

## Office of the Children's Commissioner

**Appendix 2: Rights explained – a list of human rights Articles and Conventions used in “*We want to help people see things our way*”**

# 1 Introduction

This Appendix supports the matrix of the Office of the Children’s Commissioner’s report “*We want to help people see things our way*”: *A rights-based approach to exploring the impact of low income in disabled children’s rights*.

It contains extracts from the three conventions (UNCRC, ICESCR and UNCRPD) and General Comments(GCs) on the interpretation of these from the associated Committees. These extracts represent the rights and principles we focused on in the research.

Full details of the general comments can be found at:

Committee on the Rights of the Child

<http://www2.ohchr.org/english/bodies/crc/comments.htm>

Committee on Economic Social and Cultural rights

<http://www2.ohchr.org/english/bodies/cescr/comments.htm>

The extracts for relevant themes (matrix rows A–J horizontally) and principles (Matrix columns 1–9 vertically) are given in the following subsections, after details of extracts relating to the commitment of resources.

General Comment 9 (2006) (The rights of children with disabilities) is given in full at the end of these subsections as the issues contained in this general comment cut across many of the themes and principles in the matrix.

## **Section 2: Maximum Extent of available resources**

UNCRC Article 4

UN ComRC GC 5 (paras 8 and 9)

ICESCR Article 2.1

ICESCR Article 4

ICESCR GC 19

Letter issued by the Committee on ESCR (CESCR/48th/SP /MAB/SW)

UNCRPD Article 4.2

### ***Vertically down the matrix***

## **Section 3: Survival and development (section 1)**

UNCRC Art 6.1

UNCRC Art 23.1

UNCRPD Article 10 (Right to life)

## **Section 4: Non Discrimination, Equality of Opportunity and Reasonable Accommodation (section 2)**

UNCRC Article 2

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ICESCR Article 2.2  
ICESCR GC 20 (paras 1, 28)  
UNCRC Article 2  
UNCRC Article 3  
UNCRC Article 5

**Section 5: Best Interests (section 3)**

UNCRC Article 3  
UNCRC Article 19  
UNCRC GC 12 (paras 70–74 on Articles 12 and 3)  
UNCRC GC 8 (para 18)  
UNCRC GC 13 (paras 47(iii), 48 and 61)  
UNCRC Article 7 (Children with disabilities)  
UNCRC Article 16 (Freedom from exploitation, violence and abuse)

**Section 6: Respect, personhood and evolving capacity, independence (section 4)**

UNCRC Article 1  
UNCRC Article 5  
UNCRC GC 12 (para 20)  
ICESCR PREAMBLE  
UNCRC Article 3 (General principles)  
UNCRC Article 12 (Equal recognition before the law)

**Section 7: Participation, information and influence regarding decision making (section 5)**

UNCRC Article 12  
UNCRC Article 13  
UNCRC Article 14  
UNCRC Article 17  
General Comment 12 (paras 19, 21, 22, 23 13)  
UNCRC Article 3  
UNCRC Article 4.3.  
UNCRC Article 7.3  
UNCRC Article 21 (Freedom of expression and opinion, and access to information)  
UNCRC Article 29 (Participation in political and public life)

**Section 8: Inclusion in community and society (section 6)**

UNCRC GC 9  
UNCRC Article 3  
UNCRC Article 19 (Living independently and being included in the community)  
UNCRC Article 26

**Section 9: Personal assistance and support (section 7)**

UNCRC Article 23(2)  
UNCRC General Comment 9 (paras 10–12 and 65)  
UNCRC Article 12.3  
UNCRC Article 26 (Habilitation and rehabilitation)

**Section 10: Adequacy, availability and accessibility (section 8)**

UNCRC Article 23 (3)  
ICESCR GC3 (paras 1, 2)  
ICESCR GC9 (paras 1, 2)  
UNCRC (Article General Principles)  
Article 4 (General obligations)

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Article 9 (Accessibility)

**Section 11: Training (section 9)**

UNCRC GC 9 (paras 20, 27, 32, 49, 60)

UNCRCPD Article 4

UNCRCPD Article 26.2

UNCRCPD Article 28.2

***Horizontally across the matrix***

**Section 12: Care and Assistance for disabled children (section B)**

UNCRC Article 23

UNCRCPD Article 7

**Section 13: Adequate Standard of Living – basic things you need for living (section C)**

UNCRC Article 27

ICESCR Article 11

ICESCR General Comment 19

ICESCR GC 4 Article 11(1) (Housing)

ICESCR G C 12 (Food)

UNCRCPD Article 28

**Section 14: Social Security – Money, Benefits and Social Support (section D)**

UNCRC Article 26

ICESCR Article 9

ICESCR General Comment 19 (paras 2,6,10,20, 22–27)

UNCRCPD Article 28

**Section 15 Family life and alternative care (section E)**

UNCRC Article 9

UNCRC Article 18

UNCRC Article 20

UNCRC GC 12

ICESCR Article 10

UNCRCPD Article 18.2

UNCRCPD Article 23

**Section 16: Education (section F)**

UNCRC Article 28

UNCRC Article 29

ICESCR Article 6.2

ICESCR Article 13

UNCRCPD Article 24

**Section 17: Work (section G)**

UNCRC Article 32

ICESCR Article 6

ICESCR Article 7

UNCRCPD Article 27 (Work and employment)

**Section 18: (Play, association, sport, leisure and cultural activities) (section H)**

UNCRC Article 15

UNCRC Article 30

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UNCRC Article 31  
UNCRC GC 12  
ICESCR Article 15  
UNCRC PD Article 30

**Section 19: Health (section I)**

UNCRC Article 24  
UNCRC GC 12 (para 100)  
ICESCR Article 12  
ICESCR GC 14  
ICESCR GC 19  
UNCRC PD Article 25 (Health)

**Section 20: Mobility (section J)**

UNCRC GC 23 (para 41)  
UNCRC PD Article 20 (Personal mobility)

**Section 21: CRC/C/GC/9 General Comment 9 (2006) (The rights of children with disabilities) (section A)**

Introduction

The key provisions for children with disabilities (Articles 2 and 23)

General measures of implementation (Articles 4, 42, 44 (6))

General principles

Civil rights and freedoms (Articles 7, 8, 13–17, 37a)

Family environment and alternative care (Articles 5, 18 (1–2), 9–11, 19–21, 25, 27 (4), 39)

Basic health and welfare (Articles 6, 18 (3), 23, 24, 26, 27 (1–3))

Education and leisure (Articles 28, 29 and 31)

Special protection measures (Articles. 22, 38, 39, 40, 37 (b–d), 32–36)

## 2 Maximum Extent of available resources

### **UNCRC Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### **UN ComRC GC 5 (paras 8 and 9)**

(8) The second sentence of article 4 reflects a realistic acceptance that lack of resources – financial and other resources – can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of “progressive realization” of such rights: States need to be able to demonstrate that they have implemented “to the maximum extent of their available resources” and, where necessary, have sought international cooperation. When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation (see paragraph 60 below).

(9) The sentence is similar to the wording used in the International Covenant on Economic, Social and Cultural Rights and the Committee entirely concurs with the Committee on Economic, Social and Cultural Rights in asserting that “even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances ...”. Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.

### **ICESCR Article 2.1**

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

### **ICESCR Article 4**

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

### **ICESCR GC 19**

(40) While the Covenant provides for progressive realization and acknowledges the constraints owing to the limits of available resources, the Covenant also imposes on States parties various obligations which are of immediate effect. States parties have

immediate obligations in relation to the right to social security, such as the guarantee that the right will be exercised without discrimination of any kind (Article 2, paragraph 2), ensuring the equal rights of men and women (Article 3), and the obligation to take steps (Article 2, paragraph 1) towards the full realization of Articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to social security...

(42) There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.

