**Application of the principle of equality and non–discrimination to some obligations set forth in the CRPD (situations of risk and humanitarian emergencies, legal capacity and, access to justice)**

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Human Rights Watch welcomes the opportunity to provide input to the Committee on the Rights of Persons with Disabilities on this Day of General Discussion and strongly supports the Committee’s interest in further examining article 5 of Convention on the Rights of Persons with Disabilities (CRPD) on the right to equality and non-discrimination of persons with disabilities.[[1]](#footnote-1) Equality and non-discrimination are both a principle and a right. As a principle, equality and nondiscrimination governs all the obligation set forth in the CRPD and in all human rights obligations derived from domestic law, and also in international cooperation.

I would like to focus on some of the normative contents of the right to equality and non-discrimination and make recommendations based on Human Rights Watch research that highlights the scope of the principle of equality and non– discrimination in the context of the implementation of the right to access equal support in situations of risk and humanitarian emergencies (article 11), to equal recognition before the law (Article 12), and to access to justice (Article 13). It draws from research carried out in [Armenia](https://www.hrw.org/report/2017/02/22/when-will-i-get-go-home/abuses-and-discrimination-against-children-institutions)[[2]](#footnote-2), Brazil, [China](https://www.hrw.org/report/2013/07/15/long-they-let-us-stay-class/barriers-education-persons-disabilities-china),[[3]](#footnote-3) [Croatia](https://www.hrw.org/news/2014/10/06/croatia-locked-and-neglected), [[4]](#footnote-4) [Ghana](https://www.hrw.org/report/2012/10/02/death-sentence/abuses-against-persons-mental-disabilities-ghana),[[5]](#footnote-5) [Greece](https://www.hrw.org/news/2017/06/01/eu/greece-pressure-minimize-numbers-migrants-identified-vulnerable),[[6]](#footnote-6) [India](https://www.hrw.org/sites/default/files/reports/india_forUpload.pdf), [[7]](#footnote-7) [Indonesia](https://www.hrw.org/report/2016/03/20/living-hell/abuses-against-people-psychosocial-disabilities-indonesia),[[8]](#footnote-8) [Nepal](https://www.hrw.org/report/2011/08/24/futures-stolen/barriers-education-children-disabilities-nepal),[[9]](#footnote-9) [Peru](https://www.hrw.org/sites/default/files/reports/peru0512_brochure_low.pdf)[[10]](#footnote-10), [Russia](https://www.hrw.org/report/2014/09/15/abandoned-state/violence-neglect-and-isolation-children-disabilities-russian), [[11]](#footnote-11) [Serbia](https://www.hrw.org/report/2016/06/08/it-my-dream-leave-place/children-disabilities-serbian-institutions),[[12]](#footnote-12) [South Africa](https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children#5e8ba2),[[13]](#footnote-13) [South Sudan](https://www.hrw.org/news/2017/05/31/south-sudan-people-disabilities-older-people-face-danger), [[14]](#footnote-14) and [Syria](https://www.hrw.org/news/2016/05/19/leave-no-one-behind), [[15]](#footnote-15) among other countries, as well as ongoing monitoring of the right of equality and non-discrimination of persons with disabilities.[[16]](#footnote-16)

**I. Normative Content**

**B. Article 5(2)**

 *(1) Multiple discrimination*

In General Comment No. 3, the Committee defined multiple discrimination as being committed when a person is subjected to discrimination on more than one ground. For instance, in India, Human Rights Watch documented that women and girls with psychosocial or intellectual disabilities are among the most stigmatized and marginalized, enduring stigma and discrimination in every sphere of life—personal, professional, and public.[[17]](#footnote-17) The research captured multiple cases in which families hid or abandoned female members with psychosocial or intellectual disabilities.[[18]](#footnote-18) In these cases, women with disabilities were discriminated against on the basis of being women and for having a disability. It is imperative that the Committee emphasize this multidimensional aspect of discrimination in its upcoming General Comment to ensure that States Parties harmonize their anti-discrimination legislation with due consideration to this intersectionality.

