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

**United Nations**

**Geneva**

**Switzerland**

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**Remarks on**

 **Draft General Comment on Equality and Non- discrimination (Article 5 CRPD) of the**

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

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**Article 5 CRPD - Equality and non-discrimination**

 **1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.**

 **2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.**

 **3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.**

 **4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.**

1. Introduction
2. Equality and non-discrimination for persons with disabilities in international law

1. The history of article 5 and article 2 of the Convention and the human rights model of disability
2. Legal character of non-discrimination and equality
3. Normative Content
	1. Art. 5 (1) Being equal before and under the law
	2. Art. 5 (1) Equal protection and equal benefit of the law
	3. Art. 5 (2) Prohibition of discrimination and equal and effective legal protection

**Paragraph 23**

***Comment:***

Both asylum seekers and refugees with disabilities face real challenges in finding concrete solutions to their displacement. Some challenges may come from discriminatory measures based on immigration laws that discriminate against an individual that is disabled and may have medical needs. In order to realise the rights of persons with disabilities, it is vital to systematically review laws, policies and procedures that affect disabled individuals directly to ensure that they follow the standards of the CRPD (Crock, 2016, 377).

* 1. Art. 5 (3) Reasonable Accommodation
	2. Art. 5 (4) Specific measures
1. General obligations of States parties under the Convention relating to non-discrimination and equality

1. Relationship with other specific articles of the Convention
	1. Article 6 – Women with disabilities
	2. Article 7 – Children with disabilities

**Paragraph 42**

***Comment:***

A focus on children as well as their parents and carers needs to focus on providing adequate support to adults or older siblings who may be the carers of children with disabilities. Assistance at home, including emotional support, should be provided for parents and carers. Through education, the levels of abandonment and institutionalization of children with disabilities can be reduced but only through national efforts.

* 1. Article 8 – Awareness Raising

**Paragraph 44**

***Comment:***

Whoever works with children or adults with disabilities needs to be aware of the variety of disabilities that may arise and their signs. There is currently a lack of understanding of the intersection between physical and mental disabilities. Hidden mental or learning disabilities go often unnoticed and might be dismissed or misconstrued as behavioural issues. Awareness on how lack of recognition can cause further issues or incorrect treatment is vital to ensure a full and happy life for individuals with disabilities.

* 1. Article 9 – Accessibility
	2. Article 11 – Situations of risk and humanitarian emergencies
	3. Article 12 – Equal recognition before the law
	4. Article 13 – Access to justice
		1. *Article 13(1)*
		2. *Article 13(2)*
	5. Article 14 – Liberty and security of person, article 15 – freedom from torture or cruel, inhuman or degrading treatment or punishment, article16 – Freedom from exploitation, violence and abuse and article 17 Protecting the integrity of the person

**Paragraph 64**

***Comment:***

Women, children, asylum seekers are at higher risks of intersectional discrimination. Article 16 rights emphasizes freedom from exploitation, violence and abuse. Consequently, a focus on those who are in the most vulnerable sectors of society e.g. women, children, asylum seekers is required to protect them against abusive situations. Access to safe homes and online or telephone helplines must be a nation's priority in order to allow individuals concerned to make those who can assist aware of such cases. As General Comment No. 3 on women and girls with disabilities notes: 'Article 6 (1) recognizes that women with disabilities are subject to multiple discrimination and requires that States parties take measures to ensure the full and equal enjoyment by women with disabilities of all human rights and fundamental freedoms. The Convention refers to multiple discrimination in article 5 (2), which not only requires States parties to prohibit any kind of discrimination based on disability, but also to protect against discrimination on other grounds.'[[1]](#footnote-2)

* 1. Article 19 – Living independently and being included in the community
	2. Article 24 – Education
	3. Article 27 – Work and employment

***COMMENT AND RECOMMENDATION ON***

**SECTION VII. Relationship with other specific articles of the Convention**

***Comment:***

Disabled people experience disproportionately high rates of poverty while being poor dramatically increases the likelihood of becoming disabled (Yeo 2003). In other words, "[d]isability and poverty have a bidirectional relationship; meaning that disability is a cause and a consequence of poverty" (Pinilla-Roncancio 2015, 115). A recent report, for example, reveals that "people living in households with disabled members in four countries face significantly higher levels of multidimensional poverty. These households also contribute more to the national levels of multidimensional poverty than their share in the population. More worryingly, a large percentage of households are not only severely multidimensionally poor but also destitute" (Pinilla-Roncancio & Alkire 2017, 1). The draft General Comment on Article 5 highlights that the Convention is based on a new model of transformative or inclusive equality (para 10). Against this background, it is surprising to realise that Article 28 of the Convention is not mentioned under section VII (Relationship with other specific articles of the Convention).[[2]](#footnote-3)

Disabled people should not have to choose between being able to pay for medication and being able to feed themselves, especially if the medication is essential for degenerative diseases. People may even be obliged to sell furniture or other personal homeware to be able buy essential medication.

**Article 28 CRPC** reads:

"1. States Parties recognize the right of persons with disabilities to an **adequate standard of living** for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to **social protection** and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right […]" (emphasis added).

