**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 CESCR Committee`s draft general comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities**

**A- Introduction**

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 the 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 initiative of the Committee on Economic, Social and Cultural Rights (*hereinafter* “the Committee”) to call for comments to its draft general comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights (*hereinafter* “ICESCR”) in the Context of Business Activities and to hold a Day of General Discussion on the issue. The draft provides a clear structure and thorough development of State`s obligations. However, IDA believes that it could better address key concerns on the economic, social and cultural rights (hereinafter “social rights”) of persons with disabilities in the context of business activities, by taking into account the Convention on the Rights of Persons with Disabilities (*hereinafter* “CRPD”) and the 2030 Sustainable Development Agenda.

This submission advances the latest standards on the human rights of persons with disabilities related to business activities and promotes development processes` compliance with those standards. A first section will be devoted to key CRPD provisions and standards. Secondly, we will highlight the need to explicitly refer to the 2030 Sustainable Development Agenda to promote that development efforts are informed by and comply with human rights obligations. Finally, we provide concrete recommendations, and drafting proposals (Annex I), to the Committee.

**B- The CRPD: key provisions and standards vis-à-vis business activities**

The CRPD entails a paradigm shift from the outdated medical model of disability, focus on the impairment of the person, to a human rights approach, focused on the environmental, attitudinal, informational and communicational barriers that restrict the enjoyment of rights on equal basis with others and participation within society. States must harmonise their legislation, policies and practices accordingly.

Addressing business activities, broadly understood,[[1]](#footnote-1) is very relevant for complying with the social rights of persons with disabilities in line with the CRPD and preventing adverse impacts on and barriers to their enjoyment. For example, business entities **can contribute** to increasing access to employment of persons with disabilities by adopting inclusive internal policies. Innovation on information and communication technologies can increase accessibility for persons with disabilities, impacting positively in the exercise of other rights, such as the rights to education and health.

On the other hand, frequently business entities **act as an obstacle** to the realization of rights of persons with disabilities, for instance where their economic interest collides with policy reforms required by human rights standards; e.g. private psychiatric institutions opposing de-institutionalisation processes; private schools opposing inclusive education reforms;[[2]](#footnote-2) the media perpetuating negative stereotypes on persons with disabilities, leading to discriminatory and violent practices. Finally, business entities can **directly violate** the rights of persons with disabilities, within or outside the national law; e.g. private psychiatric institutions forcibly detain persons with psychosocial disabilities; in many contexts, private hospitals practice forced sterilisation of women with disabilities.

These examples call for explicit references within the draft general comment to CRPD standards, many of which the Committee has already endorsed.[[3]](#footnote-3) Not requiring drastic changes of structure or drafting,[[4]](#footnote-4) the Committee could provide better guidance to States on their obligations in the context of business activities vis-à-vis persons with disabilities.

**B-I- Participation of organisation of persons with disabilities in decision-making**

A key element of the human rights based approach is participation in decision-making of populations affected on the exercise of their rights. In this line, Article 4(3) of the CRPD requires States to “closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

The draft general comment only refers to this element briefly in its last paragraph. IDA encourages the Committee to give a more prominent role to the effective participation in decision-making of persons with disabilities, including through their representative organizations, by stressing its key importance from the beginning of the general comment.

**B-II- Persons with disabilities as a historically discriminated group. Reasonable accommodation and specific measures to achieve de facto equality**

While noting the importance of a section on non-discrimination, IDA remains concerned by the lack of references to persons with disabilities as a historically discriminated and disproportionally affected group. Persons with disabilities represent 15% of the world’s population,[[5]](#footnote-5) and present low employment and salary rates, low educational attainment, less access to housing, and generally face barriers for the exercise of rights, as compared to others.[[6]](#footnote-6) Business entities` practices and activities are part of this negative state of affairs. This calls for explicit references to persons with disabilities throughout the general comment.