 *(2) Discrimination by association*

CRPD article 5 should be read in conjunction with article 2 which provides a definition of what it is to be understood by discrimination on the basis of disability. The expression “on the basis of disability” encompasses discrimination by association and also discrimination on a perceived disability. Discrimination by association can be committed directly or indirectly and includes instances in which an individual is treated less favorably due to another person’s characteristics, such as a disability.[[19]](#footnote-19)

In India, Ghana and Nepal, Human Rights Watch documented that discrimination by association reaches even professionals such as health workers and teachers. For example, in Nepal, there is a strong belief that disability is due to sins in a past life. As a result, special education teachers are considered less worthy, may be hired under special contracts that do not include pension benefits, and often subjected to verbal abuse by people in the community.[[20]](#footnote-20)

We urge the Committee to include explicit references to discrimination by association, spelling out what exactly it means, what states’ responsibilities with respect to it are and guide states to build awareness raising campaigns about this phenomenon.

**C. Article 5(3)**

As non-discrimination is not subject to progressive realization, the clause on reasonable accommodation also has immediate effect.[[21]](#footnote-21)

The obligation to implement reasonable accommodation for persons with disabilities, when needed, encompasses public institutions and also private parties (article 4.1.e CRPD). The obligation to implement reasonable accommodation is crosscutting throughout the Convention and is reiterated in articles on access to justice (13), deprivation of liberty (14.2), education (24.2(c) and 24.5) and employment (27.1(i)).

While there is yet no identifiable uniform test for when a sought accommodation could not be deemed “reasonable”, (different jurisdictions have applied varied criteria), there are certain common elements that could be taken into consideration to perform the test. The test of reasonableness should be commensurate with the human rights obligations of the subject required to perform the accommodation; public institutions have stronger obligations to implement reasonable accommodation than private ones. In either case under the test, if an entity objects to providing a particular accommodation on the basis that it is unreasonable and imposes an undue burden, the burden of proof lies with the entity to establish it has reached its conclusion on the basis of a rational policy, that, it already took all reasonable steps to provide accommodation and that further measures in this direction would amount to undue hardship.[[22]](#footnote-22)  The entity should be able to demonstrate material proof of the undue hardship; mere speculations or hypothesis are not sufficient.

**II. Interrelation with Other Specific Articles.**

It is essential that the Committee includes interrelationships between the right to equality and non– discrimination and the rights support in situations of risk and humanitarian emergencies, legal capacity, and access to justice.

**A. Situations of Risk and Humanitarian Emergencies (Article 11)**

In situations of risk inadequate planning and lack of consideration of persons with disabilities can also lead to discrimination. In various countries embroiled in armed conflict, Human Rights Watch documented that persons with disabilities who reached sites for international displaced people or refugees often struggled to access basic necessities, such as water, sanitation, food and shelter.

For example, in South Sudan, accessible hygiene facilities such as latrines and showers either do not exist or are insufficient. In the Malakal Protection of Civilians site, as of May 2017 few latrines had been adapted to the needs of individuals with physical disabilities, although more were scheduled to be built.[[23]](#footnote-23) People with disabilities interviewed in the Juba and Malakal sites also said that the few accessible, adapted latrines were used by all in the camp, and there was often urine or defecation on the sides of them making them hazardous for those needing to crawl into the latrine.[[24]](#footnote-24) In Juba the floors of the common showers are too high for many with disabilities to access or in Malakal are too slippery due to the tarpaulin they are made from.

Similarly in Greece, refugees and asylum seekers with disabilities described to Human Rights Watch the struggle to access sanitation facilities.[[25]](#footnote-25) Nawael, a 34-year old-Syrian women in a wheelchair staying in Piraeus told Human Rights Watch:

“Here it is very hard for me to go to the toilet. My husband helps me at the door and random women help me inside the toilet. I don’t sleep at night because my body is itchy. My husband helped me and I washed my hair with cold water, but then I got sick. Ten days ago, I got my period and I swear to God, I still haven’t had a shower. And I [usually] pray, but given that I haven’t had a shower, I can’t pray.”[[26]](#footnote-26)

Human Rights Watch documented the plight of a young Syrian man, Ayman, 28, with a physical disability resulting from a rocket hitting his home in Damascus, who was locked up in an immigration detention center in Hungary.[[27]](#footnote-27) When Human Rights Watch spoke with him in October 2016, Ayman had been locked up for more than forty days. Ayman had no access to a wheelchair, which had broken on his journey. [[28]](#footnote-28) Consequently, he spent twenty-three days lying in a bed until his lawyer could get a wheelchair donated for him.[[29]](#footnote-29)

In situations of displacement, children with disabilities face particularly difficult barriers to education. For example, government and humanitarian efforts in Lebanon to expand access to education for Syrian child refugees have failed to include children with disabilities, who are often overlooked, leaving them among the most invisible and at risk children in Lebanon.[[30]](#footnote-30)

