**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 with comments to the draft General Comment no. 5 on article 19 of the Convention on the Rights of Persons with Disabilities, Living Independently and Being Included in the Community**

**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 welcomes the initiative of the Committee on the Rights of Persons with Disabilities (*hereinafter* “the Committee”) to call for comments to its draft general comment no. 5 on Article 19. The draft duly address key elements of article 19 of the CRPD. In this submission, we address some key points for the Committee`s consideration. Firstly, in sections I and II, we note the need to strengthen on gender approach, intersectionalities and references to children with disabilities throughout the draft. In section III, we address the issue of immediate obligations vis-à-vis progressive realisation pertaining to this Article, including the key role of reasonable accommodation. Thirdly, we address the issue of deinstitutionalisation processes and potential reluctance. In a last section, we would like to highlight the links with other CRPD articles, the need to strengthen consideration of developing inclusive communities, and further links with the Sustainable Development Agenda. In annex I, we will provide further concrete drafting proposals not necessarily linked with these main points.

**I – INTERSECTIONALITY: STRENGHENING THE GENDER APPROACH AND OTHER INTERSECTIONALITIES THROUGHOUT THE DRAFT GENERAL COMMENT**

In general terms, IDA notes that the draft lacks a strengthened gender approach and strong consideration of other intersectionalities and intersectional identities. For instance, older persons are mentioned twice (para. 23 and 34), migrants with disabilities are only mentioned once (para. 23), and **indigenous persons with disabilities are not mentioned at all, which is of great concern**. IDA believes this could be remedied by including more concrete references in connection with the key issues usually impacting on them, briefly describe below.

***Women and girls with disabilities***

While welcoming references to women with disabilities and gender equality, IDA believes that the gender approach of the draft general comment should be strengthened to better reflect and address, throughout the general comment, the barriers they face for the fulfilment of their right to live independently and being included in the community. As it stands now, there are references in paras. 10 and 23 and paras. 71 and 72 are devoted to women with disabilities. However, IDA believes this dimension should be mainstreamed and strengthened all throughout the document.

Women and girls with disabilities are generally disadvantaged compared to their male peers and face greater negative stereotyping and invisibility as right holders. Further, in the context of institutionalisation that Article 19 seeks to combat, women and girls with disabilities are often victims of rape, violence and abuse, and subjected to forced sterilization and abortions, and overall violated in their sexual and reproductive rights. Article 6 of the CRPD and the general comment 3 give account of this situation, constituting a provision that seeks the advancement, empowerment and development of women with disabilities.

Particular social and cultural contexts and practices, patriarchal structures and sexist stereotyping might be harsher on women generally, and on women with disabilities in particular, notably when discussing attempts for living independently. Practices of forced marriage of girls and the cultural reproduction of the role of women in society as mother and care giver constitute great examples. **This call for stronger explicit messages by the CRPD Committee on women and girls with disabilities in the context of Article 19 of the CRPD, in line with its previous general comment no. 3 on Article 6 of the CRPD.**

As a matter of example, in this case not implying drastic changes, we would like to provide a concrete proposal for paragraph 71. IDA believes the paragraph should focus more strongly on the barriers faced by women with disabilities due to gender stereotyping and patriarchal social patterns:

“71. Often, women and girls with disabilities (art. 6) **are more excluded and isolated**, and face more restrictions regarding their place of residence as well as their living arrangements due to paternalistic stereotyping **and patriarchal social patterns** against women in society. Women and girls with disabilities often also experience gender-based, multiple and intersectional discrimination, institutionalization, violence and abuse. Therefore, when implementing the right to live independently and be included in the community, particular attention should be paid to gender equality**, to the elimination of gender based discrimination and patriarchal social patterns.”**

***Older persons with disabilities***

Ageing populations, such as those of Western Europe, give account of the intersectionality between **age and disability**, at the later stages of the life cycle. Together with persons with disabilities becoming older persons, many older persons became persons with disabilities when aging and start facing barriers, stereotypes and paternalistic attitudes in the exercise of their rights, including lack of quality supports and even restrictions of their legal capacity (formal or in practice), leading for instance to be forced to live in residential homes for older persons, in contradiction of Article 19.

Access to support services is a key element that needs to be stressed with regard to older persons with disabilities. In occasions, older persons with disabilities end up falling in the cracks of social protection systems and eligibility criteria for support services restricting their enjoyment of their right to access support to live in the community.[[1]](#footnote-1) This may happen for instance when a person with disabilities acquires the retirement age and is changed from a disability related scheme to an age/retirement scheme.

***Migrants and refugees with disabilities***

The situation of migrants and refugees with disabilities is very worrisome, even in developed countries, due to eligibility criteria in immigration application procedures and for accessing social protection schemes, including disability pensions or allowance, and support services to foster life in the community. For instance, in Australia, temporary and permanent migrants are required to meet the health requirement under the Migration Act 1958,[[2]](#footnote-2) which impacts negatively on persons with disabilities.

The CRPD Committee and the CMWF Committee have jointly stated that “access to support services, including health and social services, for migrants and refugees with disabilities is often inadequate, or limited to emergency care.”[[3]](#footnote-3) Such an statement address legislations, regulations and practices of many countries, such as those of Argentina, where article 9 of Law no 13478 deprives equal access to benefits for children with disabilities due to a prerequisite of 20 years residence before being permitted to access disability benefits. IDA believes that the general comment on Article 19 should be both more emphatic an specific when addressing the legal, regulatory and practical obstacles that migrants and refugees with disabilities encounter to exercise their right to live independently and be included in the community.

**II- THE NEED TO STRESS ARTICLE 23.5 STANDARD OF “FAMILY SETTING WITHIN THE COMMUNITY” FOR CHILDREN WITH DISABILITIES**

IDA welcomes all the references on children with disabilities and the overall call towards their deinstitutionalisation. It is particularly relevant the explicit mention in para. 23 that “[c]hildren with disabilities […] are right-holders under article 19.” This clears any potential remaining doubt any stakeholder could have on the application of Article 19 to children. Further, paragraphs 73, 74 and 84 address children with disabilities in the context of Article 19 and explicitly links it with Article 23.

IDA believes, however, that the general comment should explicitly refer and quote paragraph 5 or Article 23, which reads: “5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, **within the community in a family setting.” This is necessary in order to explicitly uphold the highest standard available of “alternative care within the community in a family setting.”**

Article 23(5) of the CRPD came to supersede the UN Guidelines for Alternative Care, which leave room for institutionalisation children with disabilities. Furthermore, the CRC Committee, in 2017, still uses phrases like the following when discussing institutionalisation: “ensure that institutionalization is used only as a last resort”.[[4]](#footnote-4) **In this context, IDA believes that it is of great importance that the CRPD Committee stresses that aspect of Article 23(5) on inclusion in the community of children in “family settings”, which distinguishes the CRPD and characterise it compared to previous human rights instruments.**

**III- STATE OBLIGATIONS UNDER ARTICLE 19 OF THE CRPD - IMMEDIATE APPLICATION VIS-À-VIS PROGRESSIVE REALISATION.**

IDA welcomes the efforts by the Committee to deal with the complex issue of obligations under Article 19 of the CRPD, in terms of characterisation as an “hybrid” norm, immediate application vs. progressive realisation, and use of resources. **IDA believes that these are the aspects that require more careful reflection and drafting, in order uphold the rights to their full extent, not to reduce scope of States obligations, and to protect as much as possible the enforceability of the right reducing States’ margin for avoiding responsibility.**

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Going into the draft, IDA notes its paragraph 7, which endorses modern human rights theory that blurs the traditional distinctions made between civil and political rights, and economic, social and cultural rights. It is acknowledgement that all rights imply both negative and positive obligations and require resources for their implementation and, together with other elements in the draft, that any effort to justify non-implementation of rights cannot be automatically based on a mere categorization of rights (mainly ESC rights) and a general assertion of lack of resources or need of time. In this line with would like to suggest the some slight modifications in the drafting to ensure the message is more clear:

“Modern human rights theory recognizes that in order to be realized, all human rights require resources, **not existing any difference between categories of rights on this regard and in the States obligations implied, both positive and negative**. Systematic realization also requires structural changes which have to be taken **~~step by step~~**, no matter whether civil and political or social, economic and cultural rights are at stake.”

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IDA believes that, as it stands know**, the draft general comment is not fully accurate and consistent in its use of human rights law categories**. For instance, while paragraph 40 refers to “a minimum essential level of the right,” which is a category typically use for ESC rights, paragraph 41 refers to the “hybrid legal character of the norm,” to attribute immediate application only to para. a of Article 19. We believe the Committee should reflect on the order in which concepts are presented and, if needed, explicitly justify the use of categories, **taking into account also the following comments.**

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**III-A– Comments on paragraph 41: inaccurate categorisation of paragraph b and c of the CRPD as “social rights” subjected to progressive realisation**

Secondly, IDA does not feel very comfortable with paragraph 41 and its clear-cut categorization of obligations emanating from the different paragraphs of Article 19, especially when it comes to state that paragraph b (support) and c (accessibility of services) are subjected to “progressive realisation.”

**Regarding paragraph b of Article 19, IDA considers that the obligation to ensure access to individualised assessed disability support services should not be subjected to progressive realisation and the corresponding right should not be presented as a “classic social right.”**

We believe that many reasons would support this view, especially with reflecting on the interaction between Article 19 and Articles 12 (Equal recognition before the law) and Article 14 (Right to Liberty and Security of the Person). In this line, we would like firstly to recall that the CRPD Committee stated that “[p]rogressive realization” (art. 4, para. 2) **does not apply to the provisions of article 12**, including access to support.[[5]](#footnote-5)

Secondly, it should be noted that the draft correctly states that **paragraph a** of Article 19 should be considered of immediate application, as it constitutes the expression of Article 12 in the context of Article 19 (choice and decision making); as such, the general comment should not allow that the necessary condition for the realisation of paragraph a (access to support under paragraph b) is postponed under the guise of “progressive realisation.” What would be the value of taking a decision without possible materialisation in reality?

In addition, the provision of support in line with paragraph b is key to prevent “isolation or segregation from the community”, including forced institutionalisation and, consequently, also key to protect the ‘classical’ civil and political rights, which are the rights to liberty and security of person (Article 14 of the CRPD) and the right to equality and non-discrimination (Article 5 of the CRPD).

**It is clear that not establishing the same level of obligation (immediate obligation) for paragraphs a and b might lead to violations of Article 19, including its paragraph a, which is projected to be of immediate realisation.** In this way, it could justify the situation of a person with disability, provided support in their decision making process, not being able to materialise their decision to leave an institution where they were originally forcibly committed, due to the lack of immediate access to support.

**Regarding paragraph c of Article 19, IDA would like to stress that “[c]ommunity services and facilities for the general population” may include those related to the rights typically categorised as economic, social and cultural rights (right to education, to health, to employment), but it is not limited to them.**

For instance, civil registries dealing with civil status and birth registration, courts, etc., are indeed related to rights that would be considered civil and political rights (recognition before the law, access to justice, etc.). Consequently, **it would not be correct to suggest that “[a]rticle 19 (c), the right to avail community services and facilities, is a social and a cultural right,” as the draft general comment reads.** Making this assertion implies categorising the paragraph on the basis of only some situations or aspects it would address.

IDA believes that the attempt to categorise this paragraph c under “progressive realisation” fails probably because the paragraph is not in itself drafted as recognising a particular right but is rather crosscutting to the exercise of all rights and refers generally to “community services and facilities”.

In addition, IDA would like to observe that some elements of implementation of paragraph c of Article 19 of the CRPD may be related to accessibility under Article 9 of the Convention. In connection to them, and with due precision, it would be important to bring into the draft elements from general comment no. 2 on Article 9 (Accessibility). For instance, it should be stressed that the obligation to make “community services and facilities” accessible to persons with disabilities is “unconditional.”[[6]](#footnote-6)

**IDA strongly encourages the Committee to avoid these categorisation of paragraph b and c of Article 19 of the CRPD, as “social and cultural right,” and to re-draft paragraph 41 and those other related paragraphs accordingly, in particular eliminating *general* links of these paragraphs to the clause of “progressive realisation”.**

**III – B – Non-discrimination: The roles of reasonable accommodation vis-à-vis progressive realisation and as a means of providing support in a particular case**

**Independently from** the outcome of reflections on the previous considerations of sections III and III-A, IDA would like to stress the role that the provision of reasonable accommodation can have to immediately advance implementation of Article 19 of the CRPD.

IDA welcomes paragraph 46 of the draft general comment on non-discrimination that highlights the immediate character of this obligation. We would like, however, to propose a small drafting change to replace “also exempt from progressive realization” by “is a right to be immediately applicable.” Thus the paragraph would read: “46. The obligation to take measures to overcome discrimination on the basis of disability and to achieve de facto equality of persons with disabilities **is a right to be immediately applicable**.”

IDA also gladly notes that para. 46 explicit says that “[t]he duty to provide reasonable accommodation (art. 5 (3) CRPD) is also not subjected to progressive realization“, and believe it could go a little further. The recent OHCHR report on Article 5 of the CRPD clearly explains that “[r]easonable accommodation, as seen, plays a **bridging role between immediate and progressive obligations**. As part of non-discrimination, reasonable accommodation applies immediately to all rights, including economic, social and cultural rights. Secondly, **as it may require positive action (with or without cost), it blurs the idea that civil and political rights imply only negative duties, and economic, social and cultural rights only positive duties**.“[[7]](#footnote-7)

Taken to the context of provision of support under different Articles of the CRPD, including Article 19, OHCHR explains that the concept of “reasonable accommodation should not be confused with provision of support.”[[8]](#footnote-8) That said, OHCHR adds, in a similar fashion to the CRPD Committee,[[9]](#footnote-9) that “[a]s support systems or services may not yet be developed, **reasonable accommodation may function as a means of providing support in a particular case.”[[10]](#footnote-10) IDA believes that this last phrase, or a similar, should be included in the end of paragraph 46.**

**IV- THE STATE DUTY TO CLOSE INSTITUTIONS AND PROVIDE QUALITY SUPPORT SERVICES AND THE POTENTIAL RESISTANCE TO DEINSTITUTIONALISATION PROCESSES: PARAGRAPH 47 OF THE DRAFT GENERAL COMMENT**

IDA notes the CRPD Committee`s efforts to address in paragraph 47 of the draft the potential reluctance of persons with disabilities (especially those who might have spent great part of their lives in institutions) and the State obligation towards deinstitutionalisation, including the closure of institutions and the provision of quality support services in the community. IDA believes this is an issue that deserves careful consideration and very thoughtful and clear drafting to prevent interpretations that might seek to justify the status quo of institutions and undermine efforts towards deinstitutionalisation and development of quality support services in the community.

**IDA would like to support the position of Inclusion International, which opposes to the inclusion in the general comment of paragraph 47 as it stands. The current drafting could suggest, as a matter of principle, acceptance to some extent of the existence of institutional settings in contradiction with the spirit of the CRPD and of its Article 19. In this sense, paragraph 47 should not have a place in a general comment on Article 19.**

**Without undermining at all the previous comment**, and taking into account previous discussions and reflections by the CRPD Committee on Article 19, **IDA believes that paragraph 47 was rather meant to have an “implementation oriented approach” for the case of deinstitutionalisation processes, and does not intend to raise any discussion at the level of principles or general obligations under Article 19**. Unfortunately, in our view, the current phrasing does not reflect this point very clearly nor explicitly and is misplaced, opening the floor for readings at the level of principles. The following comments and suggestions are done under that light and reading of paragraph 47.

Institutional settings in which persons with disabilities are forced to live (including due to lack of support services in the community), in order to access some kind of support, are contrary to Article 19, which seeks for their inclusion in the community and for preventing their segregation and isolation. However, **during deinstitutionalisation processes**, there might potentially be cases where **persons with disabilities (especially those having spent great part of their lives in institutional settings) express reluctance, fear or mistrust about the transition to the life in the community and the supports services they are offered**.

IDA considers that, **while institutions are in the process of closure,** those particular individuals have the right to:

- be awarded proper and dignifying life conditions,

- to receive quality support services that enables them to freely decide and choose where and with whom to live, to seek an option of independent living, as well as

- to come and go to the institution to perform other duties and activities that the individual chooses to do, such as schooling, work and employment, social and cultural activities, and so on.

Thus, States should have the obligation to provide for such quality support services within the institutional setting, even when not mandated achieve closure of such institutions, and in the community.

Consequently, adopting explicitly an “implementation oriented approach” and taking into account all the previous comments, IDA would like to suggest to place this concern on section V on Implementation at the National Level and provide the following drafting proposal:

**~~“47.~~** **~~The right to decide where, how and with whom to reside also embraces the individual’s decision to live in institutional care settings, because there is no obligation to live under a particular living arrangement. However, as~~** Article 19 of the Convention **aims at including persons with disabilities** in the community**~~,~~.** **~~the right to choose a residential, institutional setting does not correspond with a states’ party duty to maintain institutions or to ensure the availability of residential support services.~~ Therefore, States Parties have an obligation to avoid increasing resource allocation to, and to achieve closure of, institutions**. **In the meantime, regarding practical implementation of deinstitutionalisation processes, and while institutions are in the process of closure, States must ensure safe and dignified living conditions and independent monitoring.** **Furthermore, the fact that there could be people living in institutions who express reluctance, fear or mistrust about their transition into the community or the support services offered (while the institution is still functioning on its way to closure), does not exempt States Parties’ obligation to take proactive steps to achieve their closure, and ensure availability of quality support services tailored to the individual requirements to promote the full inclusion and participation of all persons with disabilities in the community. This includes the obligation to ensure the availability of support services to enable individuals with disabilities, regardless of their residence or living arrangement, to be included in all aspects of community life.”**

**V- OBLIGATIONS RELATED TO ACCESSIBILITY AND THE EXERCISE OF OTHER RIGHTS, THE BUILDING OF INCLUSIVE COMMUNITIES AND FURTHER LINKS TO SUSTAINABLE DEVELOPMENT GOALS**

IDA welcomes the efforts of the CRPD Committee on including links to obligations under other Articles in the draft general comment and a reference to the Sustainable Development Agenda (para. 13). We believe, however that there is room for improvement and inclusion of further concrete references on these two points.

Obligations under Article 9 and 21 on accessibility are particularly relevant for the exercise of the right to live independently and being included in the community. For instance, lack of accessible transportation and related information prevents autonomy of persons with disabilities in their mobility within the community (e.g. lack of signage for blind and partially sighted persons, of easy to read format for persons with intellectual disabilities and of sign language interpretation for deaf persons).

In this same line, urbanization processes and projects and related technological developments should be guided by inclusion and accessible. For instance, the lack of safe and inclusive common spaces for pedestrians and vehicles clearly prevents persons with disabilities from enjoying the right to live independently and being included in the community. Further, new technological trends such as smart cities with new less accessible traffic lights systems and silent cars create great risks to blind and partially sighted persons preventing their autonomy. These examples highlight the need to involve persons with disabilities in the design and implementation of new urban agendas and related technological developments.

It is clear that the right to education under Article 24 is essential for the development of autonomy, decision making skills and inclusive communities. Thus, the key role of inclusive education as a great motor for the implementation of Article 19. In this line, it is important to explicitly highlight related accessibility features to be fully incorporated in the practice of education systems, such as braille, large print, audio transcription, sign language, speech to text transcription, easy to read formats, among others.

The right to employment under Article 27, including economical empowerment for self-employment, and to social protection under Article 28, including coverage of disability related expenses, are key to ensure the income and means for an independent life in the community, and their denial have extremely negative impacts on the right to live independently and being included in the community, which should be duly noted. Further, the self-administration of financial resources or income is usually prevented by inaccessible ATMs and banking systems and information, as well as by restrictions to legal capacity, for instance of persons with psychosocial disabilities and/or intellectual disabilities and, in some contexts, even of blind persons.

Following these paragraphs, **IDA would like to highlight the need to shed a strong light on the purpose and goal of developing inclusive communities**, respecting of course the individual rights. The draft general comment, with a perspective on rights and individual entitlements, may give a weak impression when it comes to a more broad societal perspective. Addressing society as a whole, through awareness raising to combat stereotypes and foster inclusive attitudes, is particular relevant to promote the inclusion of the more marginalised groups of persons with disabilities and could be more prominent in the general comment. Such approach, provided also that accessibility of cultural spaces, activities and information is ensured, would come along with a higher degree of participation in cultural life, recreation, leisure and sport, as required by Article 30 of the CRPD.

In the same direction, the previous consideration call for more strong and explicit links to the Sustainable Development Agenda and Goals to be added to the general comment. As it stands, the draft only refers to SDGs in connection to right to housing, falling short from the wide scope of Article 19. Links to many of the SDGs goals, especially those related economic growth and decent work, creation of safe, inclusive and accessible infrastructure, cities and human settlements (SDGs goals 8, 9 and 11) should be highlighted throughout the general comment.

**VI- Recommendations**

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

- Consider the comments provided in this submission in the on-going discussions towards a general comment no. 5 on Article 19 of the CRPD, in order to ensure the provision of clear guidance to States and the greatest scope of protection and enforceability of the right to live independently and be included in the community.

- Call States to respect, promote, protect and fulfil the right of persons with disabilities to live independently and be included in the community, by complying with their immediate obligations and developing consistent public policies guided by the CRPD principles of autonomy, freedom to make one´s choices, respect for diversity, among others.

- Call States to ensure that policies under Article 19 explicitly include and address the perspective of women and girls with disabilities, as well as other intersectional identities, such as older persons with disabilities, migrant and refugee with disabilities and indigenous persons with disabilities. Furthermore, States should uphold the criteria of Article 23.5 of the CRPD of ensuring children a “family setting within the community”

- Call States to step up all efforts on deinstitutionalisation processes, and any other form of segregation and isolation of persons with disabilities, by establishing and enforcing the absolute ban on deprivation of liberty on the basis of impairments, and by providing accessible housing options, financial support and quality support services, including personal assistance services. Any potential reluctance to deinstitutionalisation, notably by persons who might have spent a great part of their life in institutions, should not prevent closure of institutions and should be address by ensuring the quality support services the person requires.

- Call States to strengthen policies related with accessibility, right to education, to employment and to social protection and an adequate standard of living, to allow for the development of inclusive communities, including as well awareness raising campaigns to to combat stereotypes and foster inclusive attitudes, especially to promote the inclusion of the more marginalised groups of persons with disabilities.

- Call States to stress links between SDGs related processes and the CRPD to ensure that all development plans and actions are guided by the human rights standards enshrined in the CRPD, including notably close consultation and active involvement of persons with disabilities, through their representative organisations, in the design, development and evaluation of all legislations and policies related to the their rights, as required by Article 4.3 of the CRPD.

**ANNEX I – Additional drafting proposals**

**Para 6**: While IDA`s acknowledges the role of Article 19 in favouring the enjoyment of other rights, the term “precondition” may create the impression that actions to implement other areas of the CRPD require first the implementation of Article 19. We would propose:

“…plays a distinct role as one of the widest ranging and most **~~intersectional~~ crosscutting** articles of the Convention and has to be considered as a **~~precondition~~** **key element** for the implementation of the Convention across all articles.”

**Para. 13:** While thanking the linkage of the general comment with the New Urban Agenda (Habitat III) and the 2030 Development Agenda and SDGs, IDA believes that those instruments should be understood and implemented in the light of the Article 19 and the general comment, and not vice-versa, being the latter normative human rights discourse. Thus, we propose:

“Article 19 and the content of this General Comment must also **~~be understood in the light of~~** **be considered to guide implementation of** The New Urban Agenda (Habitat III) and **~~as an integral part of~~** the 2030 Development Agenda and Sustainable Development Goals (SDGs).”

**Para 14**

IDA proposes the following to be added in an additional sub-para as one of the remaining barriers:

**“(x) absence of, or inadequacy of legal provisions to combat disability based discrimination, including gender based violence, to access mainstream community services and/or facilities (interrelation with articles 5, 6 and 16)”**

**Para 15(a):** IDA suggests to add a category of life, which is “language and communications”, which is key for many constituencies among persons with disabilities. Thus, the subpara. would read:

“(a) … This includes, but is not limited to: place of residence, **language and communications,** daily routine, personal relationships, clothing, nutrition, hygiene and health care, religious, cultural and sexual and reproductive rights,…”

**Para 15(b)** has left out some of the fundamental rights, and this could be misinterpreted as not being necessarily included within the context of “being included in the community”. IDA suggests the addition of these areas of participation, thus, the sub para (b) would read:

“(b) Community living: The right to be included in the community relates to the principle of full and effective inclusion and participation in society as enshrined in article 3 (c) of the Convention. It means being social and having access to all services offered by the community to its members and to specialized services offered to persons with disabilities to enable them to be fully included and to participate in social life. These services can relate to **schooling**, housing, personal care, **rehabilitation and health services**, transportation, shopping, cinemas and all other facilities and services offered to the public. …”

**Para 19**: IDA believes that referring to “legal capacity issues” could be read as tolerating their existence, meaning giving room to restrictions to legal capacity. Thus, we propose:

“…neither legal capacity **~~issues~~** **restrictions contrary to Article 12** **of the CRPD** nor the level of support required may be invoked in order to deny the right to independent and community living to persons with disabilities.”

**Para 20:** IDA proposes the following change of language:

“which extends the right to live independently and be included in the community to all persons with disabilities, regardless of their level **~~of intellectual capacity, self-functioning or~~** support requirement.”

**Para 21:**

This para contradicts the concept that any form of institutionalization is contrary to article 19. It could be misinterpreted in a way that it might seem that placing persons with disabilities in the same age group is acceptable, and that what is not acceptable is to have persons with disabilities belonging to different age groups. IDA suggests that this para should be eliminated.

**Para 25**

In its current drafting, the para. by itself does not contribute much to the general comment. The para could be improved significantly by adding the following text at the end:

**Even if the required supports for persons with disabilities in accordance to article 19 do not exist or are not the adequate ones, States Parties should not conform to the poor service provision; articles 19 and 12 clearly sets out States’ obligation to provide persons with disabilities with the necessary means for supports in decision making and to enable them freedom and control over their daily lives and services.**

**Para 28:** IDA believes that the fragment on “residential services” is at risk of being de-contextualised and favouring interpretations that relativizes the importance of choice and control by persons with disabilities. We would propose an slight modification as follows:

“Residential services are services which offer persons with disabilities support as well as a place to live, **provided that they ensure choice and control over one´s life by persons with disabilities and do not impose any institutional feature as described above in paras. XX**. They can be useful when persons with disabilities make the transition from institutions to independent and community living and might be necessary for persons who have lived in institutional settings for a long time and need to find out how they prefer to live.”

**Para 32:** IDA believes that using “do not have disabilities” confuses the concepts of “disability” with “impairment”. We would like to propose rather the following:

32. Services and facilities mentioned in this section of the article are non-disability specific community services and facilities, which **non-disabled** persons in the community **~~do not have disabilitie~~s** use.

**Para 33:**

While IDA agrees with the idea expressed in this paragraph, we believe that the last sentence might be very discouraging for States officials, especially because successful reforms require coordination among agencies. We would propose to draft it as follows:

**~~Unless~~ s**uch reforms **~~are~~** accompanied by comprehensive service and community development programs, including awareness programs, **~~they largely fail~~ in order to increase prospects of success.**

**Para 34:**

IDA completely agrees with the need to collect disaggregated data. We would like to add the category of “type of impairment”. The paragraph would read as follows:

“Therefore, effective data collection disaggregated by age, sex, **type of impairment**, ethnic background, social condition, refugee, asylum-seeking, and migrant situation, **among others,** and analysis are of paramount importance.”

**Para 40, sub-para (f):**

IDA suggests a slight addition to address the case of disproportionate impact on the basis of disability by austerity measures. The sub-para would read:

(f) The possibility of living independently must not be negatively **and/or disproportionately** affected by measures taken to respond to economic constraints.

**Para 45:** IDA would like to make the following drafting proposal:

“45. States parties are prohibited from taking retrogressive measures with respect to the core elements of the right to independent and community living listed in paragraph 40 of this General Comment. While the Committee notes that many States parties face serious financial burdens as a result of the global financial crisis (2008), they should ensure that persons with disabilities are protected against social cutbacks **~~because the effects affects them harder~~ which affects them increasingly and disproportionately compared to the general population**.”

**Para 56**

Improve language and concepts, at the end of the para, instead of “independent and community living”, the concept is adequately named and improved by “living independently and being included in the community”.

**Para 57:**

Idem as para 56, instead of “living in the community”, it is more appropriate to name it “living independently and being included in the community”.

**Para 58:**

Within the various categories of persons with disabilities, it is important to include the urban/rural category and the ethnic and cultural background, so the suggestion is to include it, and the para would read:

58. Disability support services must be available, accessible and acceptable to all persons with disabilities and be sensitive to different living and identity circumstances, such as sex, age, religion, sexual identity, urban/rural context, ethnic and cultural background. A human rights-based approach to support also means that support systems, including personal assistance, do not exclude persons with disabilities because of their impairment or the kind of support they require. This is especially important for persons with intellectual and/or psychosocial impairments or complex support requirements. Furthermore, support should not be limited to a number of pre-established activities, should not be tied to specific living arrangements, must be provided irrespective of persons with disabilities having a family or the income of the individual or family and should be delivered on the grounds of free and informed consent. Independent living is about the right to live independently and not about maintaining the regime of ‘Care’.

**Para 79:**

In the relation with article 14, it is also fundamental to mention that in many countries, the “unfitness to stand trial” is usually associated to security measures that mandate the deprivation of liberty and constitutes disability based discrimination. Suggestion is to add this into the para as follows:

79. Placing persons with disabilities in institutions or depriving them of their liberty because of their impairment or against their free will, because criminal codes decide that persons with disabilities “are unfit to stand trial” and thus deprived of their liberty in psychiatric or similar institutions, or also because there is no support available in the community is a violation of article 14.

**Paras 84, 85, 86:**

IDA would like to suggest to change terminology: instead of “Independent and community living”, we would suggest to use “Living independently and being included in the community” in line with Article 19.

1. See notably “AGE Platform Europe Position on Article 19 of the UNCRPD“, submission fort he Day of General Discussion on Article 19 of the CRPD, held in 19 April 2016. [↑](#footnote-ref-1)
2. Migration Act 1958. Available at <http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/>. To meet the health requirement the applicant must: “... not have a disease or condition which would be likely to require health care or community services; meet the medical criteria for the provision of a community service, result in significant cost to the Australian community in the areas of health care and community services; or prejudice the access on an Australian citizen or permanent resident to health care or community services, regardless of whether the applicant would use those services” [↑](#footnote-ref-2)
3. CRPD Committee and CMWF Committee, joint Statement “Addressing disabilities in large-scale movements of refugees and migrants“, [↑](#footnote-ref-3)
4. CRC Committee, Concludings Observations on Serbia, para. 40(c), adopted during its 74th session. [↑](#footnote-ref-4)
5. CRPD Committee, general comment no. 1 on Article 12, para 30. The CRPD Committee stated: „State obligation, provided for in article 12, paragraph 3, to provide access to support in the exercise of legal capacity is an obligation for the fulfilment of the civil and political right to equal recognition before the law. “Progressive realization” (art. 4, para. 2) does not apply to the provisions of article 12.“ [↑](#footnote-ref-5)
6. CRPD Committee, general comment no. 2 on Article 9 (accessibility), para. 25. [↑](#footnote-ref-6)
7. [A/HRC/34/26](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/26), para. 36. [↑](#footnote-ref-7)
8. [A/HRC/34/26](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/26), para. 34. [↑](#footnote-ref-8)
9. CRPD Committee, general comment no. 2 on Article 9 (accessibility), para. 25. [↑](#footnote-ref-9)
10. [A/HRC/34/26](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/26), para. 34. [↑](#footnote-ref-10)