#### **Letter issued by the Committee on ESCR (CESCR/48th/SP /MAB/SW)**

State Parties should not act in breach of the ICESCR, even in times of economic crisis. Any adjustments in policies should meet these requirements: 'first, the policy is a temporary measure covering only the period of crisis; second, the policy is necessary and proportionate, in the sense that the adoption of any other policy, or failure to act, would be more detrimental to economic, social and cultural rights; third, the policy is not discriminatory and comprises all possible measures, including tax measures, to support social transfers to mitigate inequalities that can grow in times of crisis and to ensure that the rights of the disadvantaged and marginalised individuals and groups are not disproportionately affected; fourth, the policy identifies the minimum core content of rights, or a social protection floor...and ensures protection of this core at all times.'

#### **UNCRPD Article 4.2**

With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

## **3 Survival and development**

### **UNCRC Article 6 (1)**

States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

### **UNCRC Article 23.1**

States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

### **UNCRPD Article 10 (Right to life)**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

## **4 Non-discrimination, equality of opportunity and reasonable accommodation**

### **UNCRC Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **ICESCR Article 2.2**

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **ICESCR GC 20 (paras 1, 28)**

(1) States parties must therefore adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.

(28) The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability. States parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace, as well as in private places, e.g. as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.

### **UNCRPD Article 2**

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms; “Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

### **UNCRPD Article 3**

3(b) Non-discrimination

3(g) Equality between men and women

## **UNCRPD Article 5 (Equality and non-discrimination)**

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

## 5 Best interests

### UNCRC Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### UNCRC Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

### UNCRC GC 12 (paras 70–74 on Articles 12 and 3)

(70) The purpose of article 3 is to ensure that in all actions undertaken concerning children, by a public or private welfare institution, courts, administrative authorities or legislative bodies, the best interests of the child are a primary consideration. It means that every action taken on behalf of the child has to respect the best interests of the child. The best interests of the child is similar to a procedural right that obliges States parties to introduce steps into the action process to ensure that the best interests of the child are taken into consideration. The Convention obliges States parties to assure that those responsible for these actions hear the child as stipulated in Article 12. This step is mandatory.

(71) The best interests of the child, established in consultation with the child, is not the only factor to be considered in the actions of institutions, authorities and administration. It is, however, of crucial importance, as are the views of the child.

(72) Article 3 is devoted to individual cases, but, explicitly, also requires that the best interests of children as a group are considered in all actions concerning children. States parties are consequently under an obligation to consider not only the individual situation of each child when identifying their best interests, but also the interests of children as a group. Moreover, States parties must examine the actions of private and public institutions, authorities, as well as legislative bodies. The extension of the obligation to “legislative bodies” clearly indicates that every law, regulation or rule that affects children must be guided by the “best interests” criterion.

(73) There is no doubt that the best interests of children as a defined group have to be established in the same way as when weighing individual interests. If the best interests of large numbers of children are at stake, heads of institutions, authorities, or governmental bodies should also provide opportunities to hear the concerned children from such undefined groups and to give their views due weight when they plan actions, including legislative decisions, which directly or indirectly affect children.

(74) There is no tension between Articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, Article 3 reinforces the functionality of Article 12, facilitating the essential role of children in all decisions affecting their lives.

#### **UNCRC GC 8 (para 18)**

(18) Article 37 of the Convention requires States to ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”. This is complemented and extended by article 19, which requires States to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. There is no ambiguity: “all forms of physical or mental violence” does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.

#### **UNCRC GC 13, paras 47(iii)–48 and 61**

47 (iii) Preventing violence in care and justice settings by, inter alia, developing and implementing community-based services in order to make use of institutionalization and detention only as a last resort and only if in the best interest of the child.

##### **48. Identification**

This includes identifying risk factors for particular individuals or groups of children and caregivers (in order to trigger targeted prevention initiatives) and identifying signs of actual maltreatment (in order to trigger appropriate intervention as early as possible). This requires that all who come in contact with children are aware of risk factors and indicators of all forms of violence, have received guidance on how to interpret such indicators, and have the necessary knowledge, willingness and ability to take appropriate action (including the provision of emergency protection). Children must be provided with as many opportunities as possible to signal emerging problems before they reach a state of crisis, and for adults to recognize and act on such problems even if the child does not explicitly ask for help. Particular vigilance is

needed when it comes to marginalized groups of children who are rendered particularly vulnerable due to their alternative methods of communicating, their immobility and/or the perceived view that they are incompetent, such as children with disabilities. Reasonable accommodation should be provided to ensure that they are able to communicate and signal problems on an equal basis with others.

61. Article 3 (best interests of the child). The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention. In particular, the Committee maintains that the best interests of the child are best served through:

- (a) Prevention of all forms of violence and the promotion of positive child-rearing, emphasizing the need for a focus on primary prevention in national coordinating frameworks
- (b) Adequate investment in human, financial and technical resources dedicated to the implementation of a child rights-based and integrated child protection and support system.

#### **UNCRPD Article 7 (Children with disabilities)**

7.2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

#### **UNCRPD Article 16 (Freedom from exploitation, violence and abuse)**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

## **6 Respect, personhood and evolving capacity, independence**

### **UNCRC Article 1**

For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.

### **UNCRC Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### **UNCRC GC 12 (para 20)**

(20)...States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.

### **ICESCR PREAMBLE**

‘These rights derive from the inherent dignity of the human person’

### **UNCRPD Article 3 (General principles)**

The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

### **UNCRPD Article 12 (Equal recognition before the law)**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

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4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

## 7 Participation, information and influence regarding decision making

### UNCRC Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

### UNCRC Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

### UNCRC Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

### UNCRC Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources
- (c) Encourage the production and dissemination of children's books
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.

### **General Comment 12 (paras 19, 21, 22, 23)**

(19) Article 12, paragraph 1, provides that States parties “shall assure” the right of the child to freely express her or his views. “Shall assure” is a legal term of special strength, which leaves no leeway for State parties’ discretion. Accordingly, States parties are under strict obligation to undertake appropriate measures to fully implement this right for all children. This obligation contains two elements in order to ensure that mechanisms are in place to solicit the views of the child in all matters affecting her or him and to give due weight to those views.

(21) The Committee emphasizes that article 12 imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice which would restrict the child’s right to be heard in all matters affecting her or him. In this respect, the Committee underlines the following:

- First, in its recommendations following the day of general discussion on implementing child rights in early childhood in 2004, the Committee underlined that the concept of the child as rights holder is “... anchored in the child’s daily life from the earliest stage”. Research shows that the child is able to form views from the youngest age, even when she or he may be unable to express them verbally. Consequently, full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences.
- Second, it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter.
- Third, States parties are also under the obligation to ensure the implementation of this right for children experiencing difficulties in making their views heard. For instance, children with disabilities should be equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views. Efforts must also be made to recognize the right to expression of views for minority, indigenous and migrant children and other children who do not speak the majority language “The right to express those views freely”

(22) The child has the right “to express those views freely”. “Freely” means that the child can express her or his views without pressure and can choose whether or not she or he wants to exercise her or his right to be heard. “Freely” also means that the child must not be manipulated or subjected to undue influence or pressure. “Freely” is further intrinsically related to the child’s “own” perspective: the child has the right to express her or his own views and not the views of others.

(23) States parties must ensure conditions for expressing views that account for the child’s individual and social situation and an environment in which the child feels respected and secure when freely expressing her or his opinions.

### **UNCRPD Article 3**

(a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons.

### **UNCRPD Article 4.3**

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

### **UNCRPD Article 7.3**

States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

### **UNCRPD Article 21 (Freedom of expression and opinion and access to information)**

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

**UNCRPD Article 29 (Participation in political and public life)**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake...:

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including...

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

## **8 Inclusion in community and society**

### **UNCRC GC 9**

(Para 11) Paragraph 11 of Article 23 should be considered as the leading principle for the implementation of the Convention with respect to children with disabilities: the enjoyment of a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate active participation in the community. The measures taken by States parties regarding the realization of the rights of children with disabilities should be directed towards this goal. The core message of this paragraph is that children with disabilities should be included in the society. Measures taken for the implementation of the rights contained in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society.

