**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 on the draft general comment on** **Article 5**

**of the Convention on the Rights for Persons with Disabilities**

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.

IDA welcomes the opportunity to provide comments to the very important draft general comment no 6 on Article 5 of the CRPD on Equality and Non-Discrimination. We hope that this submission further contributes to make the general comment even tighter and clearer.

**INTRODUCTION**

Let us begin by commending the work of the Committee on the Rights of Persons with Disabilities (*hereinafter* “the Committee”) on this draft general comment. It is comprehensive and addresses many complex issues on which guidance to States Parties is timely to foster CRPD implementation. The introduction of *inclusive equality* and the clarification of different concepts and their interaction are particularly praiseworthy.

IDA believes that the draft would benefit from some *trimming*, in order to reduce its length and prevent repetition, gain in clarity and precision, include new references to different groups among persons with disabilities (see Section III), and thus **becoming more accessible to a larger audience, which may lack very technical legal background**.[[1]](#footnote-1) For instance, concepts such as “dilemma of difference” could be put in more concrete terms for laypersons. This might be a challenging task, given the complexities of the topic, but it is also a key exercise to be done throughout the document in order **to allow for better understanding and notably increased ownership by the widest number of persons with disabilities and their organisations**.

**I- Inclusive Equality: its introduction in paragraph 10**

While IDA had encouraged the CRPD Committee to adopt the language of “transformative equality”,[[2]](#footnote-2) we are enthusiastic and supportive of the innovative concept of “inclusive equality.”[[3]](#footnote-3) On this, IDA would like to stress two main ideas. Firstly, as it entails an innovative language and concept in human rights law, IDA believes that the CRPD Committee should foresee to engage with other actors, notably other UN Treaty Bodies, to promote the further use of the concept by others as well. Secondly, the CRPD Committee should communicate very clearly and in concrete terms to prevent vague and blurry readings that make an “empty shell” of the concept (meaning everything and nothing at the same time).

To address these concerns, as well as the general one of the introduction, in the text of the general comment, IDA believes that para. 10 would benefit very much from a simple and straightforward structure,[[4]](#footnote-4) maybe even using a bullet point format, leaving its second part for a following paragraph. For example, it could read:

“10. This definition of equalization of opportunities marks a significant development from a formal model of equality to a substantive model of equality. **In this sense, an evolution of the understandings of equality can be drawn and three models clearly distinguished:**

1. **Formal Equality**: seeks to combat direct discrimination by treating persons in a similar situation similarly and persons in different situations differently. It **may** help to combat negative stereotyping and prejudices, but it cannot offer solutions for the “dilemma of difference,”[[5]](#footnote-5) as it does not consider differences among human beings (ex., sex, gender, ethnicity, etc.).
2. **Substantive Equality**: seeks to address structural and indirect discrimination and takes into account power relations. It acknowledges that the “dilemma of difference” requires both, ignoring and acknowledging differences among human beings in order to achieve de facto equality.
3. **Inclusive Equality**: The Convention on the Rights of Persons with Disabilities is based on Inclusive Equality. **In order to reach equality for persons with disabilities and** overcome deeply entrenched disability-based discrimination, States and local authorities, devolved governments need to do more than combat discriminatory behaviour, structures and systems. **They must actively change discriminatory structures and systems. Example: tackling discrimination of a person with disability in education does not suffice; the whole education system and practices needs to be made inclusive.[[6]](#footnote-6)**

**11.** **Inclusive equality** is not to be misunderstood as being a model specifically related to disability, but rather a model that acknowledges that individuals, …”

**II- Sustainable Development Goals: Goal 10: Reduce inequality within and among countries.**

IDA believes that the general comment should establish a much stronger link with the Sustainable Development Goals and this should be done from the outset, **including a strong paragraph in the introduction of the general comment**. It must be recalled that the Sustainable Development Agenda and Goals, distinguishing from previous development processes, include explicit references to persons with disabilities and inclusive language, beginning with the motto “Leave no one behind”.

