Personal Submission on the CRPD Draft General Comment No 6 – Article 5: Equality and Non-Discrimination.

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# Introduction

I welcome this opportunity to contribute to the work of the Committee. This submission does not represent the institution to which I am affiliated but only a personal contribution.

The main concerns of this submission are related to the first half of the DGC, where the writing appears confusing: the writing should be simplified as the easier it is and the clearer its content is for the reader. Other general concerns are: (i) the use of the formula ‘on an equal basis with others’ should be avoided as the distinction of categories, which is introduced by the word ‘others’, is per se discriminatory:[[1]](#footnote-1) Article 5 CRPD does not use the formula ‘on an equal basis with others’ and this is emblematic of the concepts of equality and non-discrimination themselves; (ii) the language should always be universal, inclusive and positive; (iii) when discussing issues related to disability matters, the subjects to include in the discussions should be both persons with disabilities and their representative organisations: not only the latter; (iv) several references are imprecise (contents, dates, etc.) or not consistent: they should be verified again; and (v) this DGC introduces a lot of different concepts, but sometimes they seem not properly explained: this creates confusion and does not allow a correct understanding of the differences between the concepts themselves.

# Specific Comments

This section lists the specific personal comments. Where useful, introductory comments precede the amendments. The amendments show only the parts of the paragraphs relevant to the comments. The old text has been deleted; the proposed text is underlined; and the unchanged is substituted by […].

## Paragraph\_1

* I appreciate the formula: ‘actual or perceived disability’.

*Amendment*

With this General Comment, the Committee on the Rights of Persons with Disabilities (the Committee) aims to guide the CRPD State parties and other stakeholders in relation to the obligations of the States parties themselves on the equality and non-discrimination principles as enshrined in Article 5 of the Convention. The Committee considers that guidance in this regard is necessary as, in carrying out its mandate, it continuously bears witness to discrimination of persons on the basis of actual or perceived disabilities. Such discrimination impairs or nullifies the fulfilment of human rights by persons with disabilities and by those associated with them. Having completed more than 60 constructive dialogues with the States parties to the Convention, which represent all the regions of the world, the Committee is concerned that discrimination on the basis of disability persists. The Committee routinely observes institutionalized discriminatory practices such as: negation of the right to access the built environment, transportation, information and communications; use of negative portrayals […] employment; and deprivation of the right to participate in cultural life, recreation, leisure and sport; to name but a few examples.

## Paragraph\_2

* In several paragraphs, there are passages that add nothing to previous statements. This aspect may create repetitions, bring confusion, and alter the register of the writing.

*Amendment*

The Committee notes with concern that one of the main remaining challenges regarding the persistence of disability-based discrimination is that laws, policies, and the media still approach disability through charity and/or medical paradigms to disability, despite their incompatibility with the Convention. The persistent use of such paradigms fails to acknowledge persons with disabilities as full subjects of rights and as rights holders. In addition, the Committee assumes that the efforts carried out by the States parties to overcome attitudinal barriers to disability have been insufficient in order to change the way societies view disability. This consideration is exemplified by the enduring prejudice, stigma and negative, humiliating stereotypes against persons with disabilities and the lasting misperceptions of disability as a burden for society caused by individual problems.

## Paragraph\_3

*Amendment*

In a large number […] imperfect, incomplete, and ineffective. ‘National laws and policies generally perpetuate exclusion, isolation, discrimination and violence against persons with disabilities’. In this regard, they very often lack: a recognition of multiple and intersectional discrimination; an acknowledgment that the denial of reasonable accommodation constitutes discrimination; and effective mechanisms of legal redress and reparation, which should include effective compensations. The Committee regrets that persons with disabilities and their representative organizations are not systematically and meaningfully consulted in decision-making processes that affect them.

## Paragraph\_4

* I appreciate the formula: ‘not visible disabilities’.