***PROPOSED AMENDMENTS:***

**> Suggested New Sub-Section:**

 ***xi.a. Article 28 - Adequate standard of living and social protection***

**> Suggested New Paragraphs:**

 ***73.a.*** *'Poverty is both a compounding factor and the result of multiple discrimination.'[[3]](#footnote-4) Failure to implement the right of persons with disabilities to an adequate standard of living for themselves and their families is contrary to the objectives of the Convention. This failure is particularly worrying with regard to persons with disabilities living in extreme poverty or in destitution. To reach an adequate standard of living comparable to others, persons with disabilities have typically additional expenses. As Amartya Sen explains, '[This] conversion handicap refers to the disadvantage that a disabled person has in converting money into good living' (Sen 2005, 11; see also Sen 2009, 258).* *To avoid discrimination, States Parties have to address the 'conversion handicap'. Accordingly, States Parties are required to take immediate steps to provide persons with disabilities living in extreme poverty and destitutions with a core minimum in terms of adequate food, clothing and housing.[[4]](#footnote-5)* *If the CRPD were to be read in such a way as not to require such a minimum core for persons with disability living in extreme poverty, the required 'equality under the law' would be in jeopardy (see this General Comment under para. 16).[[5]](#footnote-6)*

***73.b.*** *With regard to social protection, States Parties are further required to implement a basic protection floor. Following the Special Rapporteur on extreme poverty, "it is difficult to accept that a State has no basic protection floor in place" (A/HRC/29, 31 para. 51), especially when persons with disability living in extreme poverty and destitution are concerned. This represents a particular disadvantage for children or older women with disability living in extreme poverty and destitution. As General Comment No. 3 (2016) notes: 'Older women with disabilities especially face many difficulties in accessing adequate housing, are more likely to be institutionalized and do not have equal access to social protection and poverty reduction programmes' (para. 59).*

* 1. Article 29 - Participation in political and public life
	2. Article 31

**Paragraph 75**

**Recommendation:**

As paragraph 75 is concerned with data collection and analysis, it can be expected that this General Comment also provides more detailed guidance on how these data could be collected by applying the United Nations guide on human rights measurement.[[6]](#footnote-7) A human rights approach can be combined with the use of the International Classification of Functioning, Disability and Health (ICF).[[7]](#footnote-8) In this context, the 'Gold Indicators' are also noteworthy as a tool to measure the progress of the implementation of the CRPD. The 'Gold Indicators' have been developed by the Danish Institute for Human Rights.[[8]](#footnote-9) 'The Gold Indicators' are a set of 10 statistical outcome indicators which compare the situation of persons with and without disabilities in relation to 10 key thematic areas of the UN Convention on the Rights of Persons with Disabilities (CRPD)'.[[9]](#footnote-10) A focus on the lived experience combined with a social-determinants-of-disability approach has also been proposed as a starting point to advance measurement of disability-based disadvantage, inequality and poverty, particularly in low income countries.[[10]](#footnote-11)

1. **Implementation at the national level**

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**REFERENCES:**

Crock, M. (2016). *Refugees and Rights* (2nd edn). Routledge 2016

Gartell, A. et al (2016), 'Social determinants of disability-based disadvantage in Solomon islands', *Health Promotion International*, 1–11. doi: 10.1093/heapro/daw071

Pinilla-Roncancio, M. (2015). 'Disability and poverty: two related conditions. A review of the literature', *Rev. Fac. Med.* 63, Suppl. 1, S113-23

Pinilla-Roncancio, M. and Alkire, S. (2017). 'How poor are people with disabilities around the globe? A multidimensional perspective.' *OPHI Research in Progress* 48a, University of Oxford.

Raut, L. K. and Pal, M. and Bharati, P. (2014). *The Economic Burden of Disability in India: Estimates from the NSS Data* (February 24, 2014), [https://ssrn.com/abstract=2432546](https://ssrn.com/abstract%3D2432546)

Sen, A. (2005). 'Disability and Justice'. In The World Bank (2005), *Disability and Development and The World Bank. A Briefing Summary* (Attachment 2)

Sen, A. (2009).*The Idea of Justice*. London: Allan Lane/Penguin Books.

United Nations Human Rights Council (2015). *Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston*. A/HRC/29/31 (27 May 2015)

Yeo, R. and Moore, K. (2003). 'Including Disabled People in Poverty Reduction Work: “Nothing About Us, Without Us."' *World Development* 31(3), 571-590.

1. *General Comment No. 3 (2016) on Women and Girls with Disabilities* [↑](#footnote-ref-2)
2. *See, however, Committee on the Rights of Persons with Disabilities, General Comment No. 3 (2016) on women and girls with disabilities, para. 59.* [↑](#footnote-ref-3)
3. *Committee on the Rights of Persons with Disabilities, General Comment No. 3 (2016) on women and girls with disabilities, para. 59.*  [↑](#footnote-ref-4)
4. *See also Committee on Economic, Social and Cultural Right, General Comment No. 3 (1990): The nature of States parties’ obligations, para. 10: 'On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties’ reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d’être. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources”. In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.'* [↑](#footnote-ref-5)
5. *For an application of the 'conversion handicap' in case of job loss due to onset of disability, see Raut, L. K. and Pal, M. and Bharati, P., The Economic Burden of Disability in India: Estimates from the NSS Data (February 24, 2014). Available at SSRN:* [*https://ssrn.com/abstract=2432546*](https://ssrn.com/abstract%3D2432546) [↑](#footnote-ref-6)
6. *United Nations (2012), Human Rights Indicators: A Guide to Measurement and Implementation,* [*http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx*](https://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx) [↑](#footnote-ref-7)
7. *WHO, International Classification of Functioning, Disability and Health (ICF),* <http://www.who.int/classifications/icf/en/> [↑](#footnote-ref-8)
8. <https://www.humanrights.dk/publications/gold-indicators> [↑](#footnote-ref-9)
9. *Ibid.* [↑](#footnote-ref-10)
10. *Gartell et al (2016), 'Social determinants of disability-based disadvantage in Solomon islands', Health Promotion International, 1–11* [↑](#footnote-ref-11)