As it stands, this draft mentions SDGs only twice, by the end of the document (paras. 50 –on Article 11- and 76n). In our view, this constitutes a missed opportunity to bridge the gap between development and SDGs on one side, and human rights and CRPD on the other. In particular, Goal no. 10 reads “Reduce inequality within and among countries” and, as implementation of SDGs must be respectful of and consistent with the Convention, development measures for Goal no. 10 must be fully informed by Article 5 of the Convention and, consequently, this general comment. This is a message that should be explicitly and strongly put forward in the general comment.

**III- Diversity among persons with disabilities**

IDA of course acknowledges that the draft general comment addresses a particularly difficult article, which relates more to theoretical considerations and technical legal concepts and categories than to a particular substantive right (e.g. life, employment, education). This may make unlikely the presence of references to **different constituencies** among persons with disabilities. For example, in the draft general comment, no explicit reference can be found to blind persons, or to deaf persons. This situation is of greater concern when it comes to constituencies on which there is almost no or very little visibility, such as persons who are deafblind.

In the same vein, there are limited references to issues related to **specific groups of persons with disabilities**, such as migrant with disabilities, indigenous persons with disabilities, etc. As a matter of example, the specific issue of restriction to migration based on the “health requirement” impacting discriminatorily on persons with disabilities could be explicitly mentioned. As it stands now, the word “indigenous” appears three times but only within lists of groups.

While IDA understands the difficulty, it also believes that the **Committee should strengthen its efforts to include explicit references to different constituencies and groups among persons with disabilities**. To do so, a suggestion would be to do it through the inclusion, where appropriate, of particular concrete issues affecting the right to equality of particular constituencies and groups.

**IV – Comments on section on relationship with other Articles of the Convention**

IDA believes that this section needs to be reviewed to ensure a balanced section addressing different issues related to other Articles and equality and non-discrimination.

To begin with, there is no clarity on why some articles are addressed and some others are not. In particular, IDA notes that Articles that include the phrase “on equal basis with others” or “without discrimination” may be of particular relevance for this section and should be included in a general comment on Article 5 on Equality and Non-Discrimination, e.g. Article 28. Further, there are no explicit relationships with Articles 21, 23, 25 and 26, where discrimination on the basis of disability very often occurs in practice.

IDA observes that the paragraph whose title refers to Articles 14, 15, 16 and 17, actually only deals with issues under Article 14 (Liberty and Security of Person). This should be completed to refer also to those other Articles.

In connection with Article 19, IDA notes that the phrases “…to live in the community with choices equal to others...” and “the opportunity to choose their place of residence and where and with whom they live on an equal basis with others…” have been addressed in general comment No. 5 on Article 19. Cross-references to it should be done to ensure that it is stated that the denial to make free choices with regard to independent and inclusive community living and with regard to the right to choose the place of residence is discriminatory and must be prevented and stopped immediately, including by granting reasonable accommodation.

**V- Other specific issues**

1. **Reasonable accommodation by association**

While IDA welcomes that the Committee explicitly included discrimination by association (para. 21) and tackled extensively reasonable accommodation (paras. 24-28), we note that the Committee has not addressed **explicitly** the issue of whether associates of persons with disabilities (e.g. parents) are entitled to reasonable accommodation in the exercise of their own rights.[[7]](#footnote-7) As noted previously,[[8]](#footnote-8) the Committee approached this issue recommending the European Union “to ensure that all **employees** of the European Union **who** are persons with disabilities, or **have family members with disabilities**, receive the reasonable accommodation they need to enjoy **their rights from the labour** and related relationships on an equal basis with others.”[[9]](#footnote-9) OHCHR has also noted that “recent developments in the field of employment suggest that the duty to provide reasonable accommodation also applies to the relatives of persons with disabilities.”[[10]](#footnote-10)

Acknowledging its complexity, IDA invites the CRPD Committee to reflect and elaborate on this issue in order to ensure that associates to persons with disabilities are provided reasonable accommodation in the exercise of their rights when necessary to ensure any right of a person with disability in the particular case (e.g. employment schedule accommodation for parents of children with disabilities when necessary to ensure that the latter count with support if no other option is made available by the State for the time being).