Secondly, reasonable accommodation, as part of non-discrimination, should be highlighted. The Committee has pioneered on this issue,[[7]](#footnote-7) later on enshrined in the CRPD.[[8]](#footnote-8) States and business entities must take action to ensure the provision of reasonable accommodation. In particular, States should develop clear regulations and provide guidance to business entities on how to implement reasonable accommodation. In this line, UN agencies are undertaking efforts to provide concrete guidance on reasonable accommodation.[[9]](#footnote-9) A reference to reasonable accommodation and its denial as a form of discrimination would be very timely.

Many States have adopted measures to increase de facto equality, e.g. employment quotas, both in the public and private sectors. However, these are usually poorly complied. “Specific measures”[[10]](#footnote-10) to increase de facto equality for persons with disabilities, in relation to business activities, should be accompanied by strong monitoring and accountability mechanisms.

**B-III- Accessibility standards and public procurement**

Lack of accessibility of facilities, goods and services, including media, constitutes a major barrier for persons with disabilities to the exercise of social rights on equal basis with others. Article 9 of the CRPD requires States to ensure access of persons with disabilities to the built environment, transportation, communication and information, and that “private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities.” Consequently, accessible facilities (ramps, signage, elevators, toilets, etc.), sign language interpretation, Braille, captioning, audio-description, easy to read format, plain language, accessible ICTs, etc., should be common features of facilities and services provided to the public, including in health, education, culture, recreation, leisure and sport.

The CRPD Committee has highlighted that States should adopt accessibility plans, with adequate benchmarks, indicators and timeframes.[[11]](#footnote-11) In particular, it has also call to establish accessibility standards and **monitoring and complaints mechanisms** to ensure public and private actors´ compliance. The need to enforce accessibility standards by private actors is stressed by the growing trend of privatisation of public services. Consistently, **public procurement of good and services** must include mandatory accessibility requirements to ensure that public resources are not used to reinforce exclusion of persons with disabilities. In addition, public procurement, in the area of mobility and social protection, could play the important role of ensuring access to mobility aids (e.g. wheelchairs and alike), devices, assistive technologies, services, etc., for persons with disabilities. Regulations and calls for tender should seek for quality products at low rates to increase beneficiaries of State administered schemes, and for lowering market prices to ensure affordability.

**B-IV- The Media and awareness raising on the rights of persons with disabilities**

Private and public media, including content production and marketing techniques, and those underpinned by “ableism”,[[12]](#footnote-12) replicates the charity and medical approach to disability, perpetuating negative stereotypes about persons with disabilities and reinforcing attitudinal barriers that lead to discrimination, harmful practices, denial of rights and exclusion. This is reflected e.g. by the use of out-dated derogatory language and the portrayal of a negative image. It is a typical practice in many countries to run telethons to raise money by promoting the image of poor, helpless children with disabilities. There are also TV reality shows which portray persons with disabilities as outside the norms of society.

Article 8 of the CRPD requires States to undertake awareness raising campaigns on the rights of persons with disabilities and to encourage “all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention”. The State must protect the rights of persons with disabilities by ensuring that the media industry promotes positive images of them and contributes to the realisation of their rights.

**B-V- Intellectual property and access to culture by persons with disabilities**

Persons with disabilities are denied their right to cultural life, including entertainment and education, by being denied access to cultural materials on an equal basis with others. States` legislations prioritise the interests of business entities (publishing houses) by failing to permit copyright exceptions for the production of materials in accessible formats.

Intellectual property frameworks should encourage research and development, e.g. for universally designed goods, services, equipment and facilities, ICTs, mobility aids, assistive technologies for persons with disabilities.[[13]](#footnote-13) However, until all publications develop accessible formats allowing equal choice of content by persons with disabilities, States should establish legal exceptions to ensure their right to participate in cultural life, recreation, leisure and sport (Article 30 of the CRPD). The Marrakesh Treaty is a great example in this direction.[[14]](#footnote-14)

**B-VI– Health care insurance, overmedication, forced treatment and limited access**

Several practices of private health care impact negatively on persons with disabilities. Firstly, the insurance industry discriminates against them through the exclusion from, or reduced coverage of, health insurance based on medical criteria and risk evaluation centred on their impairment. Secondly, the pharmaceutical industry fosters over prescription of medication and influence professionals and research centres, resulting in the expansion of diagnoses and assigning of pathologies concerning behaviours associated with mental health, and constructing social barriers for persons with intellectual and psychosocial disabilities.[[15]](#footnote-15) This reinforces segregation through medicalization and endangers the health of affected persons. In addition, private health providers, including psychiatric institutions, incur in forced treatment, not seeking the free and informed consent of the person. This includes forced sterilisations of women and girls with disabilities, including when consent if given by a third party. Finally, lack of trained personnel and inaccessibility of facilities or equipment limit access of women and girls with disabilities to sexual and reproductive care.

