



Equal Rights Trust

Written submission to the Committee on the Rights of Persons with Disabilities relating to the Outline of the Draft General Comment on Article 5

July 2017

Statement of Interest

1. The Equal Rights Trust (the Trust)¹ is grateful for the opportunity to make this submission to the Committee on the Rights of Persons with Disabilities (the Committee) relating to the Outline of the Draft General Comment on Article 5 of the Convention on the Rights of Persons with Disabilities (the CRPD). The Trust also welcomes the opportunity to continue engagement in the consultation in respect of this General Comment by attending the Day of General Discussion on 25 August 2017 and by commenting on the draft General Comment once it has been drafted by the Committee.
2. The Equal Rights Trust exists to combat all forms of discrimination and to promote equality as a fundamental right and principle of social justice. We are the only international organisation to focus exclusively on the right to equality and to approach equality from a unified human rights framework. The unified human rights framework on equality forms the basis of the Trust's submission.
3. The unified human rights framework on equality is elaborated in the Declaration of Principles on Equality (the Declaration) which sets out international best practice standards on the right to equality.² The Declaration was drafted and adopted by 128 prominent equality and human rights experts from more than 40 different countries, in a process facilitated by the Equal Rights Trust in 2008. Since the adoption of the Declaration, the Trust has worked with local partners in more than 40 countries around the world to develop and promote best practice standards on the right to equality. Our work involves supporting civil society organisations, lawyers and others to secure the enactment and implementation of comprehensive anti-discrimination legislation, through advocacy, litigation, building capacity and research and documentation.
4. In the view of the Trust, the proposed General Comment on Article 5 of the CRPD provides an important opportunity for the Committee to clarify the understanding and content of the rights to equality and non-discrimination under international human rights law. In our view,

¹ For more information about the Equal Rights Trust and our work, please visit:
<http://www.equalrightstrust.org/>.

² Equal Rights Trust, *Declaration of Principles on Equality*, 2008, available at:
<http://www.equalrightstrust.org/content/declaration-principles-equality>

in addition to elaborating on the content and scope of Article 5 of the CRPD, the Committee can use this General Comment to clarify the understanding of these rights in three key respects: (1) that the right to equality, as set out in in the Preamble of the CRPD and reflected in Principle 1 of the Declaration of Principles, entails equal participation in all areas of civil, political, economic, social and cultural rights; (2) that positive action is necessary to ensure the full enjoyment of the right to equality, and that states have an obligation to take positive action measures in cases where substantive inequalities are identified; and (3) that the right to non-discrimination, as protected in the CRPD and other instruments of international law, entails protection from direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation.

5. In this submission, we provide comments on the proposed Outline for the draft General Comment, highlighting issues which we consider pertinent, in the hope of informing the Committee's deliberations on this important General Comment. We focus in particular on the three overarching issues identified above. As an Annex at the end of the submission, we provide a proposed amended structure for the General Comment, in line with our comments on the draft Outline.

Outline of the Draft General Comment

I. Introduction – 4. Legal character of Article 5

6. In the Trust's view, the General Comment should highlight that while equality and non-discrimination are foundational principles under UN human rights conventions,³ the right to non-discrimination is also a fundamental right under international law, protected *inter alia* in Article 26 of the International Covenant on Civil and Political Rights (ICCPR) as a free-standing right and guaranteed in respect of the enjoyment of other rights in both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴
7. We also consider it essential that the Committee reiterates that the right to non-discrimination is subject to immediate rather than 'progressive realisation', reflecting the clear statement to this effect made by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment 20.⁵ As the CESCR acknowledged, while economic, social and cultural rights under the ICESCR may be subject to progressive realisation, states have an immediate obligation to ensure that there is no discrimination in the enjoyment of these rights.⁶

³ See *inter alia* the Preambles of the CRPD Convention, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, Convention on the Elimination of Racial Discrimination, Convention on the Elimination of all forms of Discrimination Against Women. See also, Human Rights Committee, General Comment No. 18: Non-discrimination, UN Doc. HRI/GEN/1/Rev.9, 1989, Para. 1.

⁴ International Covenant on Civil and Political Rights, Article 26 and 2(1); International Covenant on Economic, Social and Cultural Rights. Article 2(2)

⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 7.

⁶ See discussion in Equal Rights Trust, *Economic and Social Rights in the Courtroom: A Litigator's Guide to Using Equality and Non-discrimination Strategies to Advance Economic and Social Rights*, 2014, pp. 21-22. Available at: http://www.equalrightstrust.org/ertdocumentbank/ESR_Guide.pdf

II. Normative Content – Article 5(1): 5. Equality before and under the law and 6. Equal protection and benefit of the law

8. The Trust welcomes the definition of the right to equality in the Preamble and Article 1 of the CRPD as a right which encompasses the need for “full and effective participation in society on an equal basis with others”. This definition resonates with the definition of the right to equality under Principle 1 of the Declaration as including the ability to “participate on an equal basis with others” in civil, political, economic, social and cultural life.⁷ The Trust notes however that “equal participation” is not explicitly included in Article 5 of the CRPD. We would encourage the Committee to take the opportunity, in this General Comment, to clarify that Article 5 encompasses a right to equal participation.
9. Recognising that the right to equality as a right to equal participation entails a recognition that both reasonable accommodation and positive action are required to ensure compliance with the Convention. Article 5(3) of the Convention recognises that reasonable accommodation is required to ensure equality, while Article 2 clarifies that denial of reasonable accommodation is a form of discrimination on the basis of disability.
10. However, the Convention does not recognise, explicitly, that positive action is required as an element of the right to equality. Indeed, Article 5(4) does not use the term positive action, referring instead to “[s]pecific measures which are necessary to accelerate or achieve de facto equality”. The Trust urges the Committee to consider adopting the term positive action, defined as “legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups”.⁸ Moreover, we note that, rather than recognising positive action as an obligation arising as a requirement of the right to equality,⁹ Article 5(4) indicates that such specific measures “shall not be considered discrimination under the terms of the present Convention”. The Trust urges the Committee to take this opportunity to clarify that positive action is not an exception to the right to non-discrimination, but a positive obligation essential for ensuring the enjoyment of the right to equality.

II. Normative Content – Article 5(2): 7a. Forms of Discrimination

11. The Trust welcomes the Committee’s intention to clarify that the right to non-discrimination as protected by Article 5(2) of the Convention entails protection from direct and indirect discrimination and denial of reasonable accommodation. However, we note that international best practice in this regard, as set out in the Declaration and clarified by the CESCR in its General Comment 20, dictates that there are four forms of discrimination: direct discrimination, indirect discrimination, harassment and denial of reasonable accommodation.¹⁰
12. We note with concern that harassment is not included in the Outline among the forms of discrimination, and urge the Committee to clarify in its General Comment that harassment is a prohibited form of discrimination.

⁷ See above, note 2, Principle 1.

⁸ *Ibid.*, Principle 3.

⁹ *Ibid.*

¹⁰ *Ibid.*, Principle 5 and Principle 13; and, see above, note 5, Paras 7, 10 and 28.

13. Moreover, we urge the Committee to take the opportunity to provide definitions of direct discrimination,¹¹ indirect discrimination¹², denial of reasonable accommodation¹³ and harassment¹⁴ which are in line with the definitions provided in the Declaration, to ensure clarity for both duty-bearers and rights-holders.
14. The Trust also notes that the Outline refers to ‘distinction, exclusion or restriction’ and ‘systemic and structural’ under the sub-heading on forms of discrimination. As noted above, international best practice recognises four forms of discrimination, each of which has a specific legal definition. The Trust is concerned that to include reference to “distinction, exclusion or restriction” or “systemic or structural discrimination” risks creating confusion, and introducing terms which are imprecise and potentially contradictory to the definitions of the four recognised forms of discrimination. We therefore urge the Committee to define the four recognised forms of discrimination as discussed above, and not to include these additional terms in its discussion of forms of discrimination.

II. Normative Content – Article 5(2): 7b. Personal scope
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15. In the view of the Trust, the Committee should confirm that the prohibition of discrimination under the Convention includes prohibition of discrimination on the basis of a perception of disability and on the basis of association with a person or persons with disabilities.¹⁵
16. Properly defined and understood, a prohibition on discrimination on the basis of perception covers past, present and future discrimination. Therefore, we do not consider it necessary for the General Comment to discuss the temporal scope of discrimination as a discrete issue.
17. The Trust believes that the General Comment would be a useful opportunity to elaborate upon the meaning of multiple discrimination. The Declaration indicates two types of multiple discrimination: “discrimination on more than one ground in an additive (cumulative) sense” and “discrimination on more than one ground in a syncretic sense, based on a combination of grounds, where it is only the combined characteristics of discrimination occurring on one or more prohibited grounds where the combination of the grounds triggered discrimination”

¹¹ Equal Rights Trust, *Declaration of Principles on Equality*, 2008, Principle 5: “Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.”

¹² *Ibid.*: “Indirect discrimination occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.”

¹³ *Ibid.*, Principle 13: Denial of reasonable accommodation: “Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.”

¹⁴ *Ibid.*, Principle 5: “Harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.”

¹⁵ *Ibid.*

(intersectional).¹⁶ In the view of the Trust, the General Comment should elaborate on both forms of multiple discrimination.

II. Normative Content – Article 5(2): 7c. Grounds of discrimination

18. The Trust considers intersectionality to be one of the key elements of the rights to equality and non-discrimination guaranteed in the Convention: it is the means by which the Convention guarantees that all persons with disabilities can participate in life on an equal basis with others, and can enjoy protection from all forms of discrimination.
19. In respect of the list of grounds which is set out at this point in the Outline, the Trust would urge a more comprehensive, holistic approach than is indicated at present. In line with international best practice, the list of prohibited grounds of discrimination should be both extensive in respect of explicitly provided grounds, and open-ended. Principle 5 of the Declaration sets out an extensive list of explicitly provided grounds: race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or characteristics associated with any of these grounds.¹⁷
20. In addition to providing an extensive list of explicit grounds, in the interests of consistency with other instruments of international law, we consider that it is imperative that the General Comment confirms that this list is non-exhaustive and open-ended. Moreover, to increase legal certainty, the Trust recommends that the General Comment should give guidance to rights-holders, duty-bearers and implementers on how to determine what additional grounds falls in the list. This might be done through the adoption of a “criteria-based” test, one example of which is set out in Principle 5 of the Declaration.¹⁸

II. Normative Content – Article 5(3): 8. Reasonable accommodation

21. The Trust notes the centrality of reasonable accommodation to the enjoyment of the rights to equality and non-discrimination under the Convention, and welcomes the Committee’s decision to elaborate on this in its General Comment. In order to provide increased certainty for both rights-holders and duty-bearers, we urge the Committee to take the opportunity of this General Comment to elaborate on what constitutes reasonable accommodation.
22. We encourage the Committee to provide clear guidance in the General Comment as to what measures will be considered “reasonable” accommodation. Best practice standards indicate that cost is rarely the sole factor to consider when evaluating reasonableness.¹⁹ We would

¹⁶ Equal Rights Trust, *Declaration of Principles on Equality: A Contribution to International Human Rights Law – Commentary*, p. 38. Available at: <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20cropped%2016%20Oct%20dimitrina%20comment.pdf>

¹⁷ See above, note 2, Principle 5.

¹⁸ *Ibid*, Principle 5, which states: “Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.”

¹⁹ See, for example, Committee on the Rights of Persons with Disabilities, *General Comment No. 2: Article 9: Accessibility*, UN Doc CRPD/C/GC/2, 2014, Para 26.

urge the Committee to confirm this, and to set out such other criteria and considerations which it feels are relevant to the determination of reasonableness.

23. In the view of the Trust, the General Comment should also explain what is meant by “accommodation” to ensure that duty-bearers understand that such adjustments go beyond changes to the built environment to ensure and the accessibility of buildings, and include all “necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others”.²⁰ We would encourage the Committee to elaborate on the full range of adjustments which might constitute a reasonable accommodation, in different circumstances.
24. Similarly, we call on the Committee to use the General Comment to clarify, in line Principle 13 of the Declaration, that denial of reasonable accommodation is not limited as a form of discrimination on grounds of disability, but may relate to any prohibited ground of discrimination and multiple discrimination.²¹

II. Normative Content – Article 5(4): 9. Specific measures

25. As discussed in paragraph 10 of this submission, the Trust urges the Committee to use this General Comment to state clearly that Article 5(4) of the Convention should be read as requiring positive action measures to address substantive inequality. As is clear from the definition of the right to equality in both the Preamble and Article 1 of the CRPD, and Principle 1 of the Declaration, ensuring the full enjoyment of this right necessitates positive action. Moreover, a number of other UN Treaty bodies have already confirmed that positive action is required, not merely permitted as an exception to the prohibition on discrimination.²² Therefore, we call on the Committee to take this opportunity to clarify the position regarding positive action, and to provide a definition of positive action in line with that provided in the Declaration.²³

III. Interrelation with specific other Articles

26. The Trust welcomes the Committee’s intention to use the General Comment to set out the relationship between Article 5 and other Convention articles. In our view, this approach will further underline the essential, foundational nature of the rights to equality and non-discrimination within the Convention.

²⁰ See above, note 2, Principle 13.

²¹ *Ibid.* See also: UN General Assembly, Interim report of the Special Rapporteur on freedom of religion or belief, UN Doc. A/69/261, 5 August 2014, Paras. 50 and 71. Available at: <http://www.ohchr.org/Documents/Issues/Religion/A.69.261.pdf>

²² See above, note 5, Paras 9, 26, 28, 38 and 39; and Committee on the Elimination of Discrimination Against Women, *General Comment No. 28: On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010, Paras. 9, 18, 20, 24 and 37(d); Human Rights Committee, *General Comment 18: Non-discrimination (Thirty-seventh session, 1989)*, U.N. Doc. HRI/GEN/1/Rev.1 at 26, 1994, Paras. 5 and 10.

²³ See above, note 2, Principle 3: “Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality”.

Article 5 and Articles 6 and 7

27. Articles 6 and 7 elaborate in more detail on two forms of intersectional discrimination, affecting women and children with disabilities. This is to be welcomed. However, in the view of the Trust, it is important that the Committee uses the General Comment to clarify that intersectional discrimination may occur on any combination of two or more prohibited grounds, not only on these two grounds.²⁴ Therefore, we would urge the Committee to clarify that Articles 6 and 7 are exemplary, rather than exhaustive, setting out obligations in respect of two prominent examples of intersectional discrimination.

Article 5 and Articles 24 and 27

28. Article 24 and 27 elaborate on rights and obligations in respect of discrimination against persons with disabilities in two specific areas of life: education and employment. As with intersectional discrimination, we feel that it is important for the General Comment to emphasise that the Convention requires that persons with disabilities are able to participate on an equal basis with others in all areas of life regulated by law.²⁵ In our view, therefore, the Committee should use the General Comment to emphasise this point, and to elaborate on further areas of life where individuals should be protected from discrimination.

Article 5 and Article 15

29. The phenomenon of “discriminatory torture and ill-treatment” is real, severe and in need of greater focus. Accordingly, in the Trust’s view, an exploration of the relationship between Articles 5 and 15 of the CRPD is an issue of critical importance to be elaborated in the General Comment. The Trust provided an exploration of the phenomenon and its consequences for persons with disabilities in a shadow report on Jordan submitted to the CRPD Committee for its 17th Session.²⁶ This shadow report sets out the findings of the thematic report *Shouting Through the Walls: Discriminatory Torture and Ill-treatment, Case Studies from Jordan*, which was launched at a side event of the Session.²⁷ Based on the findings in this report, the Trust encourages the Committee to elaborate on “discriminatory torture and ill-treatment” in the General Comment.

Article 5 and other Convention rights

30. More broadly, given the strong connection between discrimination and the enjoyment of other fundamental rights protected under the Convention, the Trust considers that it would be important that the General Comment explores the impact of the presence of a discriminatory element in the violation of other rights under the Convention. The Trust therefore urges the General Comment to underline the need for States to investigate discriminatory causes behind violations of other Convention rights.

²⁴ See, for example, above, note 5, Para 27; and above, note 22, Committee on Elimination of Discrimination Against Women, Para. 18.

²⁵ See above, note 2, Principle 8, which states: “The right to equality applies in all areas of activity regulated by law”.

²⁶ Equal Rights Trust, *Submission to the 17th Session of the Committee on the Rights of Persons with Disabilities in relation to the first periodic report of Jordan*, March 2017. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fJOR%2f26859&Lang=en

²⁷ Equal Rights Trust in partnership with Mizan for Law, *Shouting Through the Walls: Discriminatory Torture and Ill-treatment, Case Studies from Jordan*, March 2017. Available at: http://www.equalrightstrust.org/ertdocumentbank/Jordan%20report_ENG_0.pdf

IV. State Party Obligations – 19. Legislative obligations: anti-discrimination laws

31. The Trust welcomes the Committee’s intention to use the General Comment to clarify that Article 5, together with Article 4.1(a) of the CRPD Convention, requires the adoption of anti-discrimination law.
32. The Trust urges the Committee to take this opportunity to state clearly that any such legislation should be both comprehensive and specific. In order to meet the obligation, arising under Article 5(2) to “guarantee to persons with disabilities equal and effective legal protection against discrimination all grounds”, states must adopt anti-discrimination law which is comprehensive in both its personal and material scope. Moreover, such law must be specific, if it is to cover, with clarity and sufficient detail, all of the substantive and procedural elements of anti-discrimination law.²⁸ The need for comprehensive and specific anti-discrimination legislation has been clarified by both the CESCRC and the CEDAW Committee.²⁹ In the view of the Trust, this need is equally relevant in respect of states’ obligations under the CRPD.

IV. State Party Obligations – 20. Institutional obligations

33. The Trust welcomes the Committee’s intention to use the General Comment to clarify that Article 5 requires the establishment of equality bodies. In this respect, the Trust urges the Committee to refer to Principle 23 of the Declaration, which declares that states should “establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality”. Principle 23 requires that such bodies must have “independent status and competencies” in line with the UN Paris Principles.³⁰

IV. State party Obligations – 21. Enforcement obligations: legal remedies

34. International best practice as set out in the Declaration indicates that effective enjoyment of the rights to equality and non-discrimination necessitates the adoption of a set of enforcement measures. These are set out below in terms which reflect the relevant principles in the Declaration.³¹ In the view of the Trust, the General Comment should reiterate all of these enforcement obligations, and should stress that anti-discrimination laws must provide all of the following means of enforcement if they are to be effective in practice.
 - a. Measures to ensure access to justice: All persons who have suffered discrimination have a right to seek legal redress and an effective remedy. This right encompasses effective access to judicial and/or administrative procedures and appropriate legal aid for this purpose.³²
 - b. Protection from victimisation: National anti-discrimination law (or other laws as appropriate) should protect individuals from adverse treatment or adverse

²⁸ See above note 2, Principle 15, which states: “The realisation of the right to equality requires the adoption of equality laws and policies that are comprehensive and sufficiently detailed and specific to encompass the different forms and manifestations of discrimination and disadvantage”.

²⁹ See above, note 5, Para 37; and above, note 22, Committee on Elimination of Discrimination Against Women, Para. 31.

³⁰ See above, note 2, Principle 23.

³¹ *Ibid.*, Part IV.

³² *Ibid.*, Principle 18.

consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with equality provisions.³³

- c. Standing: National anti-discrimination law should provide that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage in any judicial or administrative procedure for the enforcement of the right to equality.³⁴
- d. Evidence of proof: Anti-discrimination law should provide specific rules relating to evidence and proof to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules in civil proceedings should be adapted to provide for the transfer of the burden of proof from the claimant to the respondent, in cases where there are facts from which it may be presumed that there has been discrimination.³⁵
- e. Remedies and sanctions: Sanctions for breach of the right to equality should be effective, proportionate and dissuasive. Sanctions must provide for appropriate remedies for those whose right to equality has been breached.³⁶

IV. State party Obligations – 22. Statistics & Research

35. The collection of statistics on equality and non-discrimination is essential to ensuring that states are able to meet their obligations under the CRPD and other Conventions. Principle 25 of the Declaration sets out that the right to equality requires the collection and publication of statistics and research in order to “identify inequalities, discriminatory practices and patterns of disadvantage and analyse the effectiveness of measures promoting equality”.³⁷ As such, while the Trust welcomes the reference to the Sustainable Development Goals and the Washington Group in the Outline, we request that care is taken to ensure that reference to these standards does not detract from the obligation under international human rights law to collect disaggregated data on rights violations.

IV. State party Obligations – 22. Other Positive Obligations

36. As discussed above, positive action is crucial to the realisation of the right to equality. The Trust sees this General Comment as providing a crucial opportunity to underline this and the nature and scope of state obligations in respect of positive action. In our view, the importance of positive action is best underlined through discussion of the obligations above, when discussing the normative content of Article 5(1) and 5(4). As such, we consider a discussion of positive action at this point in the structure to be at best duplicative, and at worst counter-productive. We would urge the Committee to set out a robust stance on positive action, in line with prevailing international best practice, under the “Normative Content” heading, and to delete the reference here.

³³ *Ibid.*, Principle 19.

³⁴ *Ibid.*, Principle 20.

³⁵ *Ibid.*, Principle 21.

³⁶ *Ibid.*, Principle 22.

³⁷ *Ibid.*, Principle 25.

Conclusion

37. Once again, the Trust would like to record its thanks for being given the opportunity to comment on the Outline of the draft General Comment on Article 5. In addition to our discussion of the points raised by the Outline above, we have provided below a proposed revised Outline, reflecting our key points regarding the structure. We hope that these comments will prove useful for the Committee as it undertakes further consideration.
38. The Equal Rights Trust looks forward to further involvement in the development of the General Comment, both at the day of general discussion, and thereafter. We remain available at the Committee's request, for further information or assistance.

ANNEX 1: Proposed Structure of the Outline

Based on the Trust's comments above, we propose the following amended structure of the Outline for the Draft General Comment on Article 5:

I. Introduction
1. Equality and non-discrimination in international law
• 2. The history of Art. 5 CRPD
• 3. The human rights model of disability and the notion of equality
• 4. Legal character of Art. 5 (fundamental, self-standing right, immediate realisation)
• 5. NEW sub-heading 'The importance of the rights to equality and non-discrimination'
II. Normative Content
Art. 5 (1)
• 6. Being equal before and under the law
• 7. Equal protection and equal benefit of the law
Art. 5 (2)
• 8. Discrimination
○ 8.a. Forms of discrimination (direct; indirect; denial of reasonable accommodation, harassment)
○ 8.b. Personal scope (perception, association, intersectionality)
○ 8.c. Grounds of discrimination and test for additional grounds
Art. 5 (3)
• 9. Duty to provide reasonable accommodation (define what is 'reasonable', what is 'accommodation')
Art. 5 (4)
• 10. Specific measures: Positive action
III. Interrelation with specific other articles
• 11. Discriminatory motives
• 12. Articles 6 and 7
• 13. Articles 9, 12, 13 and 19
• 14. Articles 15 and 16
• 15. Articles 24 and 27
IV. State Party obligations
• 16. Legislative obligations: enactment and implementation of comprehensive anti-discrimination law
• 17. Institutional obligations: equality courts, bodies, ombudspersons
• 18. Enforcement obligations: access to justice, protection from victimisation, rules on standing, burden of proof, remedies and sanctions, and specialised bodies for enforcement
• 19. Statistics & Research: (1) collection of disaggregated data of violations of the rights to equality and non-discrimination, including intersectional discrimination. (2)

Inclusion of other data and standards, e.g. Washington Group, Sustainable Development Goals

V. National Monitoring

- 20. Focal point & coordination
- 21. Independent monitoring frameworks
- 22. Meaningful participation
- 23. Indicators