1. **The immediate duty to provide procedural accommodation in connection to the right to access to justice: its denial as a form of discrimination**

IDA highly appreciates the distinction drawn in paragraph 58 between “procedural accommodation” and “reasonable accommodation,” which clearly clarifies that “procedural accommodation” in the access of justice is not “subjected to a proportionality test” and, therefore, not conditioned in any way. This reflects the position by OHCHR Thematic Study on Article 5[[11]](#footnote-11) and highlights the fact that “the right of access to justice acts as the guarantor for the effective enjoyment and exercise of all rights.”[[12]](#footnote-12)

Consistently, IDA considers very important that, as highlighted for the duty to provide reasonable accommodation, the CRPD Committee stresses that the duty to provide “procedural accommodation” is an **immediate obligation** and that denial of “procedural accommodation” must be considered a **specific form of discrimination in the context of access to justice**, which could lead to denial of justice, lack of effective remedies, and overall lack of protection of rights.

In regard to the concrete text of **paragraph 58**, **IDA believes the following fragment should be deleted**: “and they have a dual character: one is that of systemic realization in terms of transforming judicial systems to be accessible for and inclusive of persons with disabilities, and another that provides for the immediate provision of accommodation in legal proceedings in order to avoid that the right to access to justice becomes void in a particular situation.” This fragment on a “dual character” of procedural accommodation **unnecessarily overcomplicates** the understanding of Article 13 and mixes the obligation to make the whole justice system accessible with the obligation to ensure in particular cases the provision of procedural accommodations to ensure the right to access to justice of person with disabilities.

**RECOMMENDATIONS**

The International Disability Alliance makes the following recommendations to the CRPD Committee:

* To adopt the general comment on article 5, Equality and Non-Discrimination, with clear guidelines for its implementation to States parties, and with a straightforward structure when distinguishing amongst the different concepts of “equality”.
* Call on States to implement legal and effective remedies to prevent and combat all forms of discrimination against persons with disabilities, including multiple and intersecting forms of discrimination, as well as guarantees for non-repetition and redress.
* Define specific legal terminology that may not be frequently encountered by non-legal readers, to facilitate its comprehension; in this sense, concrete and appropriate examples illustrating some of the concepts described can be extremely useful.
* To make a stronger and mainstreamed linkage between CRPD Article 5 and the sustainable development goals, notably, goal no. 10, its targets and indicators, and to call on States to follow the link between these two standards when implementing CRPD Article 5.
* To include and highlight the diversity of persons with disabilities and the specific forms of discrimination they may face, as blind, deaf and deafblind persons, and in particular, underrepresented groups such as: migrants, asylum seekers and refugees, indigenous persons, and older persons with disabilities.
* To ensure that there is a clear relationship between Article 5 and the other articles of CRPD, by including specific references to this link and by providing specific examples of situations where there are violations of the rights under the particular articles, due to disability-based discrimination.

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**ANNEX I – Additional drafting proposals**

**Paragraph 1:**

IDA notes that this introduction moves very quickly to the idea of discrimination, overlooking to some extent the key concept of equality, which composes Article 5. IDA would like to propose to include in the paragraph a brief reference and explanation of equality, which could be based on the first sentences of paragraph 13 and include references to CRPD principles (Articles 3b, 3e and 3g).

**Paragraph 3:**

IDA proposes to add at the end of the paragraph: “… as required by Articles 4(3) and 33(3) of the Convention.”

**Paragraph 5:**

IDA proposes to add at the end of the paragraph: “…and equality of opportunities.”

**Paragraph 10:**

IDA proposes to modify the first sentence to read: “This definition of equalization of opportunities, which is one of the general principles of the Convention under Article 4, …”.

**Paragraph 11:**

While understanding the intent of the CRPD Committee, IDA believes that phrases like “a roadmap for change in this regard,” (end of paragraph 11), which suggests a permissive message in terms of time, should be avoided.

**Paragraph 13:**

IDA proposes to add after the phrase “It is not subject to progressive realisation” the phrase “being part of those obligations ‘that are immediately applicable according to international law’, under Article 4.2 of the Convention”.

**Paragraph 16 and 18:**

IDA believes that it might not be appropriate or convenient to single out a particular State party within the context of a general comment, especially when it might not be crucial to put forward an explanation of the concepts involved. Regardless of how interesting the historical legal background may be, IDA suggests to:

1. delete the 2nd sentence of paragraph 16, and
2. re-draft paragraph 18 by relying on and referencing the negotiations of the Convention.

**Paragraph 18**

In order to prevent any conceptual confusion, IDA suggests to replace “positive measures” by “positive action”, as the use seems to have a broad meaning explaining that “equal benefit of the law” reflects the concept of substantive equality, which entails positive duties, and not only abstention or negative duties.

Furthermore, the mention of “reasonable accommodation” in this paragraph requires a cross-reference to the sections addressing that concept and its implications (paras. 24-28).

**Paragraph 19**

IDA proposes to replace “take positive action” with “implement concrete specific measures”, making it more concrete and utilising language of Article 5.4.

**Paragraph 20-c**

IDA believes that the example utilised in this paragraph (denial of access to a public theatre) might not be a good example to explain to a large audience and could create confusion. It could be argued that the example is actually a case of “indirect discrimination” (e.g. if there is a “no animals policy” as a neutral rule) or simply a case of “denial of access”. IDA suggests to replace this example with a more typical one, e.g. denial by the employer of facilitating a higher desk at the workplace; denial of modification of working hours, etc.

**Paragraph 20-e**

IDA believes that it would be important to include here an example; as in many occasions examples put forward in this area do not truly entail intersectionality. IDA proposes the following sentence to add immediately after the first one: “For example, while denial of general health related information due to inaccessible format affects all persons on the basis of disability, the denial to a blind woman of access to family planning services restricts her rights based on both her gender and disability.”

**Paragraph 24:**

While the Committee stresses throughout the draft general comment that non-discrimination obligations are of immediate nature, it might be useful to do it explicitly in regards to reasonable accommodation. IDA proposes to add the following as the second sentence of paragraph 24: “**As such, the duty to provide reasonable accommodation is of immediate application.”**

**Paragraph 25:**

IDA proposes to incorporate a reference to Article 4(3) in the sentence referring to consultation with organisations of persons with disabilities.

**Paragraph 26:**

**IDA proposes to delete the last phrase “but rather to its effectiveness”, as it might create confusion.** Indeed, following OHCHR Thematic Study on Article 5 (see para 53), it can be noted that the consideration of whether a “reasonable accommodation” is *effective in* “ensuring the realization of the right in question” is related to the concept of relevance (“necessary” and “appropriate” in Article 2 of the CRPD).

**Paragraph 27e:**

IDA considers **extremely important**, regarding both the State as a whole and the private sector entities, to add the following sentence at the end of subparagraph e: **“Regarding both the State as a whole and the private sector entities, overall assets rather than just the resources of a unit or a department within an organizational structure must be considered.”**

**Paragraph 30**

IDA proposes to suppress the first sentence (from “Unlike reasonable accommodation” till “however”) as it might send a wrong message in the very beginning of the paragraph.

Further, IDA proposes to replace “where they are deemed” with “when objectively.” The rationale would be that the consideration should be based on objective criteria. On this issue of “specific measures” being mandatory, a concrete example would be very useful. IDA proposes to include the following sentence: “Objective statistical data, such us lower employment or education completion rates or lower average income as compared to the total population are elements that **mandate** for specific measures to achieve *de facto* equality.”

**Paragraph 33**

The rationale of the distinction between “comprehensive” and “specific” anti-discrimination legislation and its importance do not seem to be very clear. IDA suggests that this paragraph can be simplified. It would be sufficient that States’ legislation cover all the aspects of equality and non-discrimination foreseen in the CRPD, as put forward by this general comment.

**Paragraph 37**

In line with our proposals on paragraph 30, it might be important to refrain from asserting a “discretionary” character, but rather stress on the elements that lead to the mandatory character of “specific measures.”

**Paragraph 44**

Given the complexity of the issue of abortion and the reactions and misinterpretations that could be unintentionally triggered when addressing “disability-selective antenatal screening” (e.g. as the CRPD Committee making a stand against abortion), IDA would like to propose an alternative language:

“Likewise, States parties should combat stigmatization and raise awareness on the equal worth of every person, including persons with disabilities, in line with the CRPD. This is necessary, in particular, to prevent recurring eugenicist justifications of practices, such as some discourses favouring “disability-selective antenatal screening”, and allow all persons to take fully informed decisions and count with support that might be required in the exercise of their personal autonomy.”

**Paragraph 45**

As this paragraph it is very much connected with Article 13(2), it could be better placed in the section on Relationships with other Articles. When placing the paragraph there, care should be taken to prevent any confusion on the clear distinction drawn on para. 58 between “procedural accommodation” and “reasonable accommodation”.

If the Committee decided to keep the paragraph in its current location, IDA proposes to add other professional groups that also apply rules that may not treat persons with disabilities in line with the CRPD: “teachers and education staff, health care workers, social workers, and alike.”

**Paragraph 52**

IDA proposes to include an explicit reference to **refugee children with disabilities**, who constitute a group which is typically unattended within policies in this context.

**Paragraph 58**

IDA proposes to add at the end of the paragraph: "age-appropriate and plain language.”

**Paragraph 56-a**

A specific reference to general comment no 1, or a brief explanation of each model, maybe between brackets, should be added for the sake of clarity.

**Paragraph 60-c**

Following the clear distinction established in para. 58, para. 60-c should read “procedural accommodation” and not “reasonable accommodation”.

1. In addition, cross-referencing within the document might help the reader. Ex: intersectional discrimination appears in para. 3 but it is explained in para. 20.e. [↑](#footnote-ref-1)
2. See [IDA submission for the Day of General Discussion on Article 5 of the Convention on the Rights for Persons with Disabilities](https://www.ohchr.org/Documents/HRBodies/CRPD/DGD/Article5/IDA.docx), Section 1. [↑](#footnote-ref-2)
3. CRPD Committee, Draft General Comment on Article 5 (Equality and non-discrimination), para. 10. [↑](#footnote-ref-3)
4. In the style used by the Committee in General Comment No. 3 on Women and Girls with Disabilities, para. 17, to define different kind of discrimination. [↑](#footnote-ref-4)
5. See our comment in the introduction regarding concepts that may require a strong legal background. [↑](#footnote-ref-5)
6. Examples could also be provided for the first two models of equality to foster understanding by a larger non-technical audience. [↑](#footnote-ref-6)
7. While the argument in favour of reasonable accommodation to associates could be built, the argument against as well. [↑](#footnote-ref-7)
8. See [IDA submission for the Day of General Discussion on Article 5 of the Convention on the Rights for Persons with Disabilities](https://www.ohchr.org/Documents/HRBodies/CRPD/DGD/Article5/IDA.docx), Section 5-e. [↑](#footnote-ref-8)
9. [CRPD/C/EU/CO/1](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fEU%2fCO%2f1&Lang=en), para 79. [↑](#footnote-ref-9)
10. [A/HRC/34/26](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/26), para. 25. The case cited by OHCHR in footnote 19 of its Thematic Study pertains to the Californian[*Fair Employment and Housing Act*](https://www.dfeh.ca.gov/legal-records-and-reports/laws-and-regulations/) (Government Code, Title 2, Division 3, Part 2.8), which includes the duty to provide reasonable accommodation, and in which the concept of disability includes associates to persons with disabilities (§ 12926, subd. (o)). [↑](#footnote-ref-10)
11. [A/HRC/34/26](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/26), para. 35. [↑](#footnote-ref-11)
12. [A/HRC/34/26](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/26), para. 35. [↑](#footnote-ref-12)