**Committee on the Rights of Persons with Disabilities**

**General Comment No.6 on Equality and Non- discrimination (Article 5)**

**First draft as at 31 August 2017**

**Government of Malta’s comments – feedback to the draft**

**Introduction**

The Government of Malta, notes that, the General Comment No.6, related to Article 5 of the UNCRPD, identifies more clearly what compose both equality and discrimination, in relation to each and every Article of the UNCRPD. In this regards the Government of Malta is, overall, in agreement with the draft document. On the other hand, the Government of Malta would like to put forward to the Committee on the Rights of Persons with Disabilities’ consideration the following comments;

1. **Gap in regards to the Construction of Disability**

The Maltese Government highlights the Gap in the Construction of Disability. How is Disability being perceived globally? Various literature and articles exist and address the Construction of Disability. On the other hand, whilst acknowledging the various theories on the subject, a thorough debate, between State Parties, Civil Society, and other Professionals is envisaged in order to curtail such Gap. Such issue is of paramount importance to the Government of Malta, whereas such debate may facilitate the consideration and resolution of issues around implementation/societal created barriers related to equality and discrimination, and also in correlation to all Articles of the UNCRPD.

1. **Immediacy of Access to Human Rights & Reasonable Transitional Periods**

While acknowledging the fundamental nature of the rights in question, it would be ideal to specify that obligations of immediate realisation applying to human rights should be, nonetheless, subject to ***reasonable transitional periods***, in which States Parties are to bring their legislation and policies in line with the UN CRPD.

1. Thus, any claim of progressive realisation would only be imputable to necessary administrative mechanisms towards change, and not to a voluntary progressive realisation arbitrarily adopted by States Parties, or motivated by, ex. financial reasons, or arguments linked to changing social mores, as in, ex.:
2. **Legal character of non-discrimination and equality**

13. 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. [[1]](#footnote-1)

1. The same would also apply to the below extract, as to support provided to persons with a disability to exercise their legal capacity in terms of Article 12 (3):
2. **Relationship with other specific articles of the Convention**
3. **Article 12 – Equal recognition before the law**

55. […] The fact that support to exercise capacity may impose a disproportionate or undue burden **does not limit the requirement to provide it**

1. As part of such transitional period, the following transitional measures already mentioned in this draft General Comment could be included as examples:

**V. Normative Content**

1. **Art. 5 (1) Equal protection and equal benefit of the law**

18. […] **As support systems or services are not yet developed, reasonable accommodation may function as a means of providing support in a particular case**

1. Such transitional period, using the reasoning outlined earlier, would also be applied towards situations of developing appropriate reasonable accommodations, and capacity-building towards such, in light of the below:
2. **Relationship with other specific articles of the Convention**
3. **Article 9 – Accessibility**

47. […] reasonable accommodation, on the other hand, **is individualized**, **applies immediately to all rights** and **may be limited by its disproportionality**

1. In this regard, it is also important to stress that accessibility, although applicable to groups, is also a means of ultimately ensuring equal protection before the law, and equal benefit from the law, to individuals within those groups. Therefore, the wording of the below provision would ideally be revisited, and the element of progressivity aligned with the earlier observations made in this regard:
2. **Relationship with other specific articles of the Convention**
3. **Article 9 – Accessibility**

47. […]**Accessibility duties relate to groups and have to be implemented progressively but unconditionally**

1. **Reasonableness of Measures to be Undertaken by States Parties in terms of UN CRPD**

This draft General Comment mentions the *obligation of States Parties to undertake measures termed ‘necessary’, ‘effective’ or ‘appropriate and effective’*, among other terms, at different points in said draft General Comment. Para. 14 of Part IV additionally specifies that the *obligations under Article 5 UN CRPD must be applied by States Parties both with respect to the public sector, as well as to the private sector*.

***It would, however, be ideal, if such measures were also subjected to a reasonableness test, or clearer specific guidelines, when such have not already been laid out in other General Comments***. These could be drawn from the UN CRPD Committee’s Concluding Observations concerning other States Parties, or from best practices currently employed by other States Parties, or otherwise raised by the Committee itself, NHRIs, academia or civil society.

Such guidelines as to what would fall within the test of reasonableness, would be invaluable as to providing more legal certainty to implementing States Parties, although it is understandable that it is impossible for such process to be exhaustive. More importantly, it would also give a clearer picture to persons with a disability of their guarantees, and also support them greatly in advocating for their rights, and also in seeking legal redress when denial of or discrimination as to such rights is being alleged.

1. **Reasonable Accomodation**

The Government of Malta would suggest that ‘Adequate Services’ such as ‘Personal Assistant services’ should be included at Point 27. This will support a more holistic approach towards the Implementation of Article 5 (3).

1. **General obligations of States Parties under the Convention relating to non-discrimination and equality**

Point 39: General Comment No.6 should provide a list of Indicators, on the basis of which States Parties should gather the related data. This ensures uniformity, and also a clearer picture as to the Global status of the UNCRPD’s functioning.

1. Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in

   economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and

   Cultural Rights), United Nations Doc. E/C.12/GC/20, 2009, Para 7; Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights), United Nations Doc. E/1991/23, 1990, Para 1. [↑](#footnote-ref-1)