

**Submission to the Office of the United Nations High Commissioner for Human Rights**

**on Article 5 of the Convention on the Rights of Persons with Disabilities**

Human Rights Watch welcomes the opportunity to provide input to the Office of the United Nations High Commissioner for Human Rights (OHCHR) for its study on the right of persons with disabilities to equality and non-discrimination. Article 5 obligations on equality and non-discrimination are central to the realization of all rights protected by the Convention on the Rights of Persons with Disabilities (CRPD).[[1]](#footnote-1)

This submission focuses on Human Rights Watch’s research that highlights the link between discrimination and lack of equality and the rights to accessibility (Article 9), equal recognition before the law (Article 12), access to justice (Article 13), freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15), living independently and being included in the community (Article 19), education (Article 24), and participation in political and public life (Article 29) for persons with disabilities. It draws from Human Rights Watch research conducted in Central African Republic, China, Croatia, France, Greece, India, Indonesia, Peru, Serbia, Syria, Russia, South Africa, Uganda and the United States.[[2]](#footnote-2)

Before turning to the specific analysis of the discriminatory consequences to the rights of persons with disabilities in the different articles, we would like to address some general and normative aspects of the OHCHR study.

Article 5.1 of the CRPD is aligned with article 7 of the Universal Declaration of Human Rights (UDHR)[[3]](#footnote-3); article 5 from the Convention on the Elimination of All Forms of Racial Discrimination (CERD)[[4]](#footnote-4); articles 3 and 26 of the International Covenant on Civil and Political Rights (ICCPR)[[5]](#footnote-5); and article 3 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)[[6]](#footnote-6). The provision – which specifically recognizes that “all persons are equal before and **under the law**” – means that people with disabilities have to be treated equally in the substance of the law, not just before the law. It is a nuance to ensure that equality exists in all aspects of the law. The provision also calls for “equal protection and **equal benefit** of the law”, which further ensures that laws governing services and other benefits – that may be outside of laws that protect - be applied equally to persons with disabilities.

*On the basis of disability*

Paragraph 5.2 of the CRPD, prohibits all discrimination on the basis of disability and requires states to “guarantee to persons with disabilities *equal and effective* legal protection against discrimination on all grounds” (emphasis added), without specific references to grounds such as race, religion or origin.[[7]](#footnote-7) This “equal protection” extends to whatever protection grounds (e.g. race) are recognized domestically for other persons. This specific article should be read in conjunction with the definition provided by article 2 of the CRPD which defines “discrimination on the basis of disability” as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.” Although reasonable accommodation is a concept the dates from the 1960s[[8]](#footnote-8), the CRPD, as we shall see below, is the first human rights treaty to explicitly define the denial of reasonable accommodation as a form of disability based discrimination.

The use of the words “on the basis of disability” makes it clear that a person can be a victim of discrimination also because it is believed that he or she has a disability, even if it is not the case[[9]](#footnote-9); and it is also possible to discriminate because the person is associated with a person with a disability. It is not necessary for the person to have an actual impairment to be discriminated against on the basis of disability. This aspect of the definition of discrimination on the basis of a disability strengthens the relational and social aspect of disability. One clear example of discrimination by association to a person with a disability is the case of the children of Erica, a deaf woman with a disability in Northern Uganda, whom the neighbors beat and segregated from playing because they thought the children would spread “disease” in the community.[[10]](#footnote-10)

*Indirect discrimination*

The definition of “discrimination on the basis of disability” also embodies the concept of indirect discrimination. It explicitly establishes that “any distinction, exclusion or restriction on the basis of disability which has the purpose **or effect** of impairing […] enjoyment or exercise, of all human rights and fundamental freedoms” should be considered discriminatory. Even if a policy or norm does not have the intention to exclude or discriminate against a specific group of people, differential treatment based on the characteristics of a person, such as an impairment, could prove discriminatory. Indirect discrimination can refer to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on persons with disabilities. Reasonable accommodation should also be applied to all persons with disabilities if so required, even if they have more intense forms of support.[[11]](#footnote-11)

*Reasonable accommodation*

Article 5.3 establishes the obligation to take all appropriate steps to implement reasonable accommodation[[12]](#footnote-12) in order to promote equality and eliminate discrimination. The origins of the concept of reasonable accommodation are linked to the protection of religious diversity both in the United States (1960) and Canada (1980); it then migrated to disability law and, at least in North America, it is not limited to disability and it may be applied on ethnic, age, family status, gender and pregnancy grounds. In Europe it is mostly applied to disability.[[13]](#footnote-13) In the context of international human rights law, reasonable accommodation appears explicitly for the first time in General Comment 5 from the CESCR[[14]](#footnote-14) but other regional human rights bodies have considered failure to provide accommodation as a form of indirect discrimination. For example, the European Committee of Social Rights, in a case against France, concluded that the government had failed to achieve sufficient progress in advancing the education of persons with autism.[[15]](#footnote-15) The CRPD is the first international human rights treaty to include the obligation to implement reasonable accommodation as part of the anti-discrimination framework.

Because reasonable accommodation is strictly linked with the framework of anti-discrimination law – it is included in the formal definition of discrimination on the basis of disability – this also impacts the effect of the obligation. As such, reasonable accommodation is an obligation with immediate effect, and the principal of progressive realization is not applicable to this right.[[16]](#footnote-16) The explicit denial of reasonable accommodation in article 5 makes it crystal clear that this provision is not subject to progressive realization because non-discrimination is not an economic, social or cultural right.