### **UNCRPD Article 3**

c) Full and effective participation and inclusion in society

### **UNCRPD Article 19 (Living independently and being included in the community)**

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- (b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

### **UNCRPD Article 26.1**

Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

## 9 Personal assistance and support

### **UNCRC Article 23(2)**

States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

### **UNCRC General Comment 9 (paras 10–12, 65)**

(10) According to paragraph 2 of article 23 States parties to the Convention recognize the right of the child with disability to special care and shall encourage and ensure the extension of assistance to the eligible child and those responsible for his or her care. The assistance has to be appropriate to the child's condition and the circumstances of the parents or others caring for the child. Paragraph 3 of article 23 gives further rules regarding the costs of specific measures and precisions as to what the assistance should try to achieve.

(11) In order to meet the requirements of article 23 it is necessary that States parties develop and effectively implement a comprehensive policy by means of a plan of action which not only aims at the full enjoyment of the rights enshrined in the Convention without discrimination but which also ensures that a child with disability and her or his parents and/or others caring for the child do receive the special care and assistance they are entitled to under the Convention.

(12) Regarding the specifics of paragraphs 2 and 3 of article 23, the Committee makes the following observations:

(a) The provision of special care and assistance is subject to available resources and free of charge whenever possible. The Committee urges States parties to make special care and assistance to children with disabilities a matter of high priority and to invest to the maximum extent of available resources in the elimination of discrimination against children with disabilities and towards their maximum inclusion in society.

(b) Care and assistance shall be designed to ensure that children with disabilities have effective access to and benefit from education, training, health care services, recovery services, preparation for employment and recreation opportunities. The Committee when dealing with specific articles of the Convention will elaborate on the measures necessary to achieve this.

(65) In order to fully exercise their right to education, many children need personal assistance, in particular, teachers trained in methodology and techniques, including appropriate languages, and other forms of communication, for teaching children with a diverse range of abilities capable of using child-centred and individualised teaching strategies, and appropriate and accessible teaching materials, equipment and assistive devices, which States parties should provide to the maximum extent of available resources.

### **UNCRPD Article 12.3**

States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

### **UNCRPD Article 26 (Habilitation and rehabilitation)**

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas...

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

# 10 Adequacy, availability and accessibility

## UNCRC Article 23 (3)

Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

## ICESCR GC3 (paras 1, 2)

(1)...while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties obligations. One of these, which is dealt with in a separate general comment, and which is to be considered by the Committee at its sixth session, is the "undertaking to guarantee" that relevant rights "will be exercised without discrimination ..."

(2) The other is the undertaking in Article 2 (1) "to take steps", which in itself, is not qualified or limited by other considerations. The full meaning of the phrase can also be gauged by noting some of the different language versions. In English the undertaking is "to take steps", in French it is "to act" ("s'engage à agir") and in Spanish it is "to adopt measures" ("adoptar medidas"). Thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.

## ICESCR GC9 (paras 1, 2)

(1) The central obligation in relation to the Covenant is for States parties to give effect to the rights recognized therein. By requiring Governments to do so "by all appropriate means", the Covenant adopts a broad and flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account.

(2) But this flexibility coexists with the obligation upon each State party to use all the means at its disposal to give effect to the rights recognized in the Covenant. In this respect, the fundamental requirements of international human rights law must be borne in mind. Thus the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.

## **UNCRPD Article General Principles 3**

(f) Accessibility

### **Article 4 (General obligations)**

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- (f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- (g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

### **Article 9 (Accessibility)**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- (b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

- (a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- (b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- (c) To provide training for stakeholders on accessibility issues facing persons with disabilities;
- (d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- (e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- (f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost

# 11 Training

## **(UNCRC GC 9 para 20, 27, 32, 49, 60)**

(20) Resources allocated to children with disabilities should be sufficient --and earmarked so that they are not used for other purposes-- to cover all their needs, including programmes established for training professionals working with children with disabilities such as teachers, physiotherapists and policymakers; education campaigns; financial support for families; income maintenance; social security; assistive devices; and related services.

(27) As for professionals working with and for children with disabilities, training programmes must include targeted and focused education on the rights of children with disabilities as a prerequisite for qualification. These professionals include but are not limited to policymakers, judges, lawyers, law enforcement officers, educators, health workers, social workers and media staff among others.

(32) Furthermore, States parties should support the training for families and professionals on promoting and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives.

(49) In addressing institutionalization, States parties are therefore urged to set up programmes for de-institutionalization of children with disabilities, re-placing them with their families, extended families or foster care system. Parents and other extended family members should be provided with the necessary and systematic support/training for including their child back into their home environment.

(60) The Convention recognizes the need for modification to school practices and for training of regular teachers to prepare them to teach children with diverse abilities and ensure that they achieve positive educational outcomes.

## **UNCRPD Article 4**

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

## **UNCRPD Article 26.2**

States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

## **UNCRPD Article 28.2**

c)To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counselling, financial assistance and respite care

## **12 Care and assistance for disabled children (B)**

### **UNCRC Article 23**

(1) States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

(2) States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

(3) Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

(4) States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

See also General Comment 9 below.

### **UNCRPD Article 7 (Children with disabilities)**

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

See also General Comment 9 below.

# 13 Adequate Standard of Living – Basic things you need for living (C)

## UNCRC Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

## ICESCR Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
  - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

## ICESCR General Comment 19

(f) Family and child support

(18) Benefits for families are crucial for realizing the rights of children and adult dependents to protection under Articles 9 and 10 of the Covenant. In providing the benefits, the State party should take into account the resources and circumstances of

the child and persons having responsibility for the maintenance of the child or adult dependent, as well as any other consideration relevant to an application for benefits made by or on behalf of the child or adult dependent.<sup>14</sup> Family and child benefits, including cash benefits and social services, should be provided to families, without discrimination on prohibited grounds, and would ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate.

#### **ICESCR GC 4 Article 11(1) (Housing)**

(7) In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity...

8(b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services...

(d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing 5/ prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates...

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement...

(g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

#### **ICESCR GC 12 (Food)**

6. The right to adequate food is realized when every man, woman and child, alone or

in community with others, have physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively.

However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.

### ***Adequacy and sustainability of food availability and access***

7. The concept of adequacy is particularly significant in relation to the right to food since it serves to underline a number of factors which must be taken into account in determining whether particular foods or diets that are accessible can be considered the most appropriate under given circumstances for the purposes of article 11 of the Covenant. The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The precise meaning of “adequacy” is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while “sustainability” incorporates the notion of long-term availability and accessibility...

11. Cultural or consumer acceptability implies the need also to take into account, as far as possible, perceived non nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.

### **UNCRPD Article 28 (Adequate standard of living and social protection)**

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

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counselling, financial assistance and respite care;
- (d) To ensure access by persons with disabilities to public housing programmes;
- (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

# 14 Social Security – money, benefits and social support (D)

## UNCRC Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

## ICESCR Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

## ICESCR General Comment 19 (paras 2, 6, 10, 20 and 22–27)

(2) The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents...

(6) The right to social security has been strongly affirmed in international law. The human rights dimensions of social security were clearly present in the Declaration of Philadelphia of 1944 which called for the “extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care”.

(10) While the elements of the right to social security may vary according to different conditions, a number of essential factors apply in all circumstances as set out below. In interpreting these aspects, it should be borne in mind that social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy....

### ***(h) Disability***

(20) In its general comment No. 5 ((1994) on persons with disabilities, the Committee emphasized the importance of providing adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost, or received a reduction in, their income, have been denied employment opportunities or have a permanent disability. Such support should be provided in a dignified manner and reflect the special needs for assistance and other expenses often associated with disability. The support provided should cover family members and other informal carers...

### **Adequacy**

(22) Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant. States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to avoid any adverse effect on the levels of benefits and the form in which they are provided. Methods applied should ensure the adequacy of benefits. The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights. When a person makes contributions to a social security scheme that provides benefits to cover lack of income, there should be a reasonable relationship between earnings, paid contributions, and the amount of relevant benefit.

