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## **Inclusion International Response to Draft General Comment on Equality and Non- Discrimination (Article 5)**

## **Submitted to the UN Committee on the Rights of Persons with Disabilities**

**Introduction**

Inclusion International (II) welcomes the draft General Comment on equality and non-discrimination and is grateful for the opportunity to provide written input to the Committee on the draft. Inclusion International is the global federation of people with intellectual disabilities and their families. Our global network works to advance the human rights and full inclusion of people with intellectual disabilities and their families around the world. With over 200 member organizations in 115 countries throughout five regions, Inclusion International is uniquely positioned to highlight the issues people with intellectual disabilities and their families experience in relation to equality and non-discrimination.

Our submission is informed by our members and builds on our contributions to the Day of General Discussion. We believe that all people with disabilities need to have equal opportunities to be heard and to be equally represented in discussions such as this one. This includes people with more complex support needs. Stereotypes, ignorance, and negligence attached to intellectual disability, and the resulting discrimination, affects people with intellectual disabilities throughout their lives, in all aspects of their lives. Families play a unique role in the lives of persons with an intellectual disability providing lifelong support and enabling relationships and inclusion in the community. Families experience distinct discrimination by association. Through our engagement we have called for the General Comment to address the systemic discrimination of persons with intellectual disabilities and their families.

Overall, Inclusion International feels the draft General Comment is a strong and we value the emphasis on the need for reasonable accommodations to ensure rights are realizing in meaningful ways. We are pleased with the reflection that discrimination impacts families and those who support persons with disabilities. We thank the Committee for the draft and their emphasis on the importance of CRPD Article 5.

Inclusion International has contributed to the development of the submission of the International Disability Alliance. Our submission is also intended to complement the submission from Inclusion Europe. We support and endorse the recommendation brought forward in both of those submissions. To avoid duplication of efforts, we restrict our submission to a summary of issues which are of utmost importance for people with intellectual disabilities and their families.

**Key Messages for the General Comment**

With regard to the application and interpretation of Art. 5 CRPD it needs to be stated and described in the General Comment that:

* the keeping of guardianship laws and legal representation not only infringes Art. 12 CRPD but is in addition discriminatory and violates Art. 5 CRPD;
* institutionalizing persons with disabilities and forcing them to live in particular living arrangements not only ignores their right to “live in the community” (Art. 19 CRPD) and “to choose their place of residence and where and with whom they live on an equal basis with others” (Art. 19 lit. a) but also is not in line with Art. 5 CRPD;
* failing to build an “inclusive education system” and the exclusion of persons with intellectual disabilities from the general education system is a violation of Art. 5 CRPD;
* failing to develop a “labour market and work environment that is open, inclusive and accessible to persons with disabilitiy” irrespective of the kind and degree of the disability of the person and to place these persons instead in sheltered workshops and similar facilities causes discrimination as described in Art. 5 CRPD.

As a result of that States Parties cannot quote that the rights contained in Art. 12, 19, 24 and 27 CRPD are of a so – called progressive nature only (see Art. 4 para. 2 CRPD). Instead these rights must be applied by the States Parties *immediately* by providing reasonable accommodation to each individual with a disability as defined in Art. 2 and in particular in Art. 5 para. 3 CRPD.