Reasonable accommodation and indirect discrimination are closely related. Reasonable accommodation is based on the idea of substantive equality, by recognizing that a *prima facie* neutral norm or policy, that does not formally distinguish on the basis of a prohibited criterion, may be nevertheless discriminatory in its effects when it *de facto* disadvantages a protected group of people. Indeed, reasonable accommodation was specifically designed to make specific individuals overcome environments that could prove not inclusive for everyone.[[17]](#footnote-17)

In general, when apparently neutral norms or policies have indirect discriminatory effects, they should be changed to prevent those consequences from happening. However, there are times where this is not achievable without endangering the overall purpose of the norms or policies, and reasonable accommodation needs to be applied in favor of a specific individual.

The obligation to implement reasonable accommodation for persons with disabilities, when needed, encompasses public institutions and also private parties (article 4.1.e CRPD). The obligation to implement reasonable accommodation is crosscutting through all the CRPD text and the obligation is reiterated in articles 13, 14 .2, 24 .2 c), and 24.5, 27.1 i). Article 13 refers to procedural accommodation, which is not limited to the condition of reasonableness, as reasonable accommodation is.

While there is yet no identifiable uniform test for when a sought accommodation could not be deemed “reasonable”, (different jurisdictions have applied varied criteria), there are certain common elements that could be taken into consideration to perform the test. The test of reasonableness should be commensurate with the human rights obligations of the subject required to perform the accommodation; public institutions have stronger obligations to implement reasonable accommodation than private ones. The varied criteria to determine whether an accommodation is reasonable and does not impose an undue burden have been developed mainly in the employment field. First of all, the entity obligated to provide reasonable accommodation needs to prove the rational character of the policy or the norm that is generating indirect discrimination in view of the objectives of the entity and the goals they are trying to achieve. Then, the entity has to prove it took all reasonable steps to provide accommodation and that further measures in this direction would amount to undue hardship.[[18]](#footnote-18) Concrete and material proof of the undue hardship must be submitted; mere speculations or hypothesis are not sufficient. The CRPD Committee, in a divided decision, took the view that the Swedish Labor Court had not violated the right to reasonable accommodation in a case where a young woman with a severe sight impairment, asked the Social Insurance Agency to modify its computer system to enable her to work in the organization. In this specific case the CRPD Committee concluded that, when assessing the reasonableness and proportionality of accommodation measures, state parties enjoy a certain margin of appreciation, and that the Swedish Labor Court, thoroughly and objectively assessed all the possibilities of accommodation before reaching the conclusion that the support and accommodation measures would constitute an undue burden because it would imply the complete modification of the institution’s computer system. Even though “reasonableness” warrants a degree of discretion and margins of appreciation, the test to assess it must be thorough and objective.[[19]](#footnote-19)

 *Substantive equality*

Article 5.4 of the CRPD, which establishes that “specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination,” reinforces the principle of equality under the law, achieved through strict respect for non-discrimination (formally) and equality as a social goal, referring to equal opportunities and positive actions needed to achieve the goal.[[20]](#footnote-20)

We now turn to the specific articles of the CRPD in relation to equality and non–discrimination.

**Accessibility (Article 9)**

The CRPD Committee, in General Comment 2 on accessibility, has rightly emphasized that the obligation of states to render accessible the physical environment, transportation, information and communication, and services needs to be read through the lens of equality and nondiscrimination.[[21]](#footnote-21) Human Rights Watch has documented how lack of accessibility to the physical environment has discriminatory effects because it precluded persons with disabilities from basic daily activities such as leaving their homes, seeking employment, and obtaining health care. In situations of risk, lack of accessibility to the physical environment and information has prevented persons with disabilities from availing of services, including essential services such as food, on an equal basis with others.

*Urban Environments*

In Russia, persons with disabilities with whom Human Rights Watch spoke told of difficulty leaving their homes or accessing private businesses or government buildings due to narrow doorways, no elevators, and steep wheelchair ramps that lack accessible handrails.[[22]](#footnote-22) When Human Rights Watch interviewed Maria D., a 26-year-old woman who uses a wheelchair, in February 2013, she had been stuck in her third-floor municipal apartment building in Sochi for four months because the building’s entryway was accessible only by stairs, and the elevator only worked sporadically.

The lack of accessible transportation further segregates persons with disabilities from the rest of society, making it difficult or impossible for them to see friends and family, work outside their homes, date, or enjoy public facilities and institutions, such as museums, theaters, and parks.

Human Rights Watch also identified several cases of discrimination in which transport operators in Russia refused to lower wheelchair lifts on buses to allow people with physical disabilities to enter, with apparently little if any sanction. Two people whom Human Rights Watch interviewed had been denied boarding on flights on the basis of their disabilities. There have been a number of cases of discrimination in air travel by several air carriers reported in the media.

In Russia, persons with disabilities said that they also had trouble accessing healthcare facilities and services in part due to lack of access to adequate mobility devices and services. In the case of persons who are deaf or hard of hearing, they had difficulties communicating with healthcare professionals and getting emergency services. Persons with different disabilities noted that some healthcare workers refused to speak directly with them.

*Situations of Risk*

Inadequate planning and lack of consideration of persons with disabilities requirements can also lead to their discrimination in situations of risk. For example, Human Rights Watch found that persons with disabilities who reached sites for internally displaced people or refugees often faced difficulties accessing food, sanitation, and medical assistance.

In October 2015, Human Rights Watch documented the situation of a young Syrian man, Ayman, 28, who has a physical disability resulting from when a rocket struck his home in Damascus. He had fled from Syria only to be locked up in an immigration detention center in Hungary for crossing the border from Serbia.[[23]](#footnote-23) When Human Rights Watch spoke to him, Ayman had been locked up for more than 40 days, during most of which he had no access to a wheelchair. He said his wheelchair had broken at the border, and he spent 23 days lying on a bed until his lawyer was able to get a donated wheelchair for him. “Every two or three days all the others are taken out to the courtyard to get some fresh air, for 15 or 20 minutes,” he said. “I haven’t been out for 42 days because of the stairs.”