### **Accessibility**

#### **(a) Coverage**

(23) All persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination on any of the grounds prohibited under Article 2, paragraph 2, of the Covenant. In order to ensure universal coverage, non-contributory schemes will be necessary.

#### **(b) Eligibility**

(24) Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.

#### **(c) Affordability**

(25) If a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realization of other Covenant rights.

#### **(d) Participation and information**

(26) Beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.

#### **(e) Physical access**

(27) Benefits should be provided in a timely manner and beneficiaries should have physical access to the social security services in order to access benefits and information, and make contributions where relevant. Particular attention should be paid in this regard to persons with The Committee notes that, under ILO Convention No. 168 (1988) on Employment Promotion and Protection against Unemployment, such action can only be taken in certain circumstances: absence from the territory of the State; a competent authority has determined that the person concerned deliberately contributed to their own dismissal or left employment voluntarily without just cause; during the period a person stops work due to a labour dispute; the person has attempted to obtain or has obtained benefits fraudulently; the person has failed without just cause to use the facilities available for placement, vocational guidance, training, retraining or redeployment in suitable work; or the person is in receipt of another income maintenance benefit provided for in the legislation of the relevant

State, except a family benefit, provided that the part of the benefit which is suspended does not exceed that other benefit. Articles 71 and 72 of ILO Convention 102 (1952) on Social Security (Minimum Standards) set out similar requirements.... disabilities, migrants, and persons living in remote or disaster-prone areas, as well as areas experiencing armed conflict, so that they, too, can have access to these services.

See also Para 64 and 65 – violations can occur through commission and omission.

## **UNCRPD Article 28**

### ***Adequate standard of living and social protection***

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

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs
- (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes
- (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counselling, financial assistance and respite care
- (d) To ensure access by persons with disabilities to public housing programmes
- (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

# 15 Family life (E)

## UNCRC Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance applicable law and procedures, that such separation is necessary for the best interests of the child.

Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

## UNCRC Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

## UNCRC Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic

background.

## **UNCRC GC 12**

90. A family where children can freely express views and be taken seriously from the earliest ages provides an important model, and is a preparation for the child to exercise the right to be heard in the wider society. Such an approach to parenting serves to promote individual development, enhance family relations and support children's socialization and plays a preventive role against all forms of violence in the home and family.

91. The Convention recognizes the rights and responsibilities of parents, or other legal guardians, to provide appropriate direction and guidance to their children (see para. 84 above), but underlines that this is to enable the child to exercise his or her rights and requires that direction and guidance are undertaken in a manner consistent with the evolving capacities of the child.

92. States parties should encourage, through legislation and policy, parents, guardians and childminders to listen to children and give due weight to their views in matters that concern them. Parents should also be advised to support children in realizing the right to express their views freely and to have children's views duly taken into account at all levels of society.

## **ICESCR Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.

## **UNCRPD Article 18.2**

Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

## **UNCRPD Article 23**

### ***Respect for home and the family***

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

Appendix 2: Rights explained – a list of human rights Articles and Conventions used in “We want to help people see things our way”

- (a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized
- (b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided
- (c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

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.

# 16 Education (F)

## UNCRC Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means
- (d) Make educational and vocational information and guidance available and accessible to all children
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

## UNCRC Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the

present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **ICESCR Article 6.2**

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### **ICESCR Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

### **UNCRPD Article 24**

#### ***Education***

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity

- (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential
- (c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live
- (c) Reasonable accommodation of the individual's requirements is provided;
- (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education
- (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community
- (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deaf blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

# 17 Work (G)

## UNCRC Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment
- (b) Provide for appropriate regulation of the hours and conditions of employment

## ICESCR Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

## ICESCR Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

## UNCRPD Article 27 (Work and employment)

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open,

inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions
- (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances
- (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others
- (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training
- (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment
- (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business
- (g) Employ persons with disabilities in the public sector
- (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures
- (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace
- (j) Promote the acquisition by persons with disabilities of work experience in the open labour market
- (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour

# 18 Play, association, sport, leisure and cultural activities (H)

## UNCRC Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

## UNCRC Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

## UNCRC Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

## UNCRC GC 12

115. Children require play, recreation, physical and cultural activities for their development and socialization. These should be designed taking into account children's preferences and capacities. Children who are able to express their views should be consulted regarding the accessibility and appropriateness of play and recreation facilities. Very young children and some children with disabilities, who are unable to participate in formal consultative processes, should be provided with particular opportunities to express their wishes.

## ICESCR Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
  - (a) To take part in cultural life;
  - (b) To enjoy the benefits of scientific progress and its applications
  - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

## **UNCRPD Article 30**

### ***Participation in cultural life, recreation, leisure and sport***

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:
  - (a) Enjoy access to cultural materials in accessible formats;
  - (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
  - (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.
2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.
3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.
5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:
  - (a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
  - (b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
  - (c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;
  - (d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
  - (e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

# 19 Health (I)

## UNCRC Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - (a) To diminish infant and child mortality;
  - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
  - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
  - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
  - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

## UNCRC GC 12 (para 100)

100. Children, including young children, should be included in decision-making processes, in a manner consistent with their evolving capacities. They should be provided with information about proposed treatments and their effects and outcomes, including in formats appropriate and accessible to children with disabilities.

## ICESCR Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

## **ICESCR GC 14**

11. The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels...

### ***Availability***

Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs:

(b) Accessibility. Health facilities, goods and services<sup>6</sup> have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.<sup>7</sup>

(ii) Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

(iii) Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

(iv) Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues.

However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(c) Acceptability. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) Quality. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

### **ICESCR GC 19**

(a) Health care

13. States parties have an obligation to guarantee that health systems are established to provide adequate access to health services for all. In cases in which the health system foresees private or mixed plans, such plans should be affordable, in conformity with the essential elements enunciated in the present general comment. The Committee notes the particular importance of the right to social security in the context of endemic diseases such as HIV/AIDS, tuberculosis and malaria, and the need to provide access to preventive and curative measures.

### **UNCRPD Article 25 (Health)**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

## 20 Mobility (J)

### **UNCRC GC 23 (para 41)**

...material support in the form of special allowances as well as consumable supplies and necessary equipment, such as special furniture and mobility devices that is deemed necessary for the child with a disability to live a dignified, self-reliant lifestyle, and be fully included in the family and community.

### **UNCRPD Article 20 (Personal mobility)**

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- (a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- (d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

# 21 CRC/C/GC/9 General Comment No. 9 (2006) The rights of children with disabilities (A)

## I. Introduction

### **A. Why a General Comment on children with disabilities?**

It is estimated that there are 500-650 million persons with disabilities in the world, approximately 10 % of the world population, 150 million of whom are children. More than 80 % live in developing countries with little or no access to services. The majority of children with disabilities in developing countries remain out of school and are completely illiterate. It is recognized that most of the causes of disabilities, such as war, illness and poverty, are preventable which also prevent and/or reduce the secondary impacts of disabilities, often caused by the lack of early/timely intervention. Therefore, more should be done to create the necessary political will and real commitment to investigate and put into practice the most effective actions to prevent disabilities with the participation of all levels of society.

The past few decades have witnessed positive focus on persons with disabilities in general and children in particular. The reason for this new focus is explained partly by the fact that the voice of persons with disabilities and of their advocates from national and international non-governmental organizations (NGO) is being increasingly heard and partly by the growing attention paid to persons with disabilities within the framework of the human rights treaties and the United Nations human rights treaty bodies. These treaty bodies have considerable potential in advancing the rights of persons with disabilities but they have generally been underused. When adopted in November 1989 the Convention on the Rights of the Child (hereafter “the Convention”) was the first human rights treaty that contained a specific reference to disability (Article 2 on non-discrimination) and a separate article 23 exclusively dedicated to the rights and needs of children with disabilities. Since the Convention has entered into force (2 September 1990), the Committee on the Rights of the Child (thereafter “the Committee”) has paid sustained and particular attention to disability-based discrimination<sup>1</sup> while other human rights treaty bodies have paid attention to disability-based discrimination under “other status” in the context of articles on non-discrimination of their relevant Convention. In 1994 the Committee on Economic, Social and Cultural Rights issued its general comment No. 5 on persons with disabilities and stated in paragraph 15 that “The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.” The Special Rapporteur on disability of the United Nations Commission for Social Development was first appointed in 1994 and mandated to monitor of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly at its forty-eighth session in 1993 (A/RES/48/96, Annex), and to advance the status of persons with disabilities throughout the world. On 6 October

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<sup>1</sup> See WouterVandenhoele, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies*, p.170-172, Antwerpen/Oxford, Intersentia 2005.

