**Input on the Draft General Comment on the right of persons with disabilities to equality and non-discrimination (article 5)**

*Submitted by*:

Dr. Xuan Thuy Nguyen, Institute of Interdisciplinary Studies, Carleton University

Ms. Tammy Bernasky, PhD Candidate, Critical Disability Studies, York University

The “Monitoring Educational Rights of Girls with Disabilities” project, led by Dr. Xuan Thuy Nguyen, Assistant Professor in the Institute of Interdisciplinary Studies at Carleton University, was supported by the Social Sciences and Humanities Research Council of Canada (2013-2015). This project aimed to address the lack of specific knowledge about girls with disabilities in Vietnam, and to set the stage for developing social activist strategies for their inclusion.

To understand the experiences of girls with disabilities in and outside of Vietnamese schools, the study was piloted in North and South of Tu Liem districts in Vietnam. It used a participatory monitoring approach to engage with twenty-one girls with disabilities in and out of schools. This research was used as an advocacy tool, combining two forms of participatory research methodologies. The use of participatory visual methods and in-depth interviews allowed us to explore experiences of human rights for girls with disabilities, particularly in the area of education.

Given that women and girls with disabilities have had very limited access to public education in Vietnam, we aimed to use these monitoring methodologies as a transformative tool to empower their knowledge production and increase their participation in education. Eight women participated in a focus group during the third phrase of the project. The focus group invited them to share their experiences working with the girls. The one and half hour focus group was facilitated by two MRGD team members and two Action to Community Development Centre team members. The following recommendations are based on the findings of the study.

**Recommendation 1**

Paragraph 24 under Reasonable Accommodation: we recommend changing the term “adapting’ to “redesigning” to reflect the principle of universal design within the CRPD. We also recommend including “teaching strategies” among the list of reasonable accommodations (the recommended word change is in bold).

*Reasonable accommodation is an intrinsic part of the duty of non -discrimination in the context of disability.[[1]](#footnote-1) Examples of reasonable accommodations include making existing facilities and information accessible to the individual person with a disability; modifying equipment; reorganizing activities; rescheduling work;* ***redesigning*** *curricula,* ***learning materials, and teaching strategies;*** *adjusting medical procedures; implementing specific medication modalities; or enabling access to support personnel.[[2]](#footnote-2) Other examples may be: giving the person with a disability training, modifying procedures for testing or assessment providing supervision, modifying instructions or reference manuals.*

**Recommendation 2**:

We recommend that considerations of barriers to inclusive education go beyond “access to mainstream education” to consider exclusionary and discriminatory problems *in* education. The MRGD study found that access to education, including the classroom, does not guarantee that students with disabilities will be fully included in educational and social activities. For instance, when asked if she participated in activities at school, one girl with a physical impairment responded: ‘Yes, I do. For example, I can still enjoy going on a sightseeing tour. But I can’t go far’ (Nguyen et al, 2016, p. 26). Regarding class time, she told the interviewers, ‘I am almost ignored in my class.’ By this, she meant her teachers and peers ignored her presence in class” (Nguyen et al, 2016, p. 26). A recommendation from the girls with disabilities in this study was that they needed more support and understanding from their teachers in accommodating their learning.

We recommend editing the first sentence from Article 24 (paragraph 70) as follows:

*The failure of some States parties to provide students with disabilities with* ***equal*** *access to mainstream* ***school with*** *inclusive* ***and quality*** *education is discriminatory, contrary to the objectives of the Convention, and in direct contravention of articles 5 and 24.*

**Recommendation 3**

In paragraph 40, with reference to the participatory research process, we recommend including wording that recognizes the importance of providing a safe space for participants. We also recommend using the term “participatory” instead of “participative” in relation to the “research processes.” Finally, we suggest including the role of persons with disabilities in monitoring their rights as a crucial component of participatory monitoring (Nguyen, Mitchell, De Lange, & Fristch, 2015; Rioux, Pinto, & Parekh, 2015). (The recommend wording is in bold):

*Inclusive and* ***participatory*** *research processes should ensure* ***a safe space for participants and*** *centre around the lived experiences and requirements of persons with disabilities and ensure that national monitoring procedures identify the areas of inequality and discrimination that affect the lives of persons with disabilities****. Persons with disabilities and their organizations, including DPOs, must play a key role in monitoring their own rights.***

As noted in the MRGD study, “Using participatory visual methodologies as a way to enhance the participation of girls with disabilities in inclusive research, we found that this approach was not only useful for the purpose of identifying forms of discrimination and exclusion; it was also instrumental for the purpose of creating a safe space for collective activism.” (Nguyen, 2016, p. 46).

**Recommendation 4**

Article 24 of the CRPD sets out principles that support the development of children with disabilities. We recommend including a specific reference to inclusive practices within mainstream classrooms that contribute to feelings of dignity and positive self-perceptions for children with disabilities. Our study uncovered complex patterns of inclusion and exclusion for girls with disabilities in and out of education. The girls in our study “experienced situations that made them feel negatively about their personal values or dignity (81%)... Many situations involved being bullied by their peers. Girls with disabilities also experienced “a lack of understanding from their teachers and peers for their learning differences, being discriminated against by their peers because of their language and family backgrounds, and being treated unfairly in classroom situations that required accommodation of their needs.” (Nguyen, 2016, p. 21). Discrimination of students with disabilities in mainstream classrooms often includes negative treatment by peers and teachers. In accordance with the principles set out in Article 24 of the convention (education), we recommend adding the following text to paragraph 71:

*Mainstream education must ensure that course curriculum is fully accessible to and inclusive of children with disabilities such that disability is portrayed positively within education materials. Efforts must also be made by administrators and teaching staff to positively address and include all children with disabilities within the classroom.*

**Recommendation 5:**

Paragraph 43: We recommend that the draft should take the principle of the best interest of the child into careful consideration. The best interest approach is underpinned by the principle of paternalism which may not always reflect the voices and interest of the child. Disability legal studies demonstrate that the best interest approach can be used as a way of preventing children, especially girls with intellectual disabilities, from exercising their reproductive rights, as in the case of forced sterilization (e.g., the case of Eve v. Ms Eve in Canada, see Rioux, 2002; Rioux & Riddell, 2011). We suggest that adding the bolded text below to reflect the cultural and legal dimensions of childhood and disability.

The principle of the best interests of the child **should be applied to children with disabilities with careful consideration of their circumstances to ensure that children have a say in every decision-making process related to their situation**. Many children with disabilities do not have access, on an equal basis with others, to education, housing, or goods and services. General laws concerning childhood rarely consider children with disabilities. **Including the cultural understandings of childhood and disability in legal and cultural considerations of children’s rights is a vital condition for achieving inclusive equality.** **The principle of best interest, however, should not be used to prevent children, especially girls with disabilities, from exercising their right to bodily integrity.** **It should be used in consultation with children with disabilities to ensure that they are informed and can make decisions related to their situation.**

1. Committee on Economic, Social and Cultural Rights, General Comment No. 5: Persons with disabilities, United Nations Doc. E/1995/22, 1994, Para 15 [↑](#footnote-ref-1)
2. Report of the Office of the United Nations High Commissioner for Human Rights, Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities, 9 December 2016, para. 28, A/HRC/34/26 [↑](#footnote-ref-2)