**Disability as a ground for discrimination**

**in the enjoyment of economic, social and cultural rights**

Many thanks to my colleagues from the CRPD and to the Permanent Mission of Germany for the opportunity to contribute to this Day of General Discussion on the right to equality and non-discrimination. My focus will be on the principle of non-discrimination on the ground of disability in the enjoyment of economic, social and cultural rights.

As we all know, the Universal Declaration of Human Rights sets forth a broad list of grounds for discrimination that is repeated in the two International Covenants, that of Civil and Political Rights and that of Economic, Social and Cultural Rights.

This list does not attempt at being exhaustive since it includes the reference to “other status” to leave open the possibility for the inclusion of other grounds for discrimination that might eventually become necessary***.***

Along the way, more recent Conventions have taken on board new grounds for discrimination. Disability, as we know, was included for the first time in Article 2 of the Convention on the Rights of the Child.

The Convention on the Rights of Persons with Disabilities, in its Article 1, refers to disability as the social effect of the interaction between individual impairment and the social and material environment and this is my point of departure for disability as a ground for discrimination in the enjoyment of economic, social and cultural rights.

In the experience of our Committee and I assume this is shared experience among all treaty bodies, while direct discrimination is easy to identify, indirect discrimination is rather more complex, especially when legal provisions appear to be neutral but in effect lead to discrimination when implemented. Of particular concern are multiple discrimination and structural or systemic discrimination.

The concept of multiple discrimination was expressly included in Article 6 of the CRPD that recognizes that women and girls with disabilities are subject to multiple discrimination and requires States parties to take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

As expressed by CEDAW and CRPD in some of their General Comments, multiple discrimination refers to a situation in which a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated. In other words, we are referring to the cumulative and interdependent effects of discrimination on several grounds, for example, in the case of a woman, belonging to a minority religious or linguistic group and who also has a disability.

Coming back specifically to the Covenant on Economic, Social and Cultural Rights, the principle of non-discrimination and the principle of the equal right of men and women to the enjoyment of all economic, social and cultural rights are two cross cutting principles that need to be read in conjunction with each specific substantive right guaranteed in part III of the Covenant (right to work, including to just and favourable conditions of work, to social security, to the protection of the family and its members, to an adequate standard of living, including a minimum income, food, shelter, clothing, water and sanitation, to health, education and to take part in cultural life and benefit from scientific progress.

The principle of non-discrimination prohibits unjustified distinctions (similar situations being treated differently) as well as unjustified comparisons (situations that are different being treated in the same manner). Ratification of the Covenant implies that State parties must immediately eliminate formal discrimination established by law by amending such legislation and must adopt measures for the elimination of de facto discrimination as soon as possible.

How have States parties translated the comprehensive international legal framework into national legislation and regulations? And, more importantly, how far have they made it real in policy formulation and implementation and enforcement of rights?

Very seldom have they taken the option to enact a framework law against discrimination that would provide the overarching legal architecture for a coherent non-discrimination environment and integrated policies to combat the root causes of discrimination, in particular multiple and systemic discrimination. There are a number of fragmented regulations against discrimination in the fields of education, employment, social security and health, with legal avenues for complaints and redress but the absence of a framework law that tackles the problem across the board allows for huge implementation gaps and for people to fall through the cracks.

The second challenge is the lack of coordinated policies that are needed to tackle discrimination, in particular multiple discrimination. The full realization of the rights of persons with disabilities requires integrated measures from various public departments. However, very often, the necessary holistic approach is hampered by a number of policy failures at the institutional level due to financial constraints derived from sector-specific budgets, cultural constraints that locate disability programmes in the so-called social Ministries and operational complaints due to conflicting priorities and a lack of over-all policy coherence.

A third challenge is the lack of disaggregated data based on the prohibited grounds of discrimination, including disability. What is not measured cannot be seen and even less dealt with.

 As time evolves, the nature and manifestations of discrimination are becoming more interwoven with contemporary trends. It has acquired forms that are more subtle and therefore more difficult to identify and growingly reflects the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization. That is one of the reasons why in its General Comment 20, on non-discrimination in economic, social and cultural rights, our Committee, taking advantage of the other status clause in Article 2.2. of the Covenant, and recognizing that poverty and discrimination are mutually reinforcing, added economic and social situation as a ground for discrimination.

Under the International Covenant on Economic, Social and Cultural Rights, the core obligations of States are to address as a matter of absolute priority the needs of target groups traditionally subject to discrimination and persons with disabilities are one such group. States are required to ensure the satisfaction of, at the very least, minimum essential levels[[1]](#footnote-1) of each of the Covenant rights for these target groups with time-bound measurable benchmarks that set the targets to be achieved and the economic and social measures to achieve them. Compliance with such obligations must also enable an on-going assessment that allows for corrections if the impact of the measures is not as expected.

This can only be achieved through the meaningful participation of the affected groups in the process.

Two recurrent dimensions of the struggle of any discriminated group are the lack of representation of its members in decision making bodies and the multiple discrimination faced by women who suffer the most and are certainly at the bottom of society, impoverished and invisible as citizens. In the case in point, participation of persons with disabilities, in particular women with disabilities, is indeed an essential tool to combat non-discrimination and promote substantive equality.

In our dialogue with States, issues of discrimination against persons with disabilities often come up in relation to the rights to education, work, including just and favourable conditions of work, social security, social services, health and participation in cultural life. Some States hold the view that measures for protective equality, for example special schools or classes, or sheltered employment facilities, are more successful than substantive equality measures. Like other treaty bodies, we have been pushing for substantive equality. A recent example is paragraph 47 c) of our General Comment 23, of April 2016, on the right to just and favourable conditions of work, where we have made it clear and I quote “that at times, workers with disabilities require specific measures to enjoy the right to just and favourable conditions of work on an equal basis with others. Workers with disabilities should not be segregated in sheltered workshops. They should benefit from an accessible work environment and must not be denied reasonable accommodation, like workplace adjustments or flexible working arrangements. They should also enjoy equal remuneration for work of equal value and must not suffer wage discrimination due to a perceived reduced capacity for work”. (end of quote).

We have been pursuing the denial of reasonable accommodation as a form of discrimination but there seems to be a lack of understanding on the part of public authorities about the connection between the two. I look forward to the discussion of this issue in Panel 3.

Moving on to justiciability, there are 2 issues I would like to briefly touch on. The first is that National Human Rights Institutions are often not entrusted with the mandate to receive and consider complains of violations of economic, social and cultural rights. Hopefully, this will change in the future, at least for persons with disabilities, given the role played by NHRIs as independent mechanisms foreseen in Art. 33.2 of the Convention.

The second issue are the obstacles generally faced by the victims in accessing justice, including the high costs of litigation, the long-delays in court proceedings, and the non-implementation of court decisions by public authorities. For persons with disabilities the denial of reasonable accommodation in the justice system and in other public systems is a further cause for non-enforcement of their rights.

These are a few examples of how our Committee has applied the cross-cutting principle of non-discrimination to the enjoyment of all the substantive rights enshrined in the Covenant by persons with disabilities and I hope they will provide useful inputs to my CRPD colleagues as you further develop the General Comment on Article 5 of the Convention.

Many thanks.

Virginia Bras Gomes / Chair of the UN Committee on Economic, Social and Cultural Rights

1. CESCR General Comment 3 (1990) on the nature of States parties obligations

CESCR, in its General Comments on the interpretation of the Covenant, has so far identified core obligations arising from minimum essential levels of the right to food, education, health, work, social security, sexual and reproductive health, and just and favourable conditions of work

 [↑](#footnote-ref-1)