1997 the Committee devoted its day of general discussion to children with disabilities and adopted a set of recommendations (CRC/C/66, paragraphs 310-339), in which it considered the possibility of drafting a general comment on children with disabilities. The Committee notes with appreciation the work of the Ad-Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, and that it adopted at its eighth session, held in New York on 25 August 2006, a draft convention on the rights of persons with disabilities to be submitted to the General Assembly at its sixty-first session (A/AC.265/2006/4, Annex II).

The Committee, in reviewing State party reports, has accumulated a wealth of information on the status of children with disabilities worldwide and found that in the overwhelming majority of countries some recommendations had to be made specifically to address the situation of children with disabilities. The problems identified and addressed have varied from exclusion from decision-making processes to severe discrimination and actual killing of children with disabilities. Poverty being both a cause and a consequence of disability, the Committee has repeatedly stressed that children with disabilities and their families have the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of their living conditions. The question of children with disabilities living in poverty should be addressed by allocating adequate budgetary resources as well as by ensuring that children with disabilities have access to social protection and poverty reduction programmes.

The Committee has noted that no reservations or declarations have been entered specifically to article 23 of the Convention by any State party.

The Committee also notes that children with disabilities are still experiencing serious difficulties and facing barriers to the full enjoyment of the rights enshrined in the Convention. The Committee emphasizes that the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. The strategy for promoting their rights is therefore to take the necessary action to remove those barriers. Acknowledging the importance of articles 2 and 23 of the Convention, the Committee states from the outset that the implementation of the Convention with regards to children with disabilities should not be limited to these articles.

The present general comment is meant to provide guidance and assistance to States parties in their efforts to implement the rights of children with disabilities, in a comprehensive manner which covers all the provisions of the Convention. Thus, the Committee will first make some observations related directly to articles 2 and 23, then it will elaborate on the necessity of paying particular attention to and including explicitly children with disabilities within the framework of general measures for the implementation of the Convention. Those observations will be followed by comments on the meaning and the implementation of the various articles of the Convention (clustered in accordance with the Committee's practice) for children with disabilities.

## **B. Definition**

According to Article 1, paragraph 2, of the draft convention on the rights of persons with disabilities, “Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” (A/AC.265/2006/4, Annex II)

### II. The key provisions for children with disabilities (Articles 2 and 23)

#### *A. Article 2*

Article 2 requires States parties to ensure that all children within their jurisdiction enjoy all the rights enshrined in the Convention without discrimination of any kind. This obligation requires States parties to take appropriate measures to prevent all forms of discrimination, including on the ground of disability. This explicit mention of disability as a prohibited ground for discrimination in article 2 is unique and can be explained by the fact that children with disabilities belong to one of the most vulnerable groups of children. In many cases forms of multiple discrimination - based on a combination of factors, i.e. indigenous girls with disabilities, children with disabilities living in rural areas and so on - increase the vulnerability of certain groups. It has been therefore felt necessary to mention disability explicitly in the non-discrimination article. Discrimination takes place – often de facto – in various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization leads to their marginalization and exclusion, and may even threaten their survival and development if it goes as far as physical or mental violence against children with disabilities. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities and lead to the marginalization and alienation of children with disabilities. The Committee shall elaborate on these aspects in the paragraphs below.

In general, States parties in their efforts to prevent and eliminate all forms of discrimination against children with disabilities should take the following measures.

- (a) Include explicitly disability as a forbidden ground for discrimination in constitutional provisions on non-discrimination and/or include specific prohibition of discrimination on the ground of disability in specific anti-discrimination laws or legal provisions.
- (b) Provide for effective remedies in case of violations of the rights of children with disabilities, and ensure that those remedies are easily accessible to children with disabilities and their parents and/or others caring for the child.
- (c) Conduct awareness-raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating de facto discrimination against children with disabilities.

- (d) Girls with disabilities are often even more vulnerable to discrimination due to gender discrimination. In this context, States parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.

#### *B. Article 23*

Paragraph 1 of article 23 should be considered as the leading principle for the implementation of the Convention with respect to children with disabilities: the enjoyment of a full and decent life in conditions that ensure dignity, promote self – reliance (Matrix A4) and facilitate active participation in the community. The measures taken by States parties regarding the realization of the rights of children with disabilities should be directed towards this goal. The core message of this paragraph is that children with disabilities should be included in the society. Measures taken for the implementation of the rights contained in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society (Matrix B6).

According to paragraph 2 of article 23 States parties to the Convention recognize the right of the child with disability to special care and shall encourage and ensure the extension of assistance to the eligible child and those responsible for his or her care. The assistance has to be appropriate to the child's condition and the circumstances of the parents or others caring for the child. Paragraph 3 of article 23 gives further rules regarding the costs of specific measures and precisions as to what the assistance should try to achieve.

In order to meet the requirements of article 23 it is necessary that States parties develop and effectively implement a comprehensive policy by means of a plan of action which not only aims at the full enjoyment of the rights enshrined in the Convention without discrimination but which also ensures that a child with disability and her or his parents and/or others caring for the child do receive the special care and assistance they are entitled to under the Convention.

Regarding the specifics of paragraphs 2 and 3 of article 23, the Committee makes the following observations:

- (a) The provision of special care and assistance is subject to available resources and free of charge whenever possible. The Committee urges States parties to make special care and assistance to children with disabilities a matter of high priority and to invest to the maximum extent of available resources in the elimination of discrimination against children with disabilities and towards their maximum inclusion in society.
- (b) Care and assistance shall be designed to ensure that children with disabilities have effective access to and benefit from education,

training, health care services, recovery services, preparation for employment and recreation opportunities. The Committee when dealing with specific articles of the Convention will elaborate on the measures necessary to achieve this.

With reference to article 23, paragraph 4, the Committee notes that the international exchange of information between States parties in the areas of prevention and treatment is quite limited. The Committee recommends that States parties take effective, and where appropriate targeted, measures for an active promotion of information as envisaged by article 23, paragraph 4, in order to enable States parties to improve their capabilities and skills in the areas of prevention and treatment of disabilities of children.

It is often not clear how and to which degree the needs of developing countries are taken into account as required by article 23, paragraph 4. The Committee strongly recommends States parties to ensure that, within the framework of bilateral or multilateral development assistance, particular attention be paid to children with disabilities and their survival and development in accordance with the provisions of the Convention, for example, by developing and implementing special programmes aiming at their inclusion in society and allocating earmarked budgets to that effect. States parties are invited to provide information in their reports to the Committee on the activities and results of such international cooperation.

### ***III. General measures of implementation (Articles 4, 42 and 44 (6))<sup>2</sup>***

#### ***A. Legislation***

In addition to the legislative measures recommended with regard to non-discrimination (see paragraph 9 above), the Committee recommends that States parties undertake a comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, including children with disabilities who should be mentioned explicitly, where appropriate. National laws and regulations should contain clear and explicit provisions for the protection and exercise of the specific rights of children with disabilities, in particular those enshrined in Article 23 of the Convention.