‬‬‬‬‬‬‬‬‬‬‬‬‬‬‬‬In the case of Lebanon, thirteen humanitarian and disability organizations told Human Rights Watch that little or nothing had been done to ensure that refugee children with disabilities can access education.[[31]](#footnote-31) For example, Abir, a mother of two children, aged 6 and 10, with intellectual disabilities, tried to enroll her younger child in a private school, but staff refused to enroll him, claiming the school was “not equipped” to teach him. “[They] told me I was wasting my money because he had special needs,” she recalled.[[32]](#footnote-32) She also explained that she “.. tried to enroll my 10-year-old in a public school but they turned him down, even from kindergarten. They told me that other students would make fun of him.”[[33]](#footnote-33)‬‬‬‬‬‬‬‬‬‬‬‬ In 2014, Abir was able to enroll both her children in a special school at a total cost of USD $1,650, but could only afford to do so for a short while.

Human Rights Watch calls on the Committee to include guidance and recommendations to states parties and international aid agencies that have a mandate to support internally displaced persons and refugees, urging them to ensure the principle of non-discrimination in all programs and actions.

**B. Legal Capacity (Article 12)**

Legal capacity of persons with disabilities is fundamentally linked to the principle of equality and non-discrimination. The Convention obligates States to ensure that persons with disabilities enjoy the right to full legal capacity on an equal basis as others and the right to receive the support they need to make their own choices and to direct their own lives. However, all too often persons with disabilities, particularly with intellectual or psychosocial disabilities, are denied the power to make independent decisions and to have these decisions legally recognized.

For example, in Croatia, 18,000 persons with intellectual or psychosocial disabilities were deprived of their legal capacity in 2014.[[34]](#footnote-34) Similarly, in Serbia, 19,000 people with disabilities as of December 2015 were stripped of their right to legal capacity and have been placed under guardianship.[[35]](#footnote-35) Based on interviews with persons with intellectual or psychosocial disabilities in Croatia, Human Rights Watch found that denial of the right to legal capacity of persons with disabilities continues to limit other human rights including the right to liberty, the right to marry and found a family, parental rights, the right to give consent to medical treatment, the right to choose where and with whom to live, on an equal basis with others and the right to vote.[[36]](#footnote-36) In Serbia, Human Rights Watch documented cases in which young women with disabilities deprived of legal capacity were subjected to invasive medical interventions, including termination of pregnancy, with the consent of the guardian, but without their own free and informed consent.[[37]](#footnote-37) Similar trends can be found in Latin America, according to research Human Rights Watch has conducted in Peru[[38]](#footnote-38) and Brazil.[[39]](#footnote-39) In these countries, legislative frameworks still establish restrictions to legal capacity, which affect people with disabilities’ rights to vote, get married, have a family, and make personal financial decisions.

None of the countries in which Human Rights Watch has conducted research has legislation providing for a system of supported decision making. Lack of availability of and access to support necessary to reach and communicate decisions for people with disabilities constitutes discrimination.

**C. Access to Justice (Article 13)**

Discrimination hinders access to justice for persons with disabilities, particularly for persons with psychosocial or intellectual disabilities and women with disabilities. Persons with disabilities may not have access to appropriate or adequate information on how to navigate the procedural requirements of redress mechanisms. As such, Article 13 obligates States to enact additional, procedural safeguards for persons with disabilities so that they can effectively participate in the legal process and to train judicial personnel on the rights of persons with disabilities.

Human Rights Watch’s research demonstrates that law enforcement officials are often skeptical of allegations brought by persons with disabilities. In some cases, officers fail to investigate allegations or otherwise take appropriate action. For example, in India, one police officer told Human Rights Watch: “If she is MR ["mentally retarded”], she is not in a conscious mind, how can she say that she is being raped? She won’t be able to tell or identify the accused. Generally, we don’t accept [her testimony].” [[40]](#footnote-40)

Human Rights Watch urges the Committee to include in its General Comment 6, recommendations to states to develop awareness raising campaigns and programs to ensure that law enforcement officials, judges and other staff that work in administration of justice, understand their obligations to ensure equal access to justice for people with disabilities, including procedural accommodation. Awareness raising should be accompanied also by systematic professional training.

Thank you very much for your kind attention.

1. International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (CRPD), G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008. [↑](#footnote-ref-1)
2. *See* Human Rights Watch *“When will I get to go home?": Abuses and discrimination against children in institutions and lack of access to quality inclusive education in Armenia*. https://www.hrw.org/report/2017/02/22/when-will-i-get-go-home/abuses-and-discrimination-against-children-institutions [↑](#footnote-ref-2)
3. *See* Human Rights Watch, *“As Long as They Let Us Stay in Class” Barriers to Education for Persons with Disabilities in China,* https://www.hrw.org/report/2013/07/15/long-they-let-us-stay-class/barriers-education-persons-disabilities-china. [↑](#footnote-ref-3)
4. *See* Human Rights Watch, *Croatia: Locked up and Neglected. Meager Progress on Moving People with Disabilities Into the Community,* https://www.hrw.org/news/2014/10/06/croatia-locked-and-neglected. [↑](#footnote-ref-4)
5. *See* Human Rights Watch *"Like a Death Sentence": Abuses against Persons with Mental Disabilities in Ghana*. https://www.hrw.org/report/2012/10/02/death-sentence/abuses-against-persons-mental-disabilities-ghana [↑](#footnote-ref-5)
6. *See* Human Rights Watch, *EU/Greece: Pressure to Minimize Numbers of Migrants Identified As ‘Vulnerable’ European Pressure Affecting People with Disabilities, Others at Risk*, https://www.hrw.org/news/2017/06/01/eu/greece-pressure-minimize-numbers-migrants-identified-vulnerable. [↑](#footnote-ref-6)
7. *See* Human Rights Watch, *‘Treated Worse Than Animals’: Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*, https://www.hrw.org/sites/default/files/reports/india\_forUpload.pdf. [↑](#footnote-ref-7)
8. *See* Human Rights Watch, *Living in Hell: Abuses Against People with Psychosocial Disabilities in Indonesia*, https://www.hrw.org/report/2016/03/20/living-hell/abuses-against-people-psychosocial-disabilities-indonesia [↑](#footnote-ref-8)
9. *See* Human Rights Watch, *Futures Stolen Barriers to Education for Children with Disabilities in Nepal*,https://www.hrw.org/report/2011/08/24/futures-stolen/barriers-education-children-disabilities-nepal [↑](#footnote-ref-9)
10. *See* Human Rights Watch,"I Want to Be a Citizen Just like Any Other": Barriers to Political Participation for People with Disabilities in Peru. https://www.hrw.org/sites/default/files/reports/peru0512\_brochure\_low.pdf [↑](#footnote-ref-10)
11. *See* Human Rights Watch, *Abandoned by the State: Violence, Neglect, and Isolation for Children with Disabilities in Russian Orphanages*, https://www.hrw.org/report/2014/09/15/abandoned-state/violence-neglect-and-isolation-children-disabilities-russian; Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*, https://www.hrw.org/report/2015/09/01/left-out/obstacles-education-people-disabilities-russia; Human Rights Watch, *Barriers Everywhere: Lack of Accessibility for People with Disabilities in Russia*, https://www.hrw.org/report/2013/09/11/barriers-everywhere/lack-accessibility-people-disabilities-russia. [↑](#footnote-ref-11)
12. *See* Human Rights Watch, *“It is My Dream to Leave This Place” Children with Disabilities in Serbia institutions*, https://www.hrw.org/report/2016/06/08/it-my-dream-leave-place/children-disabilities-serbian-institutions. [↑](#footnote-ref-12)
13. *See* Human Rights Watch, *“Complicit in Exclusion”: South Africa’s Failure to Guarantee an Inclusive Education for Children with Disabilities*, https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children#5e8ba2. [↑](#footnote-ref-13)
14. Human Rights Watch, *South Sudan: People with Disabilities Older People Face Danger UN, Aid Agencies Should Improve Response to These Groups*, https://www.hrw.org/news/2017/05/31/south-sudan-people-disabilities-older-people-face-danger. [↑](#footnote-ref-14)
15. *See* Human Rights Watch, *Leave No One Behind Persons with Disabilities in Humanitarian Emergencies,* https://www.hrw.org/news/2016/05/19/leave-no-one-behind; Human Rights Watch, *’Growing Up Without an Education’ Barriers to Education for Syrian Refugee Children in Lebanon*, https://www.hrw.org/report/2016/07/19/growing-without-education/barriers-education-syrian-refugee-children-lebanonhttps://www.hrw.org/news/2017/06/01/eu/greece-pressure-minimize-numbers-migrants-identified-vulnerable. [↑](#footnote-ref-15)
