its general comment no 7,[[14]](#endnote-14) including a broad thematic scope.
3. Indeed, according to the CRPD Committee,

“the phrase ‘concerning issues relating to persons with disabilities’ covers the full range of legislative, administrative and other measures that may **directly or indirectly impact the rights of persons with disabilities**. **The broad interpretation of issues relating to persons with disabilities allows States parties to mainstream disability through inclusive policies, ensuring that persons with disabilities are considered on an equal basis with others**. It also ensures that the knowledge and life experiences of persons with disabilities are considered when deciding upon new legislative, administrative and other measures. **This includes decision-making processes, such as general laws and the public budget or disability-specific laws, which might have an impact on their lives**”[[15]](#endnote-15) (emphasis added).

1. Given that persons with disabilities are very frequently overlooked in policy design, especially to the lack of awareness of decision makers, IDA stresses very much the need that the draft general comment includes explicit references to participation of persons with disabilities in the design, implementation and evaluation of land related policies, to promote and ensure that measures adopted in reaction to the general comment are made inclusive of the different constituencies of persons with disabilities.

**C) Accessibility in all its dimensions for the inclusion and autonomy of persons with disabilities in measures connected to access to land and ESC rights.**

1. Accessibility is a pre-condition for the exercise of rights on equal basis with others by persons with disabilities. Article 9 and 21 of the CRPD oblige States to ensure accessibility of the built environment, transportation, communication, and information. The CRPD Committee has clarified the scope of the obligations under Article 9 in its general comment no. 2 (2014).
2. IDA cannot stress enough the need to include references to accessibility for persons with disabilities within the draft general comment. We note that the mere use of the word “accessible” (paras. 22, 26, 56 and 57) might not necessarily trigger in the reader the connection with persons with disabilities, as “accessible” is also used to refer to a close geographical location.
3. In this sense, States should be called to ensure accessibility of all public information concerning land related legislations and policies, including plans and reports, as well as related administrative information addressed to or relevant for individuals with disabilities, both elements that could be easily reflected in para. 49 of the draft general comment, among others.
4. In particular, consultation processes with civil society, including organizations of persons with disabilities (see above section IV-B), should be made accessible to all persons with disabilities, including through the utilisation of accessible formats and means of communication. Reasonable accommodation should be provided for those individuals with disabilities whose needs have not been address by the general plan of the consultation.
5. Furthermore, States should ensure that the use of land for housing both by the State for social housing and by real estate developers for the private market are obliged to comply with accessibility requirements clearly established in the construction code and/or any other relevant piece of legislation and regulation. Finally, States should ensure that the built environment and transportation relevant for accessing land and profiting its use, in whatever legal statues, reflects standards of accessibility for persons with disabilities, especially by including accessibility requirements for bidders in public tenders, by not granting construction permits for projects that do not comply with them and by closely monitoring construction advancements.

**D) Recommendations.**

For the above considerations, IDA would like to request the CESCR Committee, in its draft general comment, explicitly to:

1) Call on States to recognise full legal capacity of persons with disabilities and develop supported decision-making schemes in line with Article 12 of the CRPD, to ensure that persons with disabilities access land and benefit from it on equal basis with others, especially in the exercise of economic, social and cultural rights.

2) Call on States closely consult with and actively involve organizations of persons with disabilities in the design, implementation and evaluation of policies related to land and the exercise of relevant economic, social and cultural rights, namely the right to food, to housing and right to water. Such consultation processes should aim at developing inclusive legislations and policies. Accessibility of information, communication and premises should be ensured throughout the processes.

3) Call States to adopt and enforce accessibility standards for all public information and communication, considering all the constituencies among persons with disabilities, including the relevant formats and means of communication, such as Braille, Sign language, Easy to Read Format, captioning, tactile communication and other alternative and augmentative formats and means of communication.

4) Consider IDA´s concrete drafting proposals including in Annex I to this subsmission.

## ANNEX I

In this annex, IDA proposes *some* concrete drafting proposals for the draft general comment:

**1) IDA proposes to add a paragraph on persons with disabilities after current para. 17:**

“Persons with disabilities face specific barriers in accessing land and in exercising related economic, social and cultural rights. Many of them, including notably persons with intellectual disabilities and persons with psychosocial disabilities, are deprived of legal capacity by legislations and regulations establishing substituted decision-making regimes. Hence, they are restricted in the exercise of their rights connected to land, such as property rights and inheritance. Accessibility barriers, including of the built environment, transportation, information and communication, prevent persons with disabilities from benefiting from land on equal basis with others.

**2) On current para 21: IDA proposes to add, as a new 3rd and 4th sentence:**

“Discrimination based on disability, including restrictions to legal capacity of persons with disabilities in law (e.g. guardianship regimes) and in practice, and denial of reasonable accommodation, should be prevented, combatted and redressed for persons with disabilities to access to land and related economic, social and cultural rights on equal basis with others. Legislative provisions restricting legal capacity of persons with disabilities should be repealed.”

**3) On current para 35: IDA proposes to add**

“... Policies should be formulated in a way that **are inclusive and** enables beneficiaries to benefit from the land they acquire and does not incentivize them to sell the land in order to support their minimum needs. **Groups facing higher in accessing land and benefiting from it, including persons with disabilities, should be targeted including in the provision of training and additional support.**”

**4) On current para 49: IDA proposes to add**

49. States should ensure that individuals and groups are able to receive and impart information relevant to the enjoyment of land-related Covenant rights. **Public** **information and communication with public officials should include formats and means accessible to persons with disabilities, including in Braille, Sign language, Easy to Read Format, captioning, tactile communications and other alternative and augmentative means of communication. States** ~~They~~ …”

**International Disability Alliance (IDA)**

The International Disability Alliance (IDA) is a unique, international network of eight global and six regional organisations of persons with disabilities (OPDs). Each IDA member represents a large number of national OPDs, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world’s largest –and most frequently overlooked– minority group. IDA’s mission is to advance the human rights of persons with disabilities as a united voice of OPDs utilising the Convention on the Rights of Persons with Disabilities (CRPD) and other human rights instruments.

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Referencies:

1. UNDESA, *Disability and Development Report*, page 34, Figure II.2. [↑](#endnote-ref-1)
2. UNDESA, *Disability and Development Report*, page 35, Figure II.3. [↑](#endnote-ref-2)
3. UNDESA, *Disability and Development Report*, page 34, Figure II.2. [↑](#endnote-ref-3)
4. Eurostat [Severe Material Deprivation by Disability](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=hlth_dm010&lang=en) [↑](#endnote-ref-4)
5. A/70/297, para. 29 and 30. [↑](#endnote-ref-5)
6. UNDESA, *Disability and Development Report*, pages 37 and 38, including Table II.1. [↑](#endnote-ref-6)
7. ILO, World Social Protection Report 2017-19, *Universal social protection to achieve Sustainable Development,* 69 (Persons with severe disabilities: Ratio of persons receiving disability cash benefits to the number of persons with severe disabilities) [↑](#endnote-ref-7)
8. ILO, World Social Protection Report 2017-19, *Universal social protection to achieve Sustainable Development Goals*, 69 [↑](#endnote-ref-8)
9. See A/72/128. [↑](#endnote-ref-9)
10. See A/72/128, para. 71. [↑](#endnote-ref-10)
11. See A/72/128, para. 71. [↑](#endnote-ref-11)
12. See A/72/128, para. 65. [↑](#endnote-ref-12)
13. CRPD Committee, general comment no 1 on Article 12 (“Equal recognition before the law”) of the CRPD, CRPD/C/GC/1, 2014. [↑](#endnote-ref-13)
14. See general comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention. [↑](#endnote-ref-14)
15. Id., para. 18. [↑](#endnote-ref-15)