#### ***B. National plans of action and policies***

The need for a national plan of action that integrates all the provisions of the Convention is a well-recognized fact and has often been a recommendation made by the Committee to States parties. Plans of action must be comprehensive, including plans and strategies for children with disabilities, and should have measurable outcomes. The draft convention on the rights of persons with disabilities, in its article 4, paragraph 1 c, emphasizes the importance of inclusion of this aspect stating that States parties undertake “to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes” (A/AC.265/2006/4, annex II). It is also essential that all programmes be adequately

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<sup>2</sup> In the present general comment the Committee focuses on the need to pay special attention to children with disabilities in the context of the general measures. For a more elaborated explanation of the content and importance of these measures, see the Committee’s general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.

supplied with financial and human resources and equipped with built-in monitoring mechanisms, for example, indicators allowing accurate outcome measurements. Another factor that should not be overlooked is the importance of including all children with disabilities in policies and programmes. Some States parties have initiated excellent programmes, but failed to include all children with disabilities.

#### *C. Data and statistics*

In order to fulfil their obligations, it is necessary for States parties to set up and develop mechanisms for collecting data which are accurate, standardized and allow disaggregation, and which reflect the actual situation of children with disabilities. The importance of this issue is often overlooked and not viewed as a priority despite the fact that it has an impact not only on the measures that need to be taken in terms of prevention but also on the distribution of very valuable resources needed to fund programmes. One of the main challenges in obtaining accurate statistics is the lack of a widely accepted clear definition for disabilities. States parties are encouraged to establish an appropriate definition that guarantees the inclusion of all children with disabilities so that children with disabilities may benefit from the special protection and programmes developed for them. Extra efforts are often needed to collect data on children with disabilities because they are often hidden by their parents or others caring for the child.

#### *D. Budget*

Allocation of budget: in the light of article 4 "...States parties shall undertake such measures to the maximum extent of their available resources...". Although the Convention does not make a specific recommendation regarding the most appropriate percentage of the State budget that should be dedicated to services and programmes for children, it does insist that children should be a priority. The implementation of this right has been a concern to the Committee since many States parties not only do not allocate sufficient resources but have also reduced the budget allocated to children over the years. This trend has many serious implications especially for children with disabilities who often rank quite low, or even not at all, on priority lists. For example, if a State party is failing to allocate sufficient funds to ensure compulsory and free quality education for all children, it will be unlikely to allocate funds to train teachers for children with disabilities or to provide for the necessary teaching aids and transportation for children with disabilities. Decentralization and privatization of services are now means of economic reform. However, it should not be forgotten that it is the State Party's ultimate responsibility to oversee that adequate funds are allocated to children with disabilities along with strict guidelines for service delivery. Resources allocated to children with disabilities should be sufficient --and earmarked so that they are not used for other purposes-- to cover all their needs, including programmes established for training professionals working with children with disabilities such as teachers, physiotherapists and policymakers; education campaigns; financial support for families; income maintenance; social security; assistive devices; and related services. Furthermore, funding must also be ensured for other programmes aimed at including children with disabilities into mainstream education, inter alia by renovating schools to render them physically accessible to children with disabilities.

#### *E. Coordination body: "Focal point for disabilities"*

Services for children with disabilities are often delivered by various governmental and non-governmental institutions, and more often than not, these services are fragmented and not coordinated which result in overlapping of functions and gaps in provisions. Therefore, the setting up of an appropriate coordinating mechanism

becomes essential. This body should be multi-sectorial, including all organizations public or private. It must be empowered and supported from the highest possible levels of Government to allow it to function at its full potential. A coordination body for children with disabilities, as part of a broader coordination system for the rights of the child or a national coordination system for persons with disabilities, would have the advantage of working within an already established system, provided this system is functioning adequately and capable of devoting the adequate financial and human resources necessary. On the other hand, a separate coordination system may help to focus attention on children with disabilities.

*F. International cooperation and technical assistance*

In order to make information among States parties freely accessible and to cultivate an atmosphere of knowledge-sharing concerning, inter alia, the management and rehabilitation of children with disabilities, States parties should recognize the importance of international cooperation and technical assistance. Particular attention should be paid to developing countries that need assistance in setting up and/or funding programmes that protect and promote the rights of children with disabilities. These countries are experiencing increasing difficulties in mobilizing the adequate resources to meet the pressing needs of persons with disabilities and would urgently need assistance in the prevention of disability, the provision of services and rehabilitation, and in the equalization of opportunities. However, in order to respond to these growing needs, the international community should explore new ways and means of raising funds, including substantial increase of resources, and take the necessary follow-up measures for mobilizing resources. Therefore, voluntary contributions from Governments, increased regional and bilateral assistance as well as contributions from private sources should also be encouraged. UNICEF and the World Health Organization (WHO) have been instrumental in helping developing countries set up and implement specific programmes for children with disabilities. The process of knowledge exchange is also valuable in sharing updated medical knowledge and good practices, such as early identification and community-based approaches to early intervention and support to families, and addressing common challenges.

Countries that have endured, or continue to endure, internal or foreign conflict, during which land mines were laid, face a particular challenge. States parties are often not privy to plans of the sites where the land mines and unexploded ordnance were planted and the cost of mine clearance is very high. The Committee emphasizes the importance of international cooperation in accordance with the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, in order to prevent injuries and deaths caused by landmines and unexploded ordnance that remain in place. In this regard the Committee recommends that States parties closely cooperate with a view to completely removing all landmines and unexploded ordnance in areas of armed conflict and/or previous armed conflict.

*G. Independent monitoring*

Both the Convention and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities recognize the importance of the establishment of an

appropriate monitoring system<sup>3</sup>. The Committee has very often referred to “the Paris Principles” (A/RES/48/134) as the guidelines which national human rights institutions should follow (see the Committee’s general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child). National human rights institutions can take many shapes or forms such as an Ombudsman or a Commissioner and may be broad-based or specific. Whatever mechanism is chosen, it must be:

- (a) Independent and provided with adequate human and financial resources
- (b) Well known to children with disabilities and their caregivers;
- (c) Accessible not only in the physical sense but also in a way that allows children with disabilities to send in their complaints or issues easily and confidentially
- (d) It must have the appropriate legal authority to receive, investigate and address the complaints of children with disabilities in a manner sensitive to both their childhood and to their disabilities.

#### *H. Civil society*

Although caring for children with disabilities is an obligation of the State, NGOs often carry out these responsibilities without the appropriate support, funding or recognition from Governments. States parties are therefore encouraged to support and cooperate with NGOs enabling them to participate in the provision of services for children with disabilities and to ensure that they operate in full compliance with the provisions and principles of the Convention. In this regard the Committee draws the attention of States parties to the recommendations adopted on its day of general discussion on the private sector as a service provider, held on 20 September 2002 (CRC/C/121, paras. 630-653).

#### *I. Dissemination of knowledge and training of professionals*

Knowledge of the Convention and its specific provisions devoted to children with disabilities is a necessary and powerful tool to ensure the realization of these rights. States parties are encouraged to disseminate knowledge by, inter alia, conducting systematic awareness-raising campaigns, producing appropriate material, such as a child friendly version of the Convention in print and Braille, and using the mass media to foster positive attitudes towards children with disabilities.

As for professionals working with and for children with disabilities, training programmes must include targeted and focused education on the rights of children with disabilities as a prerequisite for qualification. These professionals include but are not limited to policymakers, judges, lawyers, law enforcement officers, educators, health workers, social workers and media staff among others.

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<sup>3</sup> See also the general comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights regarding persons with disabilities.

### **Article 3 (Best interests of the child)**

“In all actions concerning children...the best interests of the child shall be a primary consideration”. The broad nature of this article aims at covering all aspects of care and protection for children in all settings. It addresses legislators who are entrusted with setting the legal framework for protecting the rights of children with disabilities as well as the decisions-making processes concerning children with disabilities. Article 3 should be the basis on which programmes and policies are set and it should be duly taken into account in every service provided for children with disabilities and any other action affecting them.

The best interests of the child is of particular relevance in institutions and other facilities that provide services for children with disabilities as they are expected to conform to standards and regulations and should have the safety, protection and care of children as their primary consideration, and this consideration should outweigh any other and under all circumstances, for example, when allocating budgets (Matrix B3).