States must ensure that these practices by private health care enterprises are prevented, investigated, sanctioned and eradicated, as well as repealed the regulations that might allow for them to occur. The principle of free and informed consent of persons with disabilities must be uphold and cannot be overridden by a third party, including guardians.

**B-VII- International cooperation inclusive of persons with disabilities**

As pointed out in the draft, extraterritorial application of human rights is key in the context of increasing interdependence of States and their economies. States are also accountable to take appropriate steps to prevent and redress infringement of rights abroad by business entities over which they exercise control, power or authority.

International cooperation can actively contribute to the realisation of the rights of persons with disabilities outside the national territory, inasmuch as it “is inclusive of and accessible to persons with disabilities” (CRPD Article 32). Disability-markers should be established to track and assess the use of funds. Further, regulatory frameworks in the sphere of international cooperation, e.g. on public private partnerships, could be set up to exert influence over business entities to ensure that their activities respect the rights of persons with disabilities.

**B-VIII – Access to remedies for persons with disabilities.**

Actions of business entities, including transnational corporations, have had devastating effects, such as massive deforestation by food and chemical industries for extending crops and livestock, environmental pollution and the consequent displacement of communities, including persons with disabilities. Access to remedies is thus essential and States parties should ensure access to justice to persons with disabilities in line with Article 13 of the CRPD, including by providing legal aid services, making court rooms, communication and information accessible (e.g. through sign language interpretation, Braille, captioning and easy to read format) and by providing procedural and age appropriate accommodations.

**C- The 2030 Sustainable Development Agenda and the rights of persons with disabilities**

The 2030 Sustainable Development Agenda can enhance the implementation of social rights of persons with disabilities, as part of States agreed development goals.[[16]](#footnote-16) Business entities constitute key actors for the attainment of the Sustainable Development Goals. Distinguishing from the Millennium Development Goals, the SDGs constitute an **inclusive** framework, based on the motto “leave no one behind,” and refers to persons with disabilities and CRPD language.

Human rights obligations should inform States’ efforts to implement the SDGs. Stating this linkage, the CRPD Committee has begun to include references to SDGs in its recommendations to States.[[17]](#footnote-17) In order to maximise its use, the general comment should explicitly refer to the 2030 Sustainable Development Agenda and to the need that it is guided by human rights standards.

**D- Recommendations**

Based on the previous considerations, IDA encourages the Committee to:

* Call on States to respect, protect and fulfil the economic, social and cultural rights of persons with disabilities in the context of business activities, in line with the CRPD, through the adoption of laws, regulations and programmes, monitoring and accountability mechanisms. In particular, the Committee should stress the States’ duty to closely consult and actively involve persons with disabilities and their representative organisations in the elaboration, implementation and evaluation of laws, policies, programmes and campaigns.
* Call on States to adopt antidiscrimination legislation that protect persons with disabilities from all forms of discrimination, including denial of reasonable accommodation, by business entities. States should provide guidance to business entities on how to provide reasonable accommodation. Specific measures to achieve de facto equality of persons with disabilities should be promoted and duly monitored.
* Call on States to adopt accessibility plans, with benchmarks, indicators and timeframes, and to monitor and enforce compliance by business entities. Public procurement should include mandatory accessibility requirements, and could be strategically utilised to facilitate access to mobility and assistive devices, and other services, for persons with disabilities through State schemes, and their affordability in the open market.
* Call on States to undertake awareness raising campaigns to combat negative stereotypes of persons with disabilities. States should encourage media to portray persons with disabilities in a manner consistent with the purpose of the CRPD.
* Call on States to modify intellectual property frameworks not to restrict access to cultural material to persons with disabilities and to create incentives to promote research and development on universally designed goods, services, equipment and facilities, ICTs, mobility aids, assistive technologies to enhance implementation of economic, social and cultural rights of persons with disabilities.
* Call on States to repeal and outlaw provisions and requirements that exclude persons with disabilities to access private health insurance. States should also address the increasing trend of over prescription of medication that endangers health of persons with disabilities, notably children and adolescents, and promotes segregation. States should ensure respect by private health providers of the free and informed consent of persons with disabilities, not to be overridden by any third party, and eradicate forced treatment and sterilisation.
* Recommend States to ensure that international cooperation is accessible to and inclusive of persons with disabilities and to established disability markers to track the related use of funds. Furthermore, international cooperation regulatory frameworks should be utilised to exert influence on business entities operating abroad.
* Call on States to ensure access to remedies against business entities to persons with disabilities in line with Article 13 of the CRPD, including by providing legal aid services, making court rooms, communication and information accessible, through sign language interpretation, Braille, captioning and easy to read format, and other alternative means of communication, and by providing procedural and age appropriate accommodations.
* Recommend States to ensure that their efforts to achieve the 2030 Sustainable Development Goals are guided by human rights obligations, particularly in the context of business activities, in order to ensure that the realization of the development goals and the economic, social and cultural rights are inclusive of all persons with disabilities.

**Annex I – Drafting proposals**

IDA suggests the following drafting proposals for the draft general comment, in bold letter:

Paragraph 4:

“…account Covenant obligations in their activities. **The 2030 Sustainable Development Agenda constitutes a major opportunity for increased implementation of the economic, social and cultural rights of all. The Committee recommends States parties to be guided by the obligations under the covenant, including notably this general comment, in their efforts to achieve its goals, leaving no one behind**.”

Paragraph 8:

“In addition, States Parties have the obligation to ensure that business entities under their jurisdiction respect the Covenant rights and comply with the provisions of the Covenant and that business activities do not hinder the enjoyment of the Covenant rights. **States parties are recommended to ensure close consultation with and active involvement of potentially concerned groups, including persons with disabilities, in the design, development and evaluation of laws and policies concerning their human rights in the context of business activities”**

Paragraph 9:

“…Among the categories who are often disproportionately affected by **regular practices and** adverse impact of business activities are women and girls, indigenous peoples particularly in relation to extractive projects, **~~and~~** ethnic or religious minorities where they are politically disempowered**, and persons with disabilities**.”

Paragraph 10:

“…Accordingly, States Parties have the obligation to ensure that individuals and entities in the private and market spheres do not discriminate on prohibited grounds**, including ensuring the provision of reasonable accommodation to persons with disabilities**.”

Paragraph 11:

“… including at the upper echelons of the business hierarchy. **Other groups, such as persons with disabilities, also require specific measures to achieve de facto equality, including special temporary measures, and strengthened protection against multiple and intersectional discrimination”.**

Paragraph 16:

“for instance, lowering the criteria for approving new medicines, **or by not incorporating requirements on accessibility for persons with disabilities in public procurement regulations and conditions**, or granting exploration …”

Paragraph 19:

“…restricting marketing and advertising of certain goods and services in order to protect public health or to combat stereotyping and discrimination**, including against persons with disabilities**; … establishing minimum wage and fair remuneration practices to ensure adequate working conditions; **utilize public procurement based strategies to ensure access to and affordability of goods and services in the market place, including mobility and assistive devices for persons with disabilities**; …, in order to effectively combat gender **and disability based** discrimination.”

Paragraph 20

“An intellectual property framework should also encourage research and development activities that serve the fulfilment of Covenant rights, **including for universally designed goods, services, equipment and facilities, ICTs, mobility aids and assistive technologies for persons with disabilities**. Such framework, however, should not deny or restrict everyone’s access to essential medicines as necessary for the enjoyment of the right to health. **It should neither deny anyone´s access to culture and information, notably of persons with disabilities**…”.