**Summary of Specific Comments on the Draft General Comment**

* ***More detailed explanations needed –*** specifically, the draft should better describe the meaning and importance of the following terms
	+ *Equality*. Mentioned in more detail later in the GC but should be explainedin the introduction of the GC.
	+ *Intersectional discrimination*. Introduction should have more detail on the term or reference where detail can be found.
	+ *Equalization of opportunities*. Explanation should include reference to it being a CRPD general principle (Article 3.g)
	+ *Progressive realization.* Should be explained in more detail.
	+ *Washington Group Questions*. At least a footnote should be included to reference what these are.
* ***Specific References to be added:***
	+ There should be explicit reference to CRPD Article 4.3 and Article 33
	+ A reflection that the institutionalization of children with disabilities in groups homes or other settings on the basis of disability is not consistent with Article 5.
	+ Paragraph 73 on employment should be expanded to include comment on being paid according to minimum wage, having regular reviews and career advancement opportunities. Additionally, a comment should be directed at the need to address disincentives to employment (ie loss of benefits).
* ***Provide more simple explanations and provide concrete examples***
	+ To support the text to be more understandable and practical, simple explanations/plain language should be used and concrete examples would help to make the GC less abstract. (i.e.: section 10 describes very complex issues would be difficult for non-legal experts to understand the technical concepts the way they are currently framed).
* ***Strengthen the link to reasonable accommodation***
	+ The term “reasonable accommodation” is not adequately explained. Throughout the GC there is a need to highlight the importance of “reasonable accommodation” in abolishing discrimination and its value in realizing rights secured in the CRPD (ie: living and being included in the community, education, employment etc)
	+ Recognize the scope of reasonable accommodation as defined in CRPD Article 2
	+ Further expand on how reasonable accommodation relates to progressive realization and when equality and non-discrimination measures must put in place immediately.
* ***Broaden focus of awareness raising (paragraphs 46 and 36)***
	+ Awareness raising efforts should also include those in the sectors of education, caring, social work etc., in particular if persons work in hospitals, rehabilitation centers, institutions, community services and facilities etc., which very often are bound to house rules and practices which do not treat persons with disabilities as citizens with equal rights and / or ignore the needs of persons with disabilities. Additionally, awareness raising efforts should target statistic centres and others working in data collection. Too often people with intellectual disabilities and families are invisible in data.
	+ Awareness raising efforts should also include a focus on raising awareness among people with intellectual disability about their rights and existing measures available to them.
* ***Expanded reflection on discrimination by association***
	+ Families play a unique role in the lives of persons with an intellectual disability providing lifelong support and enabling relationships and inclusion in the community. The discrimination faced by families ranges from being denied access to public places, such as playgrounds and restaurants, the economic discrimination of being excluded from the labour market because of the need to care for the family member who has a disability, or restricted mobility because of exclusion from transportation or denial of visas. Throughout the world it is families who are responsible for providing the bulk of supports to persons with disabilities, often with minimal or no financial compensation.

**Specific Comments on the Draft General Comment**

**Paragraph 1:**

*Remark:* The introduction describes the importance of Art. 5, its background and its influence on many of the human rights enlisted in the CRPD. Discrimination, however, is not the only important term mentioned in Art. 5. As already stated in the headline of the Draft General Comment Art. 5 deals both with non – discrimination and *equality.* There are very close connections between these two terms: If a person suggests to be discriminated against in many cases it usually does not only claim to prohibit such a discrimination but also claims to be treated equally, which usually means to be treated *on an equal basis with others.* Example: If a person with intellectual or psychosocial disability is prevented from signing a contract due to the fact that the laws of the States Party in contrast to Art. 12 CRPD deprive the person from the right to exercise its legal capacity the person asks to be enabled and allowed to sign the contract on equal terms with a non – disabled person who usually can validly enter into an agreement and sign such an agreement.

Art. 5 para. 3 CRPD differs between equality and discrimination. We, therefore, recommend to describe the meaning and importance of the term *equality* already in the first section of the General Comment based on the General Principles mentioned in Art. 3 b, 3 e and 3 g CRPD. We are aware that the terms *equality* and *on an equal basis with others* are properly described and explained under section 8 of the Draft General Comment, but some reference should be made already in the General Introduction of section 1 of the Draft General Comment based, for instance, on the first three sentences of section 14 of the Draft General Comment on Art. 5 CRPD.

**Paragraph 4:**

*Remark:* The term *intersectional discrimination* needs to be explained here or a reference should be included where the explanation can be found in the General Comment.

**Paragraph 11:**

*“This definition of equalization of opportunities* *(***Add: “which due to Art. 3 g CRPD is one of the general principles of the Convention on the rights of persons with disabilities”)** *marks a significant development from a formal model of equality to a substantive model of equality*.”

**Paragraph 14.**

*“Non – discrimination represents a crosscutting obligation of immediate realisation which applies to all human rights, not just civil and political rights. It is* *not subject to progressive realisation.”*

*Remark:* Only experts know without further explanation what progressive realisation means in this context. We take the view that the term “progressive realisation requires some explanation based in particular on the fact that the last sentence of Art. 4 para. 2 CRPD is one of the key elements of the CRPD in comparison to other human rights treaties such as the ICCPR and in particular the IESCR: It makes sure that a States Party can not claim any longer to be obliged to stop discrimination progressively only as the obligation to prohibit discrimination as described in Art. 5 CRPD is “immediately applicable according to international law”.

**Paragraph 19:**

*Remark:*  Paragraph 19 mentions the connection between discrimination and reasonable accommodation without explaining the meaning of the term “reasonable accommodation” and its importance for the abolishment of discrimination as described in Art. 2 and Art. 5 para. 3 CRPD. At least some references should be made here to some of the following sections of this GC draft such as section 19 for instance).

**Paragraph 22:**

“*On the basis of disability” includes not only persons who presently have an impairment, but also who have had an impairment in the past, have a disposition to an impairment which lies in the future, and persons who are presumed to have an impairment or those who are associated with a person with disabilities.*”

*Remar*k: This is a very important sentence as it includes in the scope of application, for instance, the parents of persons with intellectual disabilities and the sons and daughters of a father or mother with Alzheimer and other forms of dementia who care and support their relatives with disability and feel responsible for them.