### **Article 6 (Right to life, survival and development)**

The inherent right to life, survival and development is a right that warrants particular attention where children with disabilities are concerned. In many countries of the world children with disabilities are subject to a variety of practices that completely or partially compromise this right. In addition to being more vulnerable to infanticide, some cultures view a child with any form of disability as a bad omen that may “tarnish the family pedigree” and, accordingly, a certain designated individual from the community systematically kills children with disabilities. These crimes often go unpunished or perpetrators receive reduced sentences. States parties are urged to undertake all the necessary measures required to put an end to these practices, including raising public awareness, setting up appropriate legislation and enforcing laws that ensure appropriate punishment to all those who directly or indirectly violate the right to life, survival and development of children with disabilities.

### **Article 12 (Respect for the views of the child)**

More often than not, adults with and without disabilities make policies and decisions related to children with disabilities while the children themselves are left out of the process. It is essential that children with disabilities be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. In order for this principle to be respected, children should be represented in various bodies such as parliament, committees and other forums where they may voice views and participate in the making of decisions that affect them as children in general and as children with disabilities specifically. Engaging children in such a process not only ensures that the policies are targeted to their needs and desires, but also functions as a valuable tool for inclusion since it ensures that the decision-making process is a participatory one. Children should be provided with whatever mode of communication they need to facilitate expressing their views. Furthermore, States parties should support the training for families and professionals on promoting

and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives.

Children with disabilities often require special services in health and education to allow them to achieve their fullest potential and these are further discussed in the relevant paragraphs below. However it should be noted that spiritual, emotional and cultural development and well-being of children with disabilities are very often overlooked. Their participation in events and activities catering to these essential aspects of any child's life is either totally lacking or minimal. Furthermore, when their participation is invited, it is often limited to activities specifically designed for and targeted at children with disabilities. This practice only leads to further marginalization of children with disabilities and increases their feelings of isolation. Programmes and activities designed for the child's cultural development and spiritual well-being should involve and cater to both children with and without disabilities in an integrated and participatory fashion.

## ***V. Civil rights and freedoms (Articles 7, 8, 13–17, and 37a)***

The right to name and nationality, preservation of identity, freedom of expression, freedom of thought, conscience and religion, freedom of association and peaceful assembly, the right to privacy and the right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment and not to be unlawfully deprived of liberty are all universal civil rights and freedoms which must be respected, protected and promoted for all, including children with disabilities. Particular attention should be paid here on areas where the rights of children with disabilities are more likely to be violated or where special programmes are needed for their protection.

### ***A. Birth registration***

Children with disabilities are disproportionately vulnerable to non-registration at birth. Without birth registration they are not recognized by law and become invisible in government statistics. Non-registration has profound consequences for the enjoyment of their human rights, including the lack of citizenship and access to social and health services and to education. Children with disabilities who are not registered at birth are at greater risk of neglect, institutionalization, and even death.

In the light of article 7 of the Convention, the Committee recommends that States parties adopt all appropriate measures to ensure the registration of children with disabilities at birth. Such measures should include developing and implementing an effective system of birth registration, waiving registration fees, introducing mobile registration offices and, for children who are not yet registered, providing registration units in schools. In this context, States parties should ensure that the provisions of article 7 are fully enforced in conformity with the principles of non-discrimination (art. 2) and of the best interests of the child (art. 3).

### ***B Access to appropriate information and mass media***

Access to information and means of communication, including information and communication technologies and systems, enables children with disabilities to live

independently and participate fully in all aspects of life. Children with disabilities and their caregivers should have access to information concerning their disabilities so that they can be adequately educated on the disability, including its causes, management and prognosis. This knowledge is extremely valuable as it does not only enable them to adjust and live better with their disabilities, but also allows them to be more involved in and to make informed decisions about their own care. Children with disabilities should also be provided with the appropriate technology and other services and/or languages, e.g. Braille and sign language, which would enable them to have access to all forms of media, including television, radio and printed material as well as new information and communication technologies and systems, such as the Internet.

On the other hand, States parties are required to protect all children, including children with disabilities from harmful information, especially pornographic material and material that promotes xenophobia or any other form of discrimination and could potentially reinforce prejudices.

### *C Accessibility to public transportation and facilities*

The physical inaccessibility of public transportation and other facilities, including governmental buildings, shopping areas, recreational facilities among others, is a major factor in the marginalization and exclusion of children with disabilities and markedly compromises their access to services, including health and education. Although this provision may be mostly realized in developed countries, it remains largely un-addressed in the developing world. All States parties are urged to set out appropriate policies and procedures to make public transportation safe, easily accessible to children with disabilities (Matrix J3) and free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child (Matrix J8).

All new public buildings should comply with international specifications for access of persons with disabilities and existing public buildings, including schools, health facilities, governmental buildings, shopping areas, undergo necessary alterations that make them as accessible as possible.

## ***VI Family environment and alternative care (Articles 5, 18 (1-2), 9-11, 19-21, 25, 27 (4), and 39)***

### *A. Family support and parental responsibilities*

Children with disabilities are best cared for and nurtured within their own family environment provided that the family is adequately provided for in all aspects. Such support to families includes education of parent/s and siblings, not only on the disability and its causes but also on each child's unique physical and mental requirements; psychological support that is sensitive to the stress and difficulties imposed on families of children with disabilities; education on the family's common language, for example sign language, so that parents and siblings can communicate with family members with disabilities (Matrix E9) material support in the form of special allowances as well as consumable supplies and necessary equipment, such as special furniture and mobility devices that is deemed necessary for the child with a

disability to live a dignified, self-reliant lifestyle, and be fully included in the family and community (Matrix D6). In this context, support should also be extended to children who are affected by the disabilities of their caregivers. For example, a child living with a parent or other caregiver with disabilities should receive the support that would protect fully his or her rights and allow him or her to continue to live with this parent whenever it is in his or her best interests. Support services should also include different forms of respite care, such as care assistance in the home and day-care facilities directly accessible at community level (Matrix E8). Such services enable parents to work, as well as relieve stress and maintain healthy family environments (Matrix D8).

#### *B. Violence, abuse and neglect*

Children with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings, including the family, schools, private and public institutions, inter alia alternative care, work environment and community at large. It is often quoted that children with disabilities are five times more likely to be victims of abuse. In the home and in institutions, children with disabilities are often subjected to mental and physical violence and sexual abuse, and they are also particularly vulnerable to neglect and negligent treatment since they often present an extra physical and financial burden on the family. In addition, the lack of access to a functional complaint receiving and monitoring mechanism is conducive to systematic and continuing abuse. School bullying is a particular form of violence that children are exposed to and more often than not, this form of abuse targets children with disabilities. Their particular vulnerability may be explained inter alia by the following main reasons:

- (a) Their inability to hear, move, and dress, toilet, and bath independently increases their vulnerability to intrusive personal care or abuse;
- (b) Living in isolation from parents, siblings, extended family and friends increases the likelihood of abuse;
- (c) Should they have communication or intellectual impairments, they may be ignored, disbelieved or misunderstood should they complain about abuse;
- (d) Parents or others taking care of the child may be under considerable pressure or stress because of physical, financial and emotional issues in caring for their child. Studies indicate that those under stress may be more likely to commit abuse;
- (e) Children with disabilities are often wrongly perceived as being non-sexual and not having an understanding of their own bodies and, therefore, they can be targets of abusive people, particularly those who base abuse on sexuality.