In March and April 2016, Human Rights Watch documented challenges in accessing basic necessities such as toilets for asylum seekers with disabilities at the Athens port of Piraeus and on the Greek islands of Lesbos and Chios.  Many, including numerous women with disabilities, described to Human Rights Watch the struggle of not being able to wash for days, or even weeks.

Nawael, a 34-year-old Syrian woman in a wheelchair who had been staying in Piraeus with her husband and three children for more than ten days told Human Rights Watch:

“Here it is very hard for me to go to the toilet. My husband helps me at the door and random women help me inside the toilet. I don’t sleep at night because my body is itchy. My husband helped me and I washed my hair with cold water, but then I got sick. Ten days ago, I got my period and I swear to God, I still haven’t had a shower. And I [usually] pray, but given that I haven’t had a shower, I can’t pray.”

In Central African Republic, Human Rights Watch documented in 2015 that for persons with sensory disabilities, moving around a local camp for internally displaced persons without assistance can be extremely dangerous. In several cases blind persons fell into filthy open sewage drains in the camp, or were burned by open fires or boiling water. The camp clinic had no one to facilitate communication with persons who are deaf. As a result, deaf persons who cannot read or write and are not accompanied by a relative or friend who can assist with communication would have difficulty seeking medical help or communicating directly if they do.

In Northern Uganda, Human Rights Watch documented that women with disabilities were unable to gain access to food, clothing, and shelter in camps for displaced persons or in their own communities. Charity, a woman with physical disability who lived in such a camp told Human Rights Watch that people said to her, "You are useless. You are a waste of food. You should just die so that others can eat the food."

Discrimination, as well as a more general social stigma and physical inaccessibility, prevented women with disabilities in Northern Uganda from receiving necessary information, accessing health care and other government services, and participating fully in the community. For example, the limited access to sign language interpretation in public institutions such as hospitals and police stations, coupled with the lack of training of deaf people and their families in sign language in the more rural areas, results in barriers to government services and programs for deaf women. Announcing programs solely on the radio also excludes deaf women.[[24]](#footnote-24)

**Legal capacity (Article 12)**

Legal capacity of persons with disabilities is fundamentally linked to the principle of equality and non-discrimination. The CRPD obligates states parties to ensure that persons with disabilities enjoy the right to full legal capacity on an equal basis as others and the right to receive the support they need to make their own choices and to direct their own lives. However, all too often persons with disabilities, particularly with intellectual or psychosocial disabilities, are denied the power to make independent decisions and to have these decisions legally recognized.

Human Rights Watch documented, for example, in Croatia, that 18,000 persons with intellectual and psychosocial disabilities were deprived of their legal capacity in 2014.[[25]](#footnote-25) Similarly, in Serbia, 19,000 people with disabilities as of December 2015 were stripped of their right to legal capacity and have been placed under guardianship.[[26]](#footnote-26) Based on interviews with persons with intellectual or psychosocial disabilities in Croatia, Human Rights Watch found that denial of the right to legal capacity of persons with disabilities continues to limit other human rights including the right to liberty, the right to marry and found a family, parental rights, the right to give consent to medical treatment, the right to choose where and with whom to live, on an equal basis with others and the right to vote. In Serbia, Human Rights Watch documented cases in which young women with disabilities deprived of legal capacity were subjected to invasive medical interventions, including termination of pregnancy, with the consent of the guardian, but without their own free and informed consent.

The right to legal capacity includes the obligation to provide access to support if the person so requires and he or she is willing to accept it (Article 12.3). Countries in which Human Rights Watch has carried out research do not have enabling legislation establishing the duty to provide supported decision making. This should be considered discriminatory.

For example, Human Rights Watch documented that Croatia has no support mechanisms to assist persons who retain their legal capacity to exercise their right to make decisions. In the absence of advice and support that a person may need to reach and communicate their decisions, many people with disabilities will continue to be prevented from enjoying their human rights on an equal basis with others.

**Access to justice (Article 13)**

Discrimination hinders access to justice for persons with disabilities, particularly persons with psychosocial or intellectual disabilities. Persons with disabilities may not have access to appropriate or adequate information on how to navigate what can be a complicated set of procedures around redress mechanisms. Article 13 of the CRPD obligates states to make procedural accommodations for persons with disabilities effectively to participate in the legal process, in addition to the general obligation to create accessible procedures for everyone, and train judicial personnel on the rights of persons with disabilities.[[27]](#footnote-27) Even if they successfully file a complaint, as the examples below illustrate, Human Rights Watch research has found that law enforcement officials have been skeptical of allegations brought by persons with disabilities and decline to investigate allegations or otherwise take appropriate action.

In India, for example, Human Rights Watch documented 128 women and girls with disabilities in 2013-14 who had been institutionalized against their will or who faced abuse within the institution. When asked if they had sought to challenge their institutionalization or lodge a complaint about their treatment none had done so. Most of the women and girls with psychosocial or intellectual disabilities interviewed were not even aware of mechanisms for redress.[[28]](#footnote-28) Similarly, in northern Uganda Human Rights Watch documented that sexual violence against women with disabilities goes unreported because they cannot access the justice system.[[29]](#footnote-29) In cases of sexual violence in India and northern Uganda, for example, the police may refuse to register a case because they are not convinced that the survivor is telling the truth or can identify or remember the perpetrator. For instance, one police officer in India told Human Rights Watch:‬‬‬‬‬‬‬‬‬‬‬‬‬‬‬

“If she is MR ["mentally retarded”], she is not in a conscious mind, how can she say that she is being raped? She won’t be able to tell or identify the accused. Generally we don’t accept [her testimony].”[[30]](#footnote-30)

This attitude is mirrored by family, caretakers, and government institutions.

Women and girls with psychosocial or intellectual disabilities are most often not even aware of their rights because of the lack of information in formats accessible to them and lack of redress mechanisms. Based on interviews with social workers and police officers in four cities in India, Human Rights Watch found that special educators or other types of external gender-sensitive assistance are rarely brought in to facilitate communication in police stations, courts, or hospitals. In 24 mental health hospitals, shelters, and homes visited, Human Rights Watch found that none had appropriate recourse or complaints procedures.[[31]](#footnote-32)

During research in 2010 local authorities in Northern Uganda seemed to have done nothing to make reporting on sexual violence less intimidating or to ensure confidentiality and thereby avoid stigma. Angela, a young woman with a physical disability, said that she had been raped three times in the previous week by a man who forcibly entered her home during the middle of the night. She did not tell others, including her mother because she feared that they would “say that it’s my fault and that I run around.”

**Freedom from torture and cruel, inhuman or degrading treatment or punishment (Article 15)**

Another important aspect of discrimination and denial of reasonable accommodation relates to the treatment of inmates with disabilities.

Human Rights Watch research on prisons in the United States and France indicates that correctional staff use force against persons with psychosocial disabilities that may rise to the level of torture or cruel, inhuman or degrading treatment or punishment for behavior that is directly related to their disability. Article 14.2 of the CRPD establishes that persons with disabilities who are deprived of their liberty are entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the CRPD, including by provision of reasonable accommodation. In the case prisons in the US and France, staff often fail to adequately accommodate persons with psychosocial disabilities who do not understand discipline procedures and are not motivated by instructions given by prison staff.[[32]](#footnote-33) At times, prisoners have died from this conduct. In some cases, prisoners with psychosocial disabilities have been unable to obtain reasonable accommodations and access health care on an equal basis with others.

*Use of Force*

Staff in US correctional facilities are authorized to use force when necessary to control prisoners deemed “dangerous” or “highly disruptive”. However, Human Rights Watch documented that persons with disabilities are discriminated against with regard to the use of force. For example, Human Rights Watch found that staff at times respond with unnecessary force when prisoners with psychosocial disabilities engage in behavior that is directly related to their disability, even when it is minor and non-threatening, such as urinating on the floor, using profane language, banging on a cell door, masturbating, complaining about not receiving a meal, or refusing to come out of a cell. Staff also sometimes use force to punish inmates with disabilities who annoy or anger them.

In one instance, staff at a California prison sprayed a prisoner with psychosocial disabilities approximately 40 times with pepper spray, and threw four pepper spray grenades into his cell after the man, who claimed to be “The Creator,” resisted removal from his cell.

In another, a Florida prisoner diagnosed with schizophrenia defecated on the floor of his cell and refused to clean it up. Officers allegedly put him in a scalding shower knowing he could not control the water’s temperature or flow. After being left in the shower for more than an hour, the inmate died.

*Lack of Access to Mental Health Care*

In French prisons, Human Rights Watch documented that access to mental health care, like other types of medical care, is based on prisoners’ consent. Prisoners can write to the medical unit to request an appointment. In the prisons visited by Human Rights Watch, prison staff said they also notified the medical unit of persons they thought needed medical attention. But such a system depends on prisoners being aware that they need mental health care and proactively seeking it, and on prison staff – who are inadequately trained - identifying people in that situation and communicating with medical staff. Prisoners with disabilities should be provided with the support they might need to exercise their right to free to medical treatment.

Female prisoners with psychosocial disabilities face specific discriminatory conditions in French prisons. Women in general, who are a minority in prison, are more restricted in their movements than men and have less access to treatment for mental health conditions than their male counterparts. For example, while 26 Regional Medico Psychological Services (SMPR) in French prisons provide mental health care during the day and beds for the night, only one of them has beds for women.[[33]](#footnote-34)

**Living independently and being included in the community (Article 19)**

At the core of the right to live independently and be included in the community is the principle of equality and non-discrimination. Human Rights Watch has found that in several countries like Croatia, Serbia, Russia and India, there is an entrenched culture of discrimination against persons with disabilities, even from early childhood. These conducts could be categorized as systemic discrimination.

Human Rights Watch documented how men, women and children with disabilities continue to be isolated from their communities and kept away from public view in large residential institutions and psychiatric hospitals on a discriminatory basis. For example, in Croatia, persons with intellectual and psychosocial disabilities still face barriers to realize their right to live in the community on an equal basis with others. As of September 2016, more than 7,500 persons with disabilities continued to live in institutions.[[34]](#footnote-35)

In Serbia, Human Rights Watch documented pressure families face to send children born with disabilities to large residential institutions, which may be far away from their homes, separating them from their families. For example, Jasmina, mother of Julija, a 4-year-old girl with developmental disabilities, told Human Rights Watch how medical doctors and nurses tried to convince her and her husband to leave Julija in the maternity ward and to have her placed in an institution: ‬‬‬‬‬

One doctor told us, “It will be a torment for you and you don’t know if you will receive anything back.” Medical nurses would tell us, “This is best for you and for her. It is better for her to be with children that are like her.”[[35]](#footnote-36)‬

Lack of health care and support services such as day care or inclusive and quality schools in the community accessible to children with disabilities, poverty, stigma, and discrimination are key reasons why parents may feel that the only option is to place their child with a disability in an institution.[[36]](#footnote-37) Inside institutions, children may experience neglect, inappropriate medication, and lack of privacy and have limited or no access to [education](https://www.hrw.org/topic/childrens-rights/education).

*Women and Girls with Disabilities in Institutions*

In India, Human Rights Watch documented that women and girls with psychosocial or intellectual disabilities are among the most stigmatized and marginalized, enduring stigma and discrimination in every sphere of life—personal, professional, and public. The research captured multiple cases in which families hid or abandoned female members with psychosocial or intellectual disabilities.[[37]](#footnote-39) Women with disabilities face multiple discrimination, on the basis of being women and for having a disability.

Women and girls with psychosocial or intellectual disabilities also face stigma and discrimination within large-sized custodial institutions, virtually the only model of care available. These closed institutional settings further isolate women and girls with psychosocial or intellectual disabilities, making violence and abuses against them difficult to discover and report. Many such institutions restrict freedoms and mobility to such an extent that they are like prisons; most refer to their residents as “inmates.” Violence towards women with disabilities is also a form of discrimination.

In nearly half of the institutional settings visited, at least one or more staff members said that it was a waste of time to speak to women and girls with psychosocial or intellectual disabilities because they cannot communicate, their testimonies cannot be believed, or simply because “they are mad and will say anything.”

In two residential care homes for women with psychosocial or intellectual disabilities and women without disabilities, Human Rights Watch researchers visited in Delhi and Maharashtra, these two groups were even spatially segregated. The women with disabilities were locked in a separate room or section of the facility, preventing them from accessing common areas and mingling with women without disabilities.

Women and girls with psychosocial or intellectual disabilities are often institutionalized for unique gender-specific reasons. Staff at a night shelter in Kolkata city told Human Rights Watch that families often prefer to leave their daughters with psychosocial or intellectual disabilities in the custody of an institution where they feel they are safe, out of fear that women with such disabilities may become easy targets for sexual violence if at home.

In several institutions visited, Human Rights Watch found that women and girls with mild intellectual disabilities are exploited by fellow residents or staff. In residential care facilities for children (with and without disabilities), this manifests itself in the form of bullying and making girls with disabilities do chores. Sadaf, a welfare officer at a residential care institution for girls, told Human Rights Watch:

The “normal girls” use the girls with MR [mental retardation]. For example, they send them to do their kitchen duty or wash their clothes. The girls with MR feel pressurized so they do the work and don’t go to class. We observe the girls and tell the normal girls not to dominate the others. But after 7 p.m. … the guard and caretakers are not that educated, so how can they control?[[38]](#footnote-40)

**Education (Article 24)**

Discrimination frequently impedes children with disabilities from accessing a quality education on an equal basis with their peers. Human Rights Watch has documented the exclusion or segregation of children with disabilities in the education system in a number of countries. In one example, children with disabilities were required to pay additional fees on top of existing costs for transportation to accessible schools that made the cost of education prohibitive. In other instances, even if they attended school, learners with disabilities did not have the reasonable accommodations necessary to facilitate their effective inclusion in classrooms, or understanding of course material.

*Exclusion from the education system*

In South Africa, as of October 2015, an estimated half million children with disabilities do not have access to the education system. Many children are discriminated against when they seek access to mainstream schools where school officials or medical staff refer them to special schools simply because they have a disability. The referrals system needlessly forces children to wait for up to four years at care centers or at home for placement in a special school. Many special and mainstream schools impose financial burdens on children with disabilities that children without disabilities would not incur.

Qinisela, the mother of an 8-year-old boy with Down’s syndrome who lives in Kwa-Ngwanase, KwaZulu-Natal, told Human Rights Watch, “We tried to put him in a [mainstream] school but they said they couldn’t put him in that school because he has disabilities … because of Down’s syndrome he isn’t like other children so they [said they] can’t teach him. At the therapy they promised to phone if there’s a space in a special school. I’ve been waiting since last year.”[[39]](#footnote-41)

Similarly, Human Rights Watch research in Russia found that some school administrators have refused to admit children with disabilities based on assumptions that they are unable to learn, are unsafe around other children, or engage in disruptive behavior.[[40]](#footnote-42)

Children and young people with disabilities living in institutions in Russia and Serbia have limited access to education and the vast majority of them are not enrolled in schools. For example, many children who cannot walk and talk, whom institution staff in Russia relegate to separate “lying-down rooms” and in Serbia to “wards for the most severely disabled” have typically received no education or stimulation at all.[[41]](#footnote-43) Other children with disabilities in orphanages in Russia and Serbia may receive limited education, usually in the form of some individualized instruction from orphanage staff, and in a few cases, may attend nearby specialized schools or day care centers.[[42]](#footnote-44)

In northern Uganda, Human Rights Watch documented that women and girls with disabilities are denied access to education. Women with disabilities told Human Rights Watch that their parents had not sent them to school or that they had not attended school for as many years as their siblings. Sometimes this was because parents did not think girls with disabilities needed education.[[43]](#footnote-45)

*Denial of reasonable accommodation*

When they are able to enroll in school, children with disabilities are often not provided with the reasonable accommodations that would help them to learn. These obstacles include inaccessible physical infrastructure; lack of curricula and materials appropriate for their disabilities, such as adequate printed classroom materials for children who are deaf or hard of hearing; and lack of large-print textbooks and braille for children who are blind or have low vision.

For example, Beatrice, a woman from northern Uganda who has a physical disability that requires her to wear braces on her legs, explained, “I tried once to go to a regular school but there was no latrine that I could use and I couldn’t crawl all the time, so I stayed home for six years.”[[44]](#footnote-46)

In some cases, the only choice for children with disabilities who wish to attend mainstream schools is to do so with the assistance of parents. In South Africa, Human Rights Watch found that some schools would only accept children with disabilities whose parents could pay for a facilitator or assist the child in school.[[45]](#footnote-47) In Russia, one mother of a 10-year-old girl who uses a wheelchair quit her job as an accountant in order to spend the school day with her daughter because the school lacks an entrance ramp and an elevator or wheelchair lift inside. She explained to Human Rights Watch, “I need to be there to make sure she gets up and down the stairs safely.”[[46]](#footnote-48)

The situation is similar in China. In interviews with Human Rights Watch, parents told of carrying their children up and down stairs to classrooms or bathrooms located upstairs several times a day. Students with hearing impairments said they could not follow along because the teachers walk around while teaching and do not to provide written notes, and there is no sign language instruction in most schools. They told Human Rights Watch that students who are blind or who have limited vision are not provided with magnified printed materials or tests.[[47]](#footnote-49) Some mainstream schools exclude students with disabilities from the examination system; they do not get graded and their progress is not otherwise evaluated.[[48]](#footnote-50)

*Situations of Risk*

In situations of risk, children with disabilities face particularly difficult barriers to education. For example, government and humanitarian efforts in Lebanon to expand access to education for Syrian child refugees have not done enough to include children with disabilities, who are often overlooked, leaving them among the most invisible and vulnerable children in Lebanon.

Although children with disabilities in Lebanon faced challenges accessing education before the refugee crisis, barriers for Syrian children with disabilities are particularly severe. Public schools often reject Syrian children with disabilities on the grounds that they lack resources or skills to educate them.[[49]](#footnote-51)

Even where Syrians are able to enroll children with disabilities in Lebanese public schools, schools do not adequately accommodate the needs of all children to ensure they receive quality education on an equal basis with others. One local disability rights expert told Human Rights Watch, “For Syrians, the main option is that there is no option.... In most cases, public schools are not letting in Syrians with disabilities. Where they enroll, there are no services.”

Maysa’, 30, has a 10-year-old daughter, Layla, with an intellectual disability. She tried to enroll Layla in several public schools and a non-formal school, but all of them rejected her. “They told me ‘we don’t accept these types of cases,’” she said.

**Participation in political and public life (Article 29)**

According to Peruvian law, persons with disabilities are entitled to a free identity card, which is used in all areas of life, for example, travel, voting and elections, employment, owning or inheriting property, opening a bank account, accessing the health care system, among others. However, Human Rights Watch documented discriminatory practices against people with disabilities who would disclose their disability status. For example, Maria Ramos presented a certificate stating that she had schizophrenia-paranoia during the renewal of her identity card. When the card was ready, authorities informed her that she was not considered competent to collect the card and, under the law, only a guardian or someone else could pick up the card. “I’ve never had a tutor or guardian. I’ve been independent all of my life,” she told Human Rights Watch.[[50]](#footnote-55)

Some persons with disabilities, especially those living in rural areas and persons living long-term in institutions, had particular difficultly in obtaining identity cards, effectively making them invisible as citizens. In fact, some persons with disabilities who arrived in institutions without identity cards have for years been identified with the initials “N.N.” (no name); it falls to hospital staff to decide to give them names.[[51]](#footnote-56) People who do not have a national identity card are unable to vote.

Until October 2011 people with disabilities could also be issued with identity cards that explicitly labeled them as persons who were not entitled to vote or take other legal, financial, and even personal decisions.[[52]](#footnote-57) Whilst various steps have been taken since 2011 to redress this and to ensure people with disabilities are included on the voting register, Human Rights Watch was told that some persons with disabilities were still unable to re-enter the voter registry for the recent 2016 presidential election.[[53]](#footnote-58)

Peruvians deprived of legal capacity and placed under guardianship continue to be deprived of their political rights in 2016, including the right to vote. [[54]](#footnote-59)

For persons with physical and sensory disabilities, physical inaccessibility of polling stations, limited availability of appropriate accommodations such as Braille ballots, and lack of accessible materials on the election process continue to be problems to exercising the right to vote on an equal basis with others and constitute discriminatory practices.[[55]](#footnote-60)

*Discrimination Resulting from Disclosure of Disability Status*

By law in Peru, persons with disabilities can choose whether to include information about their disability on their identity card. Many persons with disabilities told Human Rights Watch that they preferred not to include this information, as doing so may subject them to discrimination based on their disabilities.[[56]](#footnote-61) However, this choice has not always been respected. Our research documented several cases in which National Registry for Identification and Civil Status (RENIEC) employees included information about a person’s disability without the person’s authorization, and even in some cases against the explicit wishes of the person or their family members.[[57]](#footnote-62)

For example, Sonia, the mother of Mario, a 24-year old man with an intellectual disability, told Human Rights Watch: “I thought if it said [‘mental disability’] on the document itself, people would discriminate against him. I didn't want to see my son being discriminated [against].”

1. International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (CRPD), G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008. [↑](#footnote-ref-1)
2. Human Rights Watch, *As If We Weren't Human: Discrimination and Violence against Women with Disabilities in Northern Uganda*, August 26, 2010, <https://www.hrw.org/report/2010/08/26/if-we-werent-human/discrimination-and-violence-against-women-disabilities-northern>; Human Rights Watch, *Barriers Everywhere:**Lack of Accessibility for People with Disabilities in Russia*, September 11, 2013, <https://www.hrw.org/report/2013/09/11/barriers-everywhere/lack-accessibility-people-disabilities-russia>;

Human Rights Watch, *Leave No One Behind: Persons with Disabilities in Humanitarian Emergencies*, May 19, 2016, <https://www.hrw.org/news/2016/05/19/leave-no-one-behind>; Human Rights Watch, *‘Treated Worse Than Animals’****:*** *Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India,* December 3, 2014, <https://www.hrw.org/report/2014/12/03/treated-worse-animals/abuses-against-women-and-girls-psychosocial-or-intellectual>; Human Rights Watch, *Callous and Cruel: Use of Force against Inmates with Mental Disabilities in US Jails and Prisons*, May 12, 2015, <https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and>; Human Rights Watch, *Double Punishment: Inadequate Conditions for Prisoners with Psychosocial Disabilities in France,* April 5, 2016, <https://www.hrw.org/report/2016/04/05/double-punishment/inadequate-conditions-prisoners-psychosocial-disabilities-france>; Human Rights Watch, *‘It Is My Dream to Leave This Place’: Children with Disabilities in Serbian Institutions*, June 8, 2016, <https://www.hrw.org/news/2016/06/08/serbia-children-disabilities-neglected>; Human Rights Watch, *Abandoned by the State: Violence, Neglect, and Isolation for Children with Disabilities in Russian Orphanages*, September 15, 2014, <https://www.hrw.org/report/2014/09/15/abandoned-state/violence-neglect-and-isolation-children-disabilities-russian>; Human Rights Watch, ‘*Complicit in Exclusion’: South Africa’s Failure to Guarantee Inclusive Education for Children with Disabilities*, August 18, 2015, <https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children>; Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*, September 1, 2015, <https://www.hrw.org/report/2015/09/01/left-out/obstacles-education-people-disabilities-russia>;

Human Rights Watch, *’As Long as They Let Us Stay in Class’: Barriers to Education for Persons with Disabilities in China*, July 15, 2013, <https://www.hrw.org/report/2013/07/15/long-they-let-us-stay-class/barriers-education-persons-disabilities-china>; Human Rights Watch, *’Growing Up Without an Education’**Barriers to Education for Syrian Refugee Children in Lebanon,* July 19, 2016, <https://www.hrw.org/news/2016/07/19/lebanon-250000-syrian-children-out-school>; Human Rights Watch, *‘I Want to be a Citizen Just Like Any Other’: Barriers to Political Participation for People with Disabilities in Peru*, May 15, 2012, <https://www.hrw.org/report/2012/05/15/i-want-be-citizen-just-any-other/barriers-political-participation-people>; Human Rights Watch, *Croatia: Locked up and Neglected. Meager Progress on Moving People with Disabilities Into the Community*, October 6, 2016, <https://www.hrw.org/news/2014/10/06/croatia-locked-and-neglected> [↑](#footnote-ref-2)
3. Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948) <http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> [↑](#footnote-ref-3)
4. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N.GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969. http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx [↑](#footnote-ref-4)
5. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976 http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx [↑](#footnote-ref-5)
6. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981. http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx [↑](#footnote-ref-6)
7. Compared with previously existing human rights treaties: Articles 2 and 26 of the ICCPR; article 2 of the CESCR; article 2 of the CEDAW; and article 2 of the CRC. [↑](#footnote-ref-7)
8. Marianne Schulze, *Understanding the UN Convention on the Rights of Persons with Disabilities*, Handicap International, September 2009, p. 42. http://iddcconsortium.net/sites/default/files/resources-tools/files/hi\_crpd\_manual\_sept2009\_final.pdf [↑](#footnote-ref-8)
9. CRPD Concluding Observations for Peru, CRPD/C/PER/CO/1, paragraph 28. [↑](#footnote-ref-9)
10. Human Rights Watch, *As If We Weren't Human: Discrimination and Violence against Women with Disabilities in Northern Uganda*. [↑](#footnote-ref-10)
11. CRPD, preamble J. [↑](#footnote-ref-11)
12. Reasonable accommodation means, according to the definition provided in article 2 of the CRPD, the “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” [↑](#footnote-ref-12)
13. Emmanuel Bribiosa and Isabelle Rorive, “Reasonable accommodation beyond disability in Europe? European network of legal experts the non-– discrimination field.” *European Commission*, 2013. http://ec.europa.eu/justice/discrimination/files/reasonable\_accommodation\_beyond\_disability\_in\_europe\_en.pdf [↑](#footnote-ref-13)
14. CESCR, General Comment 5, on persons with disabilities, paragraph 15. [↑](#footnote-ref-14)
15. International Association Autism-Europe (IAAE) v. France (Complaint no. 13/2002) https://www.escr-net.org/sites/default/files/3InterventionAutismEuropeAudition29septembre2003final.pdf [↑](#footnote-ref-15)
16. Lord, J. E., & Stein, M. A. “Assessing Economic, Social and Cultural Rights: The Convention on the Rights of Persons with Disabilities,” in *Equality and Economic and Social Rights,* eds. Malcolm Langford & Eibe Reidel, p. 45. Cited by Janet Lord and Rebecca Brown, *The Role of Reasonable Accommodation in Securing Substantive Equality for Persons with Disabilities: The UN Convention on the Rights of Persons with Disabilities (2010)*. SSRN: [http://ssrn.com/abstract=1618903](http://ssrn.com/abstract%3D1618903) or <http://dx.doi.org/10.2139/ssrn.1618903> [↑](#footnote-ref-16)
17. Emmanuel Bribiosa and Isabelle Rorive “Reasonable accommodation beyond disability in Europe? European network of legal experts the non-– discrimination field.” *European Commission*, 2013. [↑](#footnote-ref-17)
18. The CRPD Committee has established that the burden to prove that reasonable accommodation is not proportional or constitutes an undue burden lies with the entity obligated to perform the accommodation. In the case H.M vs. Sweden, communication 3/2011, the CRPD Committee concluded that Sweden did not prove that the accommodation of allowing the author of the communication to build a hydrotherapy pool for rehabilitation in her home constituted an undue burden. CRPD/C/7/D/3/2011 Paragraph 8.7. [↑](#footnote-ref-18)
19. Marie-Louise Jungelin vs. Sweden. Communication 5/2011. CRPD/C/12/D/5/2011, paragraph 10.5 [↑](#footnote-ref-19)
20. Marianne Schulze, *Understanding the UN Convention on the Rights of Persons with Disabilities*, Handicap International, September 2009, p. 63. http://iddcconsortium.net/sites/default/files/resources-tools/files/hi\_crpd\_manual\_sept2009\_final.pdf [↑](#footnote-ref-20)
21. CRPD/C/GC/2, paragraph 34. [↑](#footnote-ref-21)
22. Human Rights Watch, *Barriers Everywhere:**Lack of Accessibility for People with Disabilities in Russia*. [↑](#footnote-ref-22)
23. Human Rights Watch, *Leave No One Behind Persons with Disabilities in Humanitarian Emergencies*. [↑](#footnote-ref-23)
24. Human Rights Watch, *As If We Weren't Human: Discrimination and Violence against Women with Disabilities in Northern Uganda*. [↑](#footnote-ref-24)
25. Human Rights Watch, *Croatia: Locked up and Neglected. Meager Progress on Moving People with Disabilities Into the Community,* October 6, 2016, <https://www.hrw.org/news/2014/10/06/croatia-locked-and-neglected> [↑](#footnote-ref-25)
26. Human Rights Watch, *‘It Is My Dream to Leave This Place’: Children with Disabilities in Serbian Institutions*. [↑](#footnote-ref-26)
27. CRPD, art. 4 in conjunction with art. 9. [↑](#footnote-ref-27)
28. Human Rights Watch, *‘Treated Worse Than Animals’****:*** *Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*. [↑](#footnote-ref-28)
29. Human Rights Watch, *As If We Weren't Human: Discrimination and Violence against Women with Disabilities in Northern Uganda*. [↑](#footnote-ref-29)
30. Human Rights Watch, *‘Treated Worse Than Animals’****:*** *Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*. [↑](#footnote-ref-30)
31. Ibid. [↑](#footnote-ref-32)
32. Human Rights Watch, *Callous and Cruel: Use of Force against Inmates with Mental Disabilities in US Jails and Prisons*. [↑](#footnote-ref-33)
33. Human Rights Watch, *Double Punishment: Inadequate Conditions for Prisoners with Psychosocial Disabilities in France*. [↑](#footnote-ref-34)
34. Human Rights Watch, *World Report 2016:* (New York: Human Rights Watch, 2016), *European Union: Croatia*, https://www.hrw.org/world-report/2016 [↑](#footnote-ref-35)
35. Human Rights Watch, *‘It Is My Dream to Leave This Place’: Children with Disabilities in Serbian Institutions*. [↑](#footnote-ref-36)
36. Ibid. [↑](#footnote-ref-37)
37. Human Rights Watch, *‘Treated Worse Than Animals’****:*** *Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*. [↑](#footnote-ref-39)
38. [↑](#footnote-ref-40)
39. Human Rights Watch, *Complicit in Exclusion’: South Africa’s Failure to Guarantee Inclusive Education for Children with Disabilities*. [↑](#footnote-ref-41)
40. Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*. [↑](#footnote-ref-42)
41. Ibid.; Human Rights Watch, *‘It Is My Dream to Leave This Place’: Children with Disabilities in Serbian Institutions* [↑](#footnote-ref-43)
42. Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*; Human Rights Watch, *‘It Is My Dream to Leave This Place’: Children with Disabilities in Serbian Institutions.* [↑](#footnote-ref-44)
43. Human Rights Watch, *As If We Weren't Human: Discrimination and Violence against Women with Disabilities in Northern Uganda*. [↑](#footnote-ref-45)
44. Ibid. [↑](#footnote-ref-46)
45. Human Rights Watch, *Complicit in Exclusion’: South Africa’s Failure to Guarantee Inclusive Education for Children with Disabilities*. [↑](#footnote-ref-47)
46. Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*. [↑](#footnote-ref-48)
47. Human Rights Watch, *’As Long as They Let Us Stay in Class’ Barriers to Education for Persons with Disabilities in China*. [↑](#footnote-ref-49)
48. Ibid. [↑](#footnote-ref-50)
49. Human Rights Watch, *’Growing Up Without an Education’**Barriers to Education for Syrian Refugee Children in Lebanon*. [↑](#footnote-ref-51)
50. Human Rights Watch, *‘I Want to be a Citizen Just Like Any Other’: Barriers to Political Participation for People with Disabilities in Peru*. [↑](#footnote-ref-55)
51. Ibid. [↑](#footnote-ref-56)
52. Ibid. [↑](#footnote-ref-57)
53. Human Rights Watch interview with **Liliana Peña Herrera**, Member of the Regional Network for article 24, Right to Inclusive Education, and member of the Board of Directors of the Latin American Federation of Down Syndrome (Fiadown), July 1, 2016. [↑](#footnote-ref-58)
54. The Peruvian Constitution, in articles 31 and 33, establishes that only those who have legal capacity may have full citizenship and are allowed to vote. If someone is placed under guardianship, he or she automatically loses the right to be registered as a voter. When the general law for persons with disabilities was adopted in 2012, it included a provision ordering the formation of a legislative commission in charge of reviewing the Civil Code in order to eliminate guardianship and replace it with supported decision-making. The commission worked for one year and presented a draft reform bill. As of today it has not yet been adopted. Human Rights Watch interviews with **Ms. Enith Pinedo**. Chief of the education commission at the National Jury for Elections in Peru; **Ms. Malena Pineda**. Head of the disability division in the Peruvian ombudsman; **Mr. Fernando Bolaños**. Vice minister of the ministry for women affairs and acting director of the National Commission for Disability (CONADIS); and **Ms. Katiushka Valencia**. Deputy Director of the National Registry of citizens for elections RENIEC, Lima, June 28; Draft bill, “Anteproyecto de Ley que Modifica El Decreto Legislativo 295 del Código Civil en lo referido al Ejercicio de la Capacidad Jurídica y su implicancia en los Libros de Personas, Acto Juridico, Familia, Sucesiones, Contratos y Prescripción y Caducidad,” March 2015, http://www4.congreso.gob.pe/comisiones/cedis/index.html [↑](#footnote-ref-59)
55. Human Rights Watch, *‘I Want to be a Citizen Just Like Any Other’: Barriers to Political Participation for People with Disabilities in Peru*. [↑](#footnote-ref-60)
56. Ibid. [↑](#footnote-ref-61)
57. Ibid. [↑](#footnote-ref-62)