Paragraph 22

“In this regard, States Parties should ensure that privatization does not lead to a situation in which the enjoyment of Covenant rights is undermined by the inability to pay, at the risk of creating new forms of socio-economic segregation. They retain the obligation to regulate and ensure that private actors provide affordable access to quality **goods and** services to all, **with particular attention to historically excluded and economically disadvantaged groups, such as persons with disabilities. Public procurement based and other strategies could prove helpful to ensure affordability also in the open market.”**

Paragraph 24

• States Parties’ failure to adopt and enforce necessary legislation aimed at preventing private health providers from denying access to affordable and quality services, treatments or information**, including through discriminatory requirements or assessments that exclude or reduce coverage of health insurance to persons with disabilities**. This includes denial of services and care necessary for the realization of women’s sexual and reproductive rights, **~~and~~** inadequate protection against non-consensual medical treatment and experimentation**, such as forced sterilization of women and girls with disabilities, and over prescription of medication and pathologizing, particularly of children.**

Paragraph 27

The duty to promote requires States Parties to provide information and guidance for business actors as well as the public on how to comply with relevant laws and policies**, notably on those areas that have recently developed, such as the rights of persons with disabilities.** This may include launching educational campaigns, collecting and disseminating best practices, and regularly updating relevant materials.

Paragraph 39

… in order to help fulfill the economic, social and cultural rights of persons outside of their national territories. **International cooperation endeavors must be consistent with human rights standards and inclusive of all groups, e.g. accessible to and inclusive of persons with disabilities.**

Paragraph 46

“…This requires States Parties to remove substantive, procedural and practical barriers to remedies**, paying particular attention to marginalized groups traditionally excluded from accessing justice such as persons with disabilities,** including by simplifying and streamlining domestic procedural laws, enabling human rights-related class actions and public interest litigation, facilitating the collection of evidence abroad, including witness testimony, **providing procedural and age- appropriate accommodations to persons with disabilities** and allowing such evidence to be presented in judicial proceedings.

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1. CESCR Committee, draft general comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, para. 5. [↑](#footnote-ref-1)
2. In Brazil, the Confederation of Private Schools undertook (unsuccessful) legal actions to nullify key provisions of the recently adopted Law on Inclusion of Persons with Disabilities, which advanced inclusive education. [↑](#footnote-ref-2)
3. See e.g., E/1995/22; E/C.12/CYP/CO/6; E/C.12/LBN/CO/2, (para. 22 (d), (e) and (f). [↑](#footnote-ref-3)
4. See Annex I “Drafting proposals”. [↑](#footnote-ref-4)
5. According to the World Bank and World Health Organization’s 2011 World Report on Disability, p. 29. [↑](#footnote-ref-5)
6. See e.g. World Bank and World Health Organization’s 2011 World Report on Disability, p. 10. [↑](#footnote-ref-6)
7. CESCR Committee, General Comment no. 5, para. 15. See e.g. E/C.12/PHL/CO/5-6, para. 22. [↑](#footnote-ref-7)
8. See CRPD, Articles 2 and 5. See OHCHR, Report on Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities, paras. 22-36. [↑](#footnote-ref-8)
9. See e.g., ILO, *Promoting diversity and inclusion through workplace adjustments*, 2016; OHCHR, *supra* note 9. [↑](#footnote-ref-9)
10. Article 5 of the CRPD refers to “specific measures”, including but not being limited to “special temporary measures” (See OHCHR, *supra* note 9, para. 19. [↑](#footnote-ref-10)
11. See e.g. CRPD Committee, general comment no. 2 on Article 9 of the CRPD (Accessibility). [↑](#footnote-ref-11)
12. See A/71/314, para 31. [↑](#footnote-ref-12)
13. CRPD, Article 4, paras. f and g. [↑](#footnote-ref-13)
14. Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. [↑](#footnote-ref-14)
15. The clearest example is the increase of imprecise and unfounded diagnoses of attention deficit disorder. [↑](#footnote-ref-15)
16. E.g. Goals 4 and 8, “Quality Education” and “Decent Work and Economic Growth” [↑](#footnote-ref-16)
17. See e.g. CRPD/C/COL/CO/1, para. 55(e); CRPD/C/BOL/CO/1, para. 62, and CRPD/C/ETH/CO/1, para. 62. [↑](#footnote-ref-17)