In addressing the issue of violence and abuse, States parties are urged to take all necessary measures for the prevention of abuse of and violence against children with disabilities, such as:

- (a) Train and educate parents or others caring for the child to understand the risks and detect the signs of abuse of the child;
- (b) Ensure that parents are vigilant about choosing caregivers and facilities for their children and improve their ability to detect abuse;
- (c) Provide and encourage support groups for parents, siblings and others taking care of the child to assist them in caring for their children and coping with their disabilities;
- (d) Ensure that children and caregivers know that the child is entitled as a matter of right to be treated with dignity and respect and they have the right to complain to appropriate authorities if those rights are breached;
- (e) Ensure that schools take all measures to combat school bullying and pay particular attention to children with disabilities providing them with the necessary protection while maintaining their inclusion into the mainstream education system(Matrix F3)
- (f) Ensure that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated, and have accessible and sensitive complaint mechanisms ( Matrix C9)
- (g) Establish an accessible, child-sensitive complaint mechanism and a functioning monitoring system based on the Paris Principles (see paragraph 24 above);
- (h) Take all necessary legislative measures required to punish and remove perpetrators from the home ensuring that the child is not deprived of his or her family and continue to live in a safe and healthy environment;
- (i) Ensure the treatment and re-integration of victims of abuse and violence with a special focus on their overall recovery programmes.

In this context the Committee would also like to draw States parties' attention to the report of the independent expert for the United Nations study on violence against children (A/61/299) which refers to children with disabilities as a group of children especially vulnerable to violence. The Committee encourages States parties to take all appropriate measures to implement the overarching recommendations and setting-specific recommendations contained in this report.

### *C. Family-type alternative care*

The role of the extended family, which is still a main pillar of childcare in many communities and is considered one of the best alternatives for childcare, should be strengthened and empowered to support the child and his or her parents or others taking care of the child.

Recognizing that the foster family is an accepted and practiced form of alternative care in many States parties, it is nevertheless a fact that many foster families are

reluctant to take on the care of a child with disability as children with disabilities often pose a challenge in the extra care they may need and the special requirements in their physical, psychological and mental upbringing. Organizations that are responsible for foster placement of children must, therefore, conduct the necessary training and encouragement of suitable families and provide the support that will allow the foster family to appropriately take care of the child with disability.

#### *D. Institutions*

The Committee has often expressed its concern at the high number of children with disabilities placed in institutions and that institutionalization is the preferred placement option in many countries. The quality of care provided, whether educational, medical or rehabilitative, is often much inferior to the standards necessary for the care of children with disabilities either because of lack of identified standards or lack of implementation and monitoring of these standards. Institutions are also a particular setting where children with disabilities are more vulnerable to mental, physical, sexual and other forms of abuse as well as neglect and negligent treatment (see paragraphs 42-44 above). The Committee therefore urges States parties to use the placement in institution only as a measure of last resort, when it is absolutely necessary and in the best interests of the child. It recommends that the States parties prevent the use of placement in institution merely with the goal of limiting the child's liberty or freedom of movement. In addition, attention should be paid to transforming existing institutions, with a focus on small residential care facilities organized around the rights and needs of the child, to developing national standards for care in institutions, and to establishing rigorous screening and monitoring procedures to ensure effective implementation of these standards (Matrix E2).

The Committee is concerned at the fact that children with disabilities are not often heard in separation and placement processes. In general, decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child's life and future. Therefore, the Committee recommends that States parties continue and strengthen their efforts to take into consideration the views of children with disabilities and facilitate their participation in all matters affecting them within the evaluation, separation and placement process in out-of-home care, and during the transition process. The Committee also emphasizes that children should be heard throughout the protection measure process, before making the decision as well as during and after its implementation. In this context, the Committee draws the attention of the States parties to the Committee's recommendations adopted on its day of general discussion on children without parental care, held on 16 September 2005 (CRC/C/153, paragraphs 636-689)( Matrix E5).

In addressing institutionalization, States parties are therefore urged to set up programmes for de-institutionalization of children with disabilities, re-placing them with their families, extended families or foster care system. Parents and other extended family members should be provided with the necessary and systematic support/training for including their child back into their home environment.

### *E. Periodic review of placement*

Whatever form of placement chosen for children with disabilities by the competent authorities, it is essential that a periodic review of the treatment provided to the child, and all other circumstances relevant to his or her placement, is carried out to monitor his or her wellbeing.

## **VII. Basic health and welfare** (Articles 6, 18 (3), 23, 24, 26, and 27 (1-3))

### *A. Right to health*

Attainment of the highest possible standard of health as well as access and affordability of quality healthcare is an inherent right for all children. Children with disabilities are often left out because of several challenges, including discrimination, inaccessibility due to the lack of information and/or financial resources, transportation, geographic distribution and physical access to health care facilities. Another factor is the absence of targeted health care programmes that address the specific needs of children with disabilities. Health policies should be comprehensive and address early detection of disabilities, early intervention, including psychological and physical treatment, rehabilitation including physical aids, for example limb prosthesis, mobility devices, hearing aids and visual aids.

It is important to emphasize that health services should be provided within the same public health system that provides for children with no disabilities, free of charge, whenever possible, and as updated and modernized as possible. The importance of community-based assistance and rehabilitation strategies should be emphasized when providing health services for children with disabilities (Matrix I6). States parties must ensure that health professionals working with children with disabilities are trained to the highest possible standard and practice based on a child-centred approach. In this respect, many States parties would greatly benefit from international cooperation with international organizations as well as other States parties (Matrix I9)

### *B. Prevention*

Causes of disabilities are multiple and, therefore, the quality and level of prevention vary. Inherited diseases that often cause disabilities can be prevented in some societies that practice consanguineous marriages and under such circumstances public awareness and appropriate pre-conception testing would be recommended. Communicable diseases are still the cause of many disabilities around the world and immunization programmes need to be stepped up aiming to achieve universal immunization against all preventable communicable diseases. Poor nutrition has a long-term impact upon children's development and it can lead to disabilities, such as blindness caused by Vitamin A deficiency. The Committee recommends that States parties introduce and strengthen prenatal care for children and ensure adequate quality of the assistance given during the delivery. It also recommends that States parties provide adequate post-natal health-care services and develop campaigns to inform parents and others caring for the child about basic child healthcare and nutrition. In this regard, the Committee also recommends that the States

parties continue to cooperate and seek technical assistance with, among others, WHO and UNICEF.

Domestic and road traffic accidents are a major cause of disability in some countries and policies of prevention need to be established and implemented such as the laws on seat belts and traffic safety. Lifestyle issues, such as alcohol and drug abuse during pregnancy, are also preventable causes of disabilities and in some countries the fetal alcohol syndrome presents a major cause for concern. Public education, identification and support for pregnant mothers who may be abusing such substances are just some of the measures that may be taken to prevent such causes of disability among children. Hazardous environment toxins also contribute to the causes of many disabilities. Toxins, such as lead, mercury, asbestos, etc., are commonly found in most countries. Countries should establish and implement policies to prevent dumping of hazardous materials and other means of polluting the environment. Furthermore, strict guidelines and safeguards should also be established to prevent radiation accidents.

Armed conflicts and their aftermath, including availability and accessibility of small arms and light weapons, are also major causes of disabilities. States parties are obliged to take all necessary measures to protect children from the detrimental effects of war and armed violence and to ensure that children affected by armed conflict have access to adequate health and social services, including psychosocial recovery and social reintegration. In particular, the Committee stresses the importance of educating children, parents and the public at large about the dangers of landmines and unexploded ordnance in order to prevent injury and death. It is crucial that States parties continue to locate landmines and unexploded ordnance, take measures to keep children away from suspected areas, and strengthen their mine clearance activities and, when appropriate, seek the necessary technical and financial support within a framework of international cooperation, including from United Nations agencies. (See also paragraph 23 above on landmines and unexploded ordnance and paragraph 78 below on armed conflicts under special protection measures).

### *C. Early identification*

Very often, disabilities are detected quite late in the child's life, which deprives him or her of effective treatment and rehabilitation. Early identification requires high awareness among health professionals, parents, teachers as well as other professionals working with children. They should be able to identify the earliest signs of disability and make the appropriate referrals for diagnosis and management. Therefore, the Committee recommends that States parties establish systems of early identification and early intervention as part of their health services, together with birth registration and procedures for following the progress of children identified with disabilities at an early age. Services should be both community- and home-based, and easy to access. Furthermore, links should be established between early intervention services, pre-schools and schools to facilