**International Disability Alliance (IDA)**

Member Organisations:

Down Syndrome International, Inclusion International, International Federation for Spina Bifida and Hydrocephalus, International Federation of Hard of Hearing People, World Blind Union, World Federation of the Deaf, World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry, Arab Organization of Disabled People, African Disability Forum, ASEAN Disability Forum, European Disability Forum, Red Latinoamericana de Organizaciones no Gubernamentales de Personas con Discapacidad y sus familias (RIADIS), Pacific Disability Forum

**IDA submission to the Committee on the Rights of the Child for the Day of General Discussion “Protecting and empowering children as human rights defenders”**

The International Disability Alliance (IDA) is a unique international network of global and regional organisations of persons with disabilities. Established in 1999, each IDA member represents a large number of national organisations of persons with disabilities (OPDs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among them more than 1 billion persons with disabilities worldwide, the world’s largest –and most frequently overlooked– minority group. Currently comprising eight global and six regional OPDs, IDA’s mission is to advance the human rights of children and adults with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities (CRPD) and other human rights instruments. IDA also aims to promote the effective implementation and compliance with the CRPD within the UN system and across the treaty bodies.

**INTRODUCTION**

IDA welcomes the opportunity to provide its views prior to the Day of General Discussion “Protecting and empowering children as human rights defenders.” We consider highly important to ensure the full and explicit inclusion of children with disabilities in the discussions on children as human rights defenders. This submission addresses relevant standards under the Convention on the Rights of Persons with Disabilities (hereinafter CRPD) pertaining to children with disabilities, which might be relevant for the discussions on children human rights defenders led by the Committee on the Rights of the Child.

**I- Enabling environment for children with disabilities human rights defenders and their inclusion in related children led-initiatives and forums (Articles 7 and 29 of the CRPD)**

Article 7 of the CRPD requires States to take measures to ensure to children with disabilities the enjoyment of their right on equal basis with other children and upholds the principle of the best interest of the child. Its paragraph 3 recognises the “right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children”, including providing with disability and age-appropriate assistance to do so. These provisions must be interpreted in the light of the general principle of “[r]espect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities” (Article 3(h)), as well as of the principle and obligations of non-discrimination (Articles 3(b), 4(1)(b) and 5). In particular, the fulfilment of the obligation to ensure the provision of reasonable accommodation is key to facilitate, when required, the participation of children with disabilities as human rights defenders.

By projecting those provisions to the public sphere for the promotion of human rights, the linkage with Article 29 of the CRPD on “Participation in political and public life” is unavoidable. Its section (b) requires that States promote an environment in which persons with disabilities [including children] can -and are encouraged to- effectively and fully participate in the conduct of public affairs, by participating in public interest NGOs and political parties and by forming and joining organizations of persons with disabilities to represent persons with disabilities.[[1]](#footnote-1)

While the issue of representative organisations of children with disabilities will be dealt with in section II, IDA would like to stress here that States must take proactive measures to **promote children with disabilities as children human rights defenders and ensure that all initiatives directed to children in general are accessible to and inclusive of children with disabilities**. In line with Article 7(3) of the CRPD, States must ensure children with disabilities are able to express themselves **freely** and count with disability and age-appropriate assistance to realize that right, including for acting to promote and defend their human rights. In addition, as stated by the CRC Committee, “[a]dolescents with disabilities should, […] be provided with opportunities for **supported decision-making** in order to facilitate their active participation in all matters concerning them.”[[2]](#footnote-2)

**I-a) Inclusive education as an essential mean for empowering children with disabilities**

Children with disabilities have been -and still are- excluded from and/or segregated within the education worldwide. This prevents them from developing their full potential and from participating in all spheres of life on equal basis with other children, as well as drastically limits their opportunities to access employment or any form of self-employment and entrepreneurship when adults.

To address this pervasive exclusion, Article 24 of the CRPD provides for the right to inclusive education of children with disabilities.[[3]](#footnote-3) Inclusive education came to supersede previous models of education (notably segregated education and integration) and requires a systemic transformation to ensure that all children at risk of marginalisation are allowed to participate in education with all children. IDA is thankful that the CRC Committee has adopted positive language on inclusive education throughout its work.[[4]](#footnote-4)

States’ reforms towards inclusive education will increase overall participation of children with disabilities and their interaction with other children, and must be considered a key opportunity to promote awareness raising and human rights education of all children about CRC and CRPD rights and standards. This would give basic knowledge on rights and, importantly, empower children to become human rights defenders, to begin with in their daily contexts and communities, e.g. through school parliaments.

**I- b) Accessibility related measures to ensure participation of children with disabilities as human rights defenders**

“Accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society.”[[5]](#footnote-5) Therefore, all the obligations emanating from Article 9 of the CRPD (Accessibility), which addressed accessibility to the built environment, transportation, information and communication, are essential for children with disabilities to be able to participate and act as children human rights defenders. Preventing exclusion of children with disabilities through ensuring full accessibility is a key enabler, including to better promote and protect their rights and those of other children.

In particular, also in line with Article 21 of the CRPD, access to information related to human rights issues and public policies in accessible formats, including Braille, Sign Language interpretation, Easy to Read, audio description, accessible digital formats, etc., and to alternative means of communication, in order to participate on equal basis with other children, is of the utmost importance for children with disabilities.

Current **reliance on digital media, including online methods**, e.g. online consultations through specialised websites (e.g. GoogleForms, SurveyMonkey, etc.) and online meetings through specialised platforms (e.g. Google Hangout, CISCO WebEX, GoToMeeting, accompanied by the increased use of ICTs, allow for remote participation. Yet, IDA believes that **shortcomings on accessibility that exclude persons with disabilities must be stressed.** For instance, many tools are not accessible to blind persons, and persons with intellectual disabilities might be excluded, be it for the complexity of the tool being used or because of the way information is presented (not in Easy to Read format).

**II – Rights holders as defenders and Articles 4.3 and 33.3 of the CRPD: The obligation to ensure close consultation and active involvement of, through their representative organisations, in the decision-making process concerning their rights. The role of family organisations.**

Building upon the 1999 declaration,[[6]](#footnote-6) UN human rights mechanisms have identified the role of human rights defenders to “**assist** State parties in developing public policies compliant with treaty obligations.”[[7]](#footnote-7) **Regarding right holders as defenders**, this role reflects the requisite of participation of the human rights based approach.[[8]](#footnote-8) This “assistance” in public decision making must not be seen as an option for States, but as the consequence of their **obligation** to involve right-holders in the public decision making concerning their rights.

The CRPD includes this role of right-holders in public decision making. Its article 4(3) establishes a **general obligation**: “[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 provision is complemented by Article 33(3), which provides that “[c]ivil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process”.[[9]](#footnote-9) Distinguishing from previous treaties, including the CRC,[[10]](#footnote-10) the CRPD establishes a binding obligation for public decision-making processes. Being this obligation clear regarding children with disabilities under the CRPD, **the CRC Committee should adopt stricter language to make clear that States must actively involve children in public decision making concerning their rights, that this is a mandatory requirement from the very first input to the final product and a condition of validity of decisions, and that effective remedies must be available to address non-compliance, including nullification of decisions.**

Secondly, IDA believes that, in line with previous CRC standards,[[11]](#footnote-11) [[12]](#footnote-12) [[13]](#footnote-13) the upcoming discussions should stress on promoting **organizations and initiatives led by children with disabilities**, in order to acknowledge their role to channel the views of their constituency and promote their empowerment as human rights defenders. In particular, as children may not be allowed to register associations, States must acknowledge and promote that children-led **unregistered** associations, informal groups, schools-based student forums, parliaments, etc., are closely consulted and actively involved on issues that concerns them. Highlighting the need to give space to organisations of children with disabilities does not preclude the important acknowledgement of **organisations of families of children with disabilities**. Inasmuch as they play a key role in advancing the rights of children with disabilities and promoting their autonomy and participation, notably in connection with children with intellectual disabilities, autistic children and other marginalised groups of children.

In terms of procedures for the fulfilment of this obligation to actively involve children, States should foresee **specific processes** for children to participate, different from adult-oriented processes, in order to avoid any constraint in the expression of their views. Consequently, it is important to recall, and incorporate in the text of the draft, **the mandatory requirements established by the CRC Committee** for “[a]ll processes in which a child or children are heard and participate […]: “(a) Transparent and informative; (b) Voluntary; (c) Respectful; (d) Relevant; (e) Child-friendly; (f) **Inclusive**; (g) Supported by training; (h) Safe and sensitive to risk; (i) Accountable.“[[14]](#footnote-14) In addition, IDA would like to highlight explicitly that processes should also be **gender-sensitive**, to make sure that girls with disabilities are able to participate on equal terms with all children, in line with States duty to promote their development, advancement and empowerment (Article 6 of the CRPD).

**III - Access to justice of children with disabilities as human rights defenders.**

The right to access to justice is a key tool for human rights defenders, as it allows “to protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional and international levels.”[[15]](#footnote-15) Legal venues allow to prevent violations of rights and to seek legal remedies, including reparation, compensation, sanction of perpetrators, among others. IDA would like to highlight specific issues regarding children with disabilities and access to justice that need to be tackled to give children human rights defenders with disabilities the whole array of legal tools to perform as such.

Article 13 of the CRPD requires States to “ensure effective access to justice for persons with disabilities on an equal basis with others.” In particular, it demands, when necessary, the “provision of **procedural** and **age-appropriate** accommodations” to ensure their participation in all legal proceedings in whatever role (claimant, respondent, witness, etc.), and to train “those working in the field of administration of justice, including police and prison staff.”

The duty to provide procedural accommodation derives from civil and political rights, is linked to non-discrimination and is not subject to progressive realization.[[16]](#footnote-16) It must be distinguished from “**reasonable** accommodation”: “while the latter is limited by the concept of disproportionality, procedural accommodations are not.”[[17]](#footnote-17) Thus, the failure to provide procedural accommodation when required constitutes a disability based discrimination.[[18]](#footnote-18) As the CRPD Committee has recognised procedural accommodations must also be **age-appropriate**, and also cater the needs for children with disabilities. They may consist in modifying court room procedures and practices[[19]](#footnote-19) or in utilising plain language that might be more accessible.[[20]](#footnote-20)

The CRPD Committee has recognised the importance of “judicial remedies of a collective nature or class actions” as a tool to address situations affecting a group of persons with disabilities. Indeed, allowing for class actions, recognising broad legal standing (e.g. to civil associations),[[21]](#footnote-21) and allowing for and promoting public interest strategic litigation constitute a very interesting legal venue to seek for legal remedies, put the concerned issue in the public agenda raising its profile and lead to more comprehensive outcomes of judicial processes.[[22]](#footnote-22)

**RECOMMENDATIONS**

For the upcoming review of the draft general comment, IDA would like to propose to the CRC Committee to:

- Call States to promote children with disabilities as children human rights defenders, ensuring that all initiatives directed to children in general are accessible to and inclusive of children with disabilities, and ensuring that children with disabilities are able to express themselves freely and count with disability and age-appropriate assistance and supported decision-making in order to facilitate their active participation in all matters concerning them, in line with Article 7(3) of the CRPD.

- Call States to ensure that the development of inclusive education systems serves as a key mean to promote awareness raising and human rights education of all children about CRC and CRPD rights and standards, fostering empowerment of children to become human rights defenders.

- Call States to comply with accessibility related obligations under Articles 9 and 21 of the CRPD in all initiatives related to children, notably those pertaining their participation as human rights defenders. In particular, ensuring information is made available in accessible formats, including Braille, Sign Language interpretation, Easy to Read, audio description, accessible digital formats, among others, that alternative means of communication are provided, and that digital media and online methods of participation complies with the latest accessibility standards.

- To stress and call States to comply with the obligation to closely consult with and actively involve children with disabilities, through their representative organizations, in the development and implementation of legislation and policies concerning issues relating to them, including by promoting organizations and initiatives led by children with disabilities and developing specific processes for children to participate, different from adult-oriented processes, compliant with the CRC Committee established criteria, notably making them inclusive and also gender-sensitive. Acknowledging the contribution of organisations of families of children with disabilities is important, inasmuch as they contribute to advance the rights of children with disabilities and promote their autonomy and participation.

- To stress and call States to fulfil the right of children with disabilities to access to justice by ensuring the provision of “procedural and age-appropriate accommodations” and training “those working in the field of administration of justice, including police and prison staff”. In particular, promoting judicial remedies of a collective nature or class actions allows addressing structural discrimination of children with disabilities effectively and efficiently.

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1. While the phrasing of the Article is more directed to adults, it can be perfectly considered to reflect on children with disabilities and the development of their initiatives, forums and organisations. [↑](#footnote-ref-1)
2. CRC/C/GC/20, para. 32. [↑](#footnote-ref-2)
3. See CRPD Committee, CRPD/C/GC/4. [↑](#footnote-ref-3)
4. See e.g., [CRC/C/NRU/CO/1](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsttsBjyX%2fwSGIMoHUf7j8vAqB2RlzeskJ9RkdSj7%2ftqBwpgLlFLLzbAx3w8wNlhTSypD0vqh5A8L6kBphroDj38BCak8ktzduWChcRYkGwp5) (urging the State to: “... (c) Guarantee all children with disabilities, […] , *the right to inclusive education in mainstream schools independent of parental consent and ensure the availability of qualified assistance in mainstream schools*“ (emphasis added). [↑](#footnote-ref-4)
5. CRPD Committee, CRPD/C/GC/2, para. 1. [↑](#footnote-ref-5)
6. See [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf) (1999), Article 1. [↑](#footnote-ref-6)
7. [20th anniversary of the UN Declaration on Human Rights Defenders, Joint statement by a group of Chairs, Vice-Chairs and members of the United Nations human rights Treaty Bodies and the UN Special Rapporteur on Human Rights Defenders](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23154&LangID=E). [↑](#footnote-ref-7)
8. OHCHR, HR/PUB/06/12, para. 64. [↑](#footnote-ref-8)
9. The CRPD Committee is developing a general comment on Articles 4(3) and 33(3), which could inspire any development by the CRC Committee on this point. [↑](#footnote-ref-9)
10. Notably on Article 12, and general comments 12, 14 and 20, referring to the right to be heard and the views given due weight, more focused on administrative or judicial procedures, except by paras. 23-24 of general comment 20 (Para. 23 of GC 20 provides by “States should ensure that adolescents are involved in the development, implementation and monitoring of all relevant legislation, policies, services and programmes affecting their lives, at school and at the community, local, national and international levels.”) [↑](#footnote-ref-10)
11. CRC/C/GC/12, para. 128. Throughout this general comment, there are several references to children-led organisations in different areas of life (e.g. education, prevention of violence, etc.). [↑](#footnote-ref-11)
12. CRC/C/GC/20, para. 24. [↑](#footnote-ref-12)
13. CRC/C/GC/20, para. 54, stating that that “[l]egal recognition should be afforded to adolescents to establish their own associations, clubs, organizations, parliaments and forums…”. [↑](#footnote-ref-13)
14. CRC/C/GC/12, para. 134. [↑](#footnote-ref-14)
15. [20th anniversary of the UN Declaration on Human Rights Defenders, Joint statement by a group of Chairs, Vice-Chairs and members of the United Nations human rights Treaty Bodies and the UN Special Rapporteur on Human Rights Defenders](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23154&LangID=E). [↑](#footnote-ref-15)
16. OHCHR, A/HRC/37/25, para. 25. [↑](#footnote-ref-16)
17. CRPD Committee, CRPD/C/GC/6, para. 25(d). OHCHR, A/HRC/37/25, para. 25. [↑](#footnote-ref-17)
18. For more information on “procedural accommodation”, see A/HRC/37/25, para. 26 (stating, e.g., that it has to be based on the “free choice and preference” of the person concerned and that it “should not necessarily be based on medical information and cannot be subject to any disability assessment, for example those related to the granting of a disability card or certification.”) [↑](#footnote-ref-18)
19. CRC/C/GC/10, Children’s rights in juvenile justice, para. 46. [↑](#footnote-ref-19)
20. CRPD/C/GC/6, para. 51. [↑](#footnote-ref-20)
21. E.g. Article 43 of Argentinian Constitution recognises legal standing to registered public interest civil associations to bring to justice cases against discrimination, allowing for the practice of public interest litigation. [↑](#footnote-ref-21)
22. Instead of a situation in which the justice system is flooded with multiple individual claims and contradictory decisions by judges, a class action might be efficient in tackling comprehensively and efficiently the problem. [↑](#footnote-ref-22)