**Paragraph 46:**

*“In particular, States Parties should raise awareness of non – discrimination among members of the legal profession, including the judiciary, clearly highlighting the duty to provide* *reasonable accommodation as an obligation to ensure equality.”*

*Remark:* It is recommended to add other professional groups. For instance persons working in the fields of care, rehabilitation, education, social work etc. Additionally, awareness raising efforts should target statistic centres and others working in data collection. Too often people with intellectual disabilities and families are invisible in data.

**Paragraph 53:**

…...*”For example, efforts to expand access to education for child refugees often overlook children with disabilities, leaving them among the most invisible and at risk children.”*(*Remark:* We recommend to add that among refugees there is a huge number of unaccompanied children who are traumatized. It is a group which requires special attention and treatment as the experience and knowledge how to cure and integrate these children is quite limited. Traumas, therefore, can lead to long lasting disabilities of these children and young adults)

**Paragraph 66 – 70:**

*Remark:* In this paragraph which deals with Art. 19 CRPD recommend to add some considerations dealing with the terms:”…to live in the community with choices *equal to others….”* and (see Art. 19 a)”….the opportunity to choose their place of residence and where and with whom they live *on an equal basis with others…”*

These terms are explained and interpreted in the General Comment Art. 19 CRPD, but either a reference should be made to particular sections of this General Comment or it should be added in the General Comment on Art. 5 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 stopped immediately by granting reasonable accommodation).

**Paragraph 72:**

*“Art. 5 (2) of the Convention requires that States parties prohibit all forms of discrimination on the basis of disability…….This rights is strengthened for persons with disabilities in article 24 (2) which requires States parties to ensure an inclusive education on an equal basis with others in the communities in which they live by providing reasonable accommodation of an individual`s requirement in accordance with article 24 (2)*.”

*Remark:* We recommend to add that Art. 24 (2) (c) makes sure that States Parties instantly (not only progressively!) must guarantee to include persons with disabilities, in particular children with disabilities, in the mainstream primary and secondary education system by providing any kind of individual support to meet the requirements of each person / child to be able to take part in the general education system.

**Paragraph 74 f:**

*“Ensure reasonable accommodation regarding access to training and education including vocational training and capacity building with special emphasis on training on reasonable accommodation for employers and representative organisations of employees.”*

*Remark:* These are good examples, but the range of Art. 27 para. 1 lit.I CRPD is broader: The whole “workplace” of the person with disability is covered by Art. 27 para. 1 lit. I CRPD. If the person needs assistance to be able to perform its work duties such assistance must be provided unless the burden for the employer is disproportionate and undue. The same is true, if the person with disability requires additional technical aids to be able to fulfil its work obligation.

**Paragraph 74 a – I:**

*Remark:* We think this list of duties needs more structure based in particular on an explanation at the beginning of Art. 27 of this General Comment what it means to have the “right to work *on an equal basis with others*….in a labour market….that is open, inclusive and accessible to persons with disabilities.”

On an equal basis with others does not mean to work in the same way as non – disabled employees/workers. But it means that persons with disabilities should have the same opportunities as non – disabled employers / workers to enter the open labour market and that they should not be referred to segregating work facilities such as sheltered workshops as they still exist in many countries, in particular in the Global North. In addition Art. 27 para. 1 a CRPD expressively stresses that discrimination is prohibited with regard “to all matters concerning all forms of employment”, i.e. all measures necessary to employ persons with disabilities in any kind of profession and work is covered by the prohibition of discrimination. This has practical consequences: The right to work is a social right in the sense of Art. 4 para. 2 CRPD, i.e. basically it must be implemented progressively only. But due to Art. 27 para. 1 a CRPD any kind of discrimination with regard to the employment and work situation of a person with disability must be stopped immediately by granting reasonable accommodation to the person concerned. Further, the General Comment should reflect on being paid according to minimum wage, having regular reviews and career advancement opportunities. Additionally, a comment should be directed at the need to address disincentives to employment (ie loss of benefits).

**Paragraph 77 k:**

*“Adopt appropriate measures to regularly and comprehensively monitor inclusive equality. This includes collecting, and analyzing, disaggregated data on the situation of persons with disabilities, and where necessary improving existing data collection systems for adequate monitoring and evaluation. In this regard, the Committee recommends the Washington Group Short Set of Questions.”*

*Remark:* This needs to be explained in more detail at least in a footnote.

Submitted by Inclusion International, 30 November, 2017.

Contact

Connie Laurin-Bowie

Executive Director

KD.2.03 University of East London

University Way

London

E162RD

UK

tel: +44-(0)20-8223 7709

fax: +44-(0)20-8223 6081

conniel@cacl.ca