16. International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (CRPD), G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008. [↑](#footnote-ref-16)
17. Human Rights Watch, *‘Treated Worse Than Animals’: Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*, https://www.hrw.org/sites/default/files/reports/india\_forUpload.pdf. [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. Equality and non-discrimination under article 5 of the Convention on the Rights Of Persons with Disabilities: Report of the United Nations High Commissioner for Human Rights, A/HRC/34/26, para. 25. http://undocs.org/A/HRC/34/26 [↑](#footnote-ref-19)
20. Human Rights Watch, *Futures Stolen Barriers to Education for Children with Disabilities in Nepal,* https://www.hrw.org/report/2011/08/24/futures-stolen/barriers-education-children-disabilities-nepal [↑](#footnote-ref-20)
21. *Lord, J. E., & Stein, M. A. “Assessing Economic, Social and Cultural Rights: The Convention on the Rights of Persons with Disabilities,” in Equality and Economic and Social Rights, eds. Malcolm Langford & Eibe Reidel, p. 45. Cited by Janet Lord and Rebecca Brown, The Role of Reasonable Accommodation in Securing Substantive Equality for Persons with Disabilities: The UN Convention on the Rights of Persons with Disabilities (2010). SSRN:*[*http://ssrn.com/abstract=1618903*](http://ssrn.com/abstract%3D1618903)*or*[*http://dx.doi.org/10.2139/ssrn.1618903*](http://dx.doi.org/10.2139/ssrn.1618903) [↑](#footnote-ref-21)
22. The CRPD Committee has established that the burden to prove that reasonable accommodation is not proportional or constitutes an undue burden lies with the entity obligated to perform the accommodation. In the case H.M vs. Sweden, communication 3/2011, the CRPD Committee concluded that Sweden did not prove that the accommodation of allowing the author of the communication to build a hydrotherapy pool for rehabilitation in her home constituted an undue burden. CRPD/C/7/D/3/2011 Paragraph 8.7. [↑](#footnote-ref-22)
23. Human Rights Watch, *South Sudan: People with Disabilities Older People Face Danger UN, Aid Agencies Should Improve Response to These Groups*, https://www.hrw.org/news/2017/05/31/south-sudan-people-disabilities-older-people-face-danger*.* [↑](#footnote-ref-23)
24. *Id.* [↑](#footnote-ref-24)
25. Human Rights Watch, “Greece: Refugees with Disabilities Overlooked, Underserved”, https://www.hrw.org/news/2017/01/18/greece-refugees-disabilities-overlooked-underserved. [↑](#footnote-ref-25)
26. *Id.*  [↑](#footnote-ref-26)
27. Human Rights Watch, *Leave No One Behind Persons with Disabilities in Humanitarian Emergencies,* https://www.hrw.org/news/2016/05/19/leave-no-one-behind *.*  [↑](#footnote-ref-27)
28. *Id.*  [↑](#footnote-ref-28)
29. *Id.*  [↑](#footnote-ref-29)
30. Human Rights Watch, *’Growing Up Without an Education’ Barriers to Education for Syrian Refugee Children in Lebanon*, https://www.hrw.org/report/2016/07/19/growing-without-education/barriers-education-syrian-refugee-children-lebanon. [↑](#footnote-ref-30)
31. *Id.* [↑](#footnote-ref-31)
32. *Id.*  [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. Human Rights Watch, *Croatia: Locked up and Neglected. Meager Progress on Moving People with Disabilities Into the Community,* October 6, 2016, https://www.hrw.org/news/2014/10/06/croatia-locked-and-neglected. [↑](#footnote-ref-34)
35. Human Rights Watch, *“It is My Dream to Leave This Place” Children with Disabilities in Serbia institutions,* https://www.hrw.org/report/2016/06/08/it-my-dream-leave-place/children-disabilities-serbian-institutions*.*  [↑](#footnote-ref-35)
36. *Id.* [↑](#footnote-ref-36)
37. *Id.*  [↑](#footnote-ref-37)
38. Human Rights Watch, *“I Want to be a Citizen Just like Any Other”: Barriers to Political Participation for People with Disabilities in Peru*. https://www.hrw.org/sites/default/files/reports/peru0512\_brochure\_low.pdf [↑](#footnote-ref-38)
39. Brazil has recently revoked provisions that were established in the Brazilian Law for Inclusion (statute of people with disabilities), a law that entered into force in January 2016, that established a shift from substitute decision-making to supported decision-making. Substitute decision-making is prevalent in that country. [↑](#footnote-ref-39)
40. Human Rights Watch, *‘Treated Worse Than Animals’: Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*, https://www.hrw.org/sites/default/files/reports/india\_forUpload.pdf. [↑](#footnote-ref-40)