*Amendment*

In its work, the Committee has encountered that, due to the mentioned wrong approaches to disability and to the insufficient awareness of the rights of persons with disabilities, opportunities for that may derive from the domestic implementation of the Convention are missed. Persons with disabilities are faced with discrimination and this leads to exclusion, segregation and lack of redress. These issues are particularly serious with regard to women, children and the elderly due to a multiple and intersectional discrimination. In addition, these issues have different effects in relation to different disabilities, such as: persons with psychosocial and intellectual disabilities; those with high support requirements; and those whose disabilities are not visible. The Committee notes that differential treatments of persons with disabilities have humiliating consequences, for instance in terms of legal recognition. This situation continues with the acquiescence of public authorities. The Committee has observed that disability-based discriminatory practices, such as inaccessibility, institutionalization and segregation, are often not considered as discrimination. These discriminatory practices are wrongly justified as being carried out to take care of persons with disabilities, in consideration of either their or public best interests. Such practices are in direct contravention of the Convention and its principles, including the respect for the inherent dignity, autonomy, and freedom to make one’s choices.

## Paragraph\_5

* The subject should remain ‘equality and non-discrimination’.
* The UDHR is a declaration and it does not prohibit but it proclaims, recognises, condemns, and so on.
* The reference used for the sentence ‘and constitute the primary objectives of the international community’ is not correct as the CCPR GC 18 refers to equality and non-discrimination and not to dignity and tolerance.

*Amendment*

Equality and non-discrimination are among the most fundamental principles and rights of international human rights law. Equality and non-discrimination are interconnected with human dignity, and also for this reason they are the cornerstones of all human rights. The Universal Declaration of Human Rights proclaims that everyone is equal in dignity and rights (Article 1) and condemns discrimination (Article 2). It further recognizes (Article 7) that ‘all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination’. The Office of the High Commissioner for Human Rights clearly stated that ‘non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights’. The Vienna Declaration proclaims that equality, dignity and tolerance are indivisibly linked one another (Part B). Article 5 CRPD has been inspired by international legislation, and it represents the evolution of consolidated international principles. Any form of discrimination is a violation of the equality principle. Any form of discrimination is a violation of the integrity of the person and it represents a violation of human dignity, as a consequence. Negative stereotyping, stigmatization, and prejudices are harmful to both the perception that people have of one’s equality and dignity, and the perception that one have of being equal to others and worthy of dignity.

## Paragraph\_6

*Amendment*

Equality and non-discrimination are at the core of all human rights treaties. Both the 1966 International Covenants contain the prohibition of discrimination on an open list of grounds. For instance, Article 26 ICCPR states that ‘all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground’, from which Article 5 CRPD has been evidently inspired. All the thematic UN Human Rights Conventions are aimed at establishing equality eliminating discrimination. The thematic UN Human Rights Convention are: on the Elimination of All Forms of Racial Discrimination (ICERD) of 1965; on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979; against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984; or the Convention on the Rights of the Child (CRC) of 1989; on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) of 1990; and for the Protection of All Persons from Enforced Disappearance (CPED) of 2006. All these Conventions contain several provisions on equality and non-discrimination. The Convention on the Rights of Persons with Disabilities has taken stock of the experiences offered by the previous Conventions, and its equality and non-discrimination principles represent the evolution of the UN tradition.

## Paragraph\_7

* What is said here is very important. Dignity for all human beings on an equal basis: there are no others, only human beings.

*Amendment*

The term “dignity” appears in the CRPD more often than in any other human rights convention of the United Nations. The term “dignity” is included in the Preamble where the principles proclaimed in the Charter of the United Nations are recalled. These “[…]”. The principle of universality of all human rights is based on the understanding that all human beings have equal worth and dignity, and that all human beings should enjoy equal rights.

## Paragraph\_8

* I suggest to withdraw this paragraph and use the HRC reference in paragraph 3.

## Paragraph\_9

* There is no need for such long quotation from the Standard Rules. I suggest to delete the whole quotation as the Committee should give its own definition.

*Amendment*

Paragraph 9 bis (ex 11)

Disability is a social construction. Impairments must not be taken as legitimate ground for the denial or restriction of human rights. The human rights model of disability acknowledges that disability is one out of several layers of identity. Hence, disability law and policy need to take the diversity of persons with disabilities into account. The human rights model of disability fully endorses that human rights are interdependent, interrelated and indivisible. Civil and political rights can be enjoyed only if economic social and cultural rights are granted, and vice versa. For this reason, the Convention enshrines many provisions containing both sets of rights.

## Paragraph\_10

* This paragraph probably deserves an introduction.
* The passage from formal to substantive equality is not clear.
* The difference between substantive and inclusive equality is not clear.
* ‘Equality of results’ has been omitted.
* Article 5 CRPD mentions ‘de facto equality’ and this paragraph does not refer to the concept.
* The CRPD refers to multiple discrimination, not intersectional.

*Amendment*

Paragraph 10 intro

While it could be said that treating everybody in the same way should be enough in order not to discriminate against anyone, in reality equality has an intrigued paradigm: if the same treatment is used for everyone, there could be discrimination due to the denial of necessary accommodations; on the other hand, if different treatments are used for different persons, there could be discrimination due to the exclusion from opportunities. The paradigm of equality states that: when like is treated alike, there may be a formal kind of equality; but when like is not treated alike to accommodate the needs of a person, there may be an equality of opportunities. However, formal equality and equality of opportunities may be not enough to guarantee the access to available opportunities. Indeed, the offer of opportunities should be structured in order to encounter the demand of opportunities. Resources and benefits should be fairly distributed to guarantee equality of result to all persons. Equality of result may require proportionality or specific measures, such as compulsory workplace quotas reserved for persons with disabilities. The three equalities (formal, of opportunities, and of result) should coexist and find a fair and personalised balance. The three equalities should have a temporal perspective, as past discriminations could preclude the access to present or future opportunities. Finally, it is possible to refer to substantial equality when the mentioned personalised correct balance and temporal perspective are wholly satisfied. For persons with disabilities, substantial or de facto equality should result from inclusive and universally designed societies.

Paragraph 10 intro bis

Substantive equality could be seen as a four-dimensional concept:

1. Redistributive dimension: equality has to be asymmetric in order to recognise that the problem is not a person or a group but the social stereotypes of them. Stereotypes and discrimination are two faces of the same coin. Redistribution of opportunities is not a welfare but a human rights matter.

2. Recognition dimension: everyone should treat and be treated with respect and dignity. The recognition of the dignity of being human is the basis of a de facto equality. The recognition of the dignity of being human represents a denial of discrimination and humiliation. The recognition dimension inserts the redistribution of opportunities into human rights matters. The recognition dimension recognises the intersectionality of the individual.

3. Transformative dimension: the asymmetry of equality is not sufficient, as diversities has to be included instead of being asked to conform to the status quo. This dimension is dynamic and it requires to change the social environment. The transformative dimension allows the redistribution of opportunities to be fulfilled.

4. Participative dimension: the asymmetry of equality is individually oriented. The participative dimension reaffirms the social nature of people and it supports the full recognition of humanity through the effective inclusion in society. The participative dimension impacts on the quality and inclusiveness of the opportunities that are redistributed. The participative dimension addresses an intersectional reality.

Paragraph 10

The ‘dilemma of difference’ requires the acknowledgement of differences among human beings, in order to achieve de facto equality. To change discriminatory structures and systems, positive measures are necessary. The Convention develops a new model of equality, which is also known as transformative or inclusive equality. Inclusive equality acknowledges that individuals may experience discrimination due to their belonging to specific social groups. This happens because stereotyping connects an individual with negative stigmas linked to social groups to which the individual belongs. Hence, non-discrimination measures should target groups other than individuals. Individuals always belong to multiple social groups. To address this issue, the Convention explicitly acknowledges multiple discrimination. Individuals have multiple layers of identities, statuses, and life circumstances. Inclusive equality tackles individual, and multiple discrimination.

## Paragraph\_11

* I suggest to move this paragraph after paragraph 9.

## Paragraph\_12

* This paragraph should be moved under the section I.ii.

## Paragraph\_13

* There is no point to include here the concept of reasonable accommodation, which is a means, among others, to realise the principles/rights of equality and non-discrimination.

*Amendment*

Equality and non-discrimination are both principle and right. The CRPD refers to them in Article 3 as principles, and in Article 5 as rights. They are also an interpretative tool for all the other principles and rights enshrined in the Convention. The principles/rights of equality and non-discrimination are a cornerstone of the international protection guaranteed by the Convention. Promote equality and tackle discrimination are crosscutting obligations of immediate realisation. They are not subject to progressive realisation.

## Paragraph\_14

* Please, avoid negative statements.

*Amendment*

Article 5 of the Convention is independent from other provisions. […]

## Paragraph\_15

*Amendment*

Several […] officers, and the administration must not discriminate against persons on the basis of disability.

## Paragraph\_16

* Please, refer to the GC 1, paragraph 12. ‘Full protection before the law’ is passive, whereas ‘engage under the law’ is active. Persons with disabilities have the right to be passively protected and to positively engage.

*Amendment*

“Equality under the law” is unique to the Convention. As stated in the General Comment on Article 12 CRPD, equality under the law refers to the possibility to engage in legal relationships. While equality before the law refers to the right to be protected by the law, equality under the law refers to the right to use the law for personal benefit. Persons with disabilities have the right to be passively protected and to positively engage.

## Paragraph\_17

*Amendment*

Article 5 is enforced by Article 4, according to which the States parties […].

## Paragraph\_18

* The law has: (i) to protect people; and (ii) to allow people to take advantage of the law itself.
* This paragraph should state the actual position of the Committee only.
* There is confusion with regard to ‘positive measures’. Legal positive measures are required to allow people to positively take advantage of the law.

*Amendment*

“Equal protection of the law” demands to refrain from any discrimination against persons with disabilities when enacting laws and policies. “Equal benefit of the law” ensures that all persons have equal opportunities to obtain personal benefits. Reading Article 5 in conjunction with Article 1, Article 3, and Article 4 of the Convention, it emerges that positive measures are often required in order to allow the enjoyment of the rights guaranteed by the legislation. Such measures include, but are not limited to, the provisions of accessibility, reasonable accommodation, and individualized supports. Accessibility can be implemented by adopting building, transportation, Information and Communications Technology (ICT), laws, and so on, that are universally designed. Reasonable accommodation should be incorporated into every employment law. Education laws shall ensure inclusive education for each child without relegating children with disabilities to special education schools or classrooms. Support measures relate to the exercise of specific rights to live independently.

## Paragraph\_19

* The link to Article 2 is fundamental. Although there is no need to rewrite it.

*Amendment*

Article 5 (2) contains the legal requirements for achieving equality rights for persons with disabilities and those persons related to them. Indeed, the obligation~~s~~ to “prohibit all discrimination on the basis of disability” includes both persons with disabilities and persons who are linked with disability matters, real or presumed. The obligation ~~and~~ to “guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds” is far-reaching and imposes positive duties of protection on States parties taking into account all the grounds of personal identities, as described in Paragraphs 9 and 11. Disability-based discrimination is defined in Article 2. It includes “denial of reasonable accommodation” as a form of disability-based discrimination, which is mentioned also in Article 5 and will be elaborated on in later paragraphs.

## Paragraph\_20

* I am not sure that ‘violence in all its appearances, such as rape, abuse and exploitation, hate-crime, and beatings’ fits in the definition of direct discrimination.
* The difference between direct and indirect is not clear: the difference between action and non-action has been omitted. The prohibited ground refers to direct discrimination. There is indirect discrimination when the provision asks for something that is evidently impossible to be realized by persons with certain characteristics.
* The example for reasonable accommodation is wrong. Reasonable accommodation requires ‘modifications and adjustments’. This means that if the blind person asks the theatre to modify their regulation to allow a guide dog to enter and they say no for reasons that are not burdens, then there is a denial of reasonable accommodation. Reasonable accommodation is an action that is put in place, because requested, to change the non-action that causes a direct discrimination.
* Stating that denial of reasonable accommodation does not refer to groups is not correct (see also paragraph 27.d). Referring to reasonable accommodation, the discrimination lays on the denial: to have a denial, a request is necessary. This can be done either by a single individual or by a collective subject.
* For ‘intersectional’ and ‘multiple’ see paragraph 22 and the CRPD General Comment No 3 paragraph 4.c.

*Amendment*

The duty to prohibit “all discrimination” includes all forms of discrimination.In international human rights practise five main forms of discrimination are identified:

1. “Direct discrimination”, which occurs when, in a similar situation, persons are treated less favourably than other persons because of a different personal status and for a reason related to a prohibited ground. Direct discrimination includes detrimental acts or omissions based on prohibited grounds where there is no comparable similar situation. This means that a non-action justified by a prohibited ground may be discrimination. For instance, a public school that refuses to admit a child with disabilities in order not to change the scholastic programmes is an example of direct discrimination. A parent that cannot have time off to take care of the disabled child, because the management does not allow such flexibility, is another example of direct discrimination.
2. “Indirect discrimination”, whichmeans that laws, policies or practices appear neutral at face value, but have a disproportionate negative impact on persons having a particular status or ~~a~~ characteristic. Indirect discrimination occurs when an opportunity that appears accessible in reality excludes persons due to the fact that their status does not allow them to benefit of the opportunity itself. For example, if a school does not provide books in Easy Read, it would indirectly discriminate against persons with intellectual disabilities: although allowed to go to that school, they would go to another one. If there is an opportunity for a job but the contract does not allow time off during the day, although this would not constitute undue burden, parents who need time off would not apply.
3. “Denial of reasonable accommodation”, which, according to Article 2 of the Convention, constitutes discrimination when the necessary and appropriate modification and adjustments (that do not impose a disproportionate or undue burden) are denied and are needed to ensure the equal enjoyment or exercise of a human right or fundamental freedom. For instance, a public school that refuses to provide books in Easy Read although requested in advance and that does not prove the undue burden, is denying reasonable accommodation. If a parent asks to change the contract from full-time to part-time to take care of the child and the answer is negative without proving an undue burden, there is denial for reasonable accommodation. Although a subject, individual or collective, asks for reasonable accommodation, the denial of reasonable accommodation constitutes discrimination against the group of people that could have taken advantage of the accommodation itself. Any denial must be justified with the proof of the undue burden, otherwise it constitutes discrimination. [delete]
4. “Harassment”, which shall be deemed a form of discrimination when any unwanted conduct takes place with the purpose or effect of: violating the dignity of a person; and creating an intimidating, hostile, degrading, humiliating or offensive environment. For instance, making fun of a disability or abusive and threatening comments about someone’s disability are examples of harassment. “Bullying” and its online forms, “cyber bullying” and “cyber hate”, also constitute particularly violent and harmful forms of harassment.
5. “Multiple discrimination”, which occurs when a person is discriminated on the basis of several grounds or statuses. When the interactions between these grounds or status are inseparable, there is “intersectional discrimination”. Multiple and intersectional discrimination can appear as: direct or indirect discrimination, denial of reasonable accommodation, and harassment. However, multiple and intersectional discrimination are not only the sum of two or more discriminations because the result is qualitatively different as it touches several aspects of the personal identity. For this reason, multiple and intersectional discrimination is recognised as a specific form of discrimination. Everyone has multi-level personalities and identities. As a consequence, discrimination is often multi-level and it has to be tackled as such.

## Paragraph\_21

* I would suggest the use of the term ‘disability’ instead of ‘impairment’.

*Proposed Amendment*

“On the basis of disability” includes persons: who presently have a disability; who had a disability in the past; who have a disposition to a disability which lies in the future; ~~,~~ who are presumed to have a disability; and who are associated with ~~a~~ persons with disabilities. The last situation is known as “discrimination by association”. The reason for this wide ~~personal~~ scope of Article 5 is to eradicate and combat all discriminatory situations and/or discriminatory conducts that are linked to disability.

## Paragraph\_22

* This is a CRPD General Comment: in this paragraph as in others, when there is a list of grounds/groups/categories, disability should come first.

*Amendment*

“Protection […]. Possible grounds include but are not limited to: disability, health status, genetic or other predisposition towards illness, race, colour, descent, sex, pregnancy and maternity/paternity, […] States parties must tackle multiple and intersectional discrimination against persons with disabilities. The Committee has defined: multiple discrimination as […]; and intersectional discrimination as a situation […].

## Paragraph\_23

*Amendment*

“Equal and effective legal protection against discrimination” means that the States Parties have to take positive measures to protect persons with disabilities against discrimination. The explicit legal prohibition of discrimination against persons with disabilities has to be accompanied by provisions regarding effective legal remedies. Sanctions in civil, administrative, and criminal proceedings, must be effective in case of discriminatory acts carried out by public or private entities and/or individuals. When services are provided by private entities, persons with disabilities are at high risk of being discriminated in the private sector. Thus, the Conventions asks its States Parties to guarantee anti-discrimination measures in the private sector as well as in the public one.

## Paragraph\_25

* This paragraph is not clear. Is not accessibility the goal of a reasonable accommodation?
* For the question related to groups see comment on paragraph 20 and paragraph 27.d.
* The introduction of the distinction between reasonable accommodation and universal design would be useful. Universal design has to guarantee accessibility ex ante; whereas reasonable accommodation has to guarantee accessibility ex nunc.
* I see that the GC 2 refers in paragraphs 25-26 to accessibility for groups and to reasonable accommodation for individuals, but also in these two paragraphs accessibility has been confused with universal design. Indeed, they do not mention universal design and they appear not consistent with other paragraphs that describe universal design, as paragraphs 15, 16, and 35.

*Amendment*

Reasonable accommodation duties are different from universal design duties. Both have to guarantee accessibility. However, the duty to provide universal design is an *ex ante* duty, whereas the duty to provide reasonable accommodation is an *ex nunc* duty. *Ex ante* means that universal design has to be provided before a person with a disability wants to exercise the right to access to a building, a service or a product. The States parties need to set accessibility standards that must be developed and adopted in consultation with persons with disabilities and their representative organisations (DPOs). *Ex nunc* means that reasonable accommodation has to be provided from the moment in which anyone wants to access to non-accessible situations and contexts. Reasonable accommodation is often, but not necessarily, requested by the person who wants to access or by relevant representatives. Reasonable accommodation needs to be negotiated with the applicant(s). In certain circumstances, provided reasonable accommodations become collective goods. In other cases, provided reasonable accommodations are benefitted only by the applicant(s). […].

Paragraph 25 bis (ex 47)

On the one hand, the duty to provide universal design have to be implemented progressively but unconditionally. On the other hand, the duty to provide reasonable accommodation applies immediately to all rights and may be limited only by a demonstrated undue burden. Due to the progressive realization of universal design in the built environment, public transportation, information, communication, and services, reasonable accommodation represents the means to fulfil the right to accessibility in the meantime.

## Paragraph\_26

* In the last sentence, ‘disproportionality’ refers to ‘special measures’ as described in this paragraph itself. I suggest to delete the last sentence.

## Paragraph\_27

* I suggest to re-paraphrase point b.

## Paragraph\_31

*Amendment*

Specific measures […] actively involve persons with disabilities and DPOs when they adopt specific measures. Specific measures must be carefully monitored and evaluated.

## Paragraph\_43

*Amendment*

The principle of the best interests of the child is rarely applied to children with disabilities. In addition, access to education, housing, goods, and services often does not apply to all children on an equal basis. General laws […].

## Paragraph\_46

*Amendment*

Accessibility is […] all persons on an equal basis.

## Paragraph\_47

* This paragraph does not make sense.
* ‘Undue burden’ and ‘disproportionality’ are different concepts.
* I suggest paragraph 25 bis to summarise the correct concepts here described.

## Paragraph\_54

*Amendment*

Legal capacity is fundamental for the full and effective participation of all persons in society on an equal basis. The right to legal capacity is a threshold right. It is required […] legal capacity. The application […]. These two articles are fundamentally connected, because equality before the law must include the enjoyment of legal capacity by all persons on an equal basis. In other words […].

## Paragraph\_70

*Amendment*

The failure […] from mainstream and inclusive education settings. All students, including students with disabilities, must be welcomed and supported to participate in the classroom setting and school on an equal basis.

## Paragraph\_71

* I would include the concept of universal design here.

*Amendment*

Article 5(2) of the Convention requires that the States parties prohibit all forms of discrimination on the basis of disability. Segregated models of education, which exclude students with disabilities from mainstream and inclusive education on the basis of disability, contravene Articles 5(2) and 24(1)(a) of the Convention. Article 5(3) of the Convention requires its State parties to take all appropriate steps to ensure that reasonable accommodation is provided to promote equality and eliminate discrimination. This right is strengthened in Article 24(2)(b) which requires the States parties to ensure an inclusive education for persons with disabilities in the communities in which they live. This goal can be achieved: by providing reasonable accommodation of an individual’s requirement in accordance with article 24(2)(c); and developing new inclusive settings universally designed. States parties’ obligations extend beyond the school. The States parties must ensure that school transportation is provided to all students with disabilities where transportation options are limited due to social or economic barriers.

## Paragraph\_73

*Amendment*

To achieve de facto equality […]

## Paragraph\_75

* Speaking about the CRPD, data have to be disaggregated by disability first.

*Amendment*

Data collection and analysis are important measures to monitor anti-discrimination policy and laws. State parties must collect and analyse data, which must be disaggregated on the basis of disability-related units, and of intersectional categories such as: sex, […] consultation with persons with disabilities and their representative organizations. Data should give information on all forms of discrimination.

## Paragraph\_76

* Section b is unclear. Its last part has omitted the concept of ‘specific measures’.
* Section f introduces the concept of universal design for the first time in this General Comment. I suggest to take into account my previous amendments where the concept has been considered.

*Amendment*

[…]

b. Include disability in anti-discrimination acts as prohibited ground for discrimination, and enact ~~a~~ disability-inclusive anti-discrimination laws that have broad personal and material scopes and provide~~s~~ effective legal remedies. Such laws should include past, present, future, and presumed disabilities as well as persons associated with persons with disabilities. Only then, all persons affected by disability-based discrimination will be legally protected, and their redresses granted effectively. Persons victimized by disability-based discrimination who seek legal redress should not be burdened by proving that they are “disabled enough” in order to benefit from the protection of the law.

[…]

e. Develop […] with persons with disabilities and their representative organization ~~of~~ They are crucial components for establishing a culture of tolerance and diversity which is the bedrock for anti-discrimination law and policy.

[…]

g. Establish accessible and effective redress mechanisms and ensure access to justice for all victims of disability-based discrimination on an equal basis. […].

[…]

m. Adopt specific measures with a view to achieving inclusive equality in particularly for persons with disabilities, who experience multiple and intersectional discrimination […].

n. […]. In particularly State parties that host refugees and migrants must ensure that formal and legally defined […] protection services are disability, age, and gender sensitive. […].

1. Marcello Sacco, *Personal statement on the CRPD Committee Draft General Comment on Article 19* [2017] [↑](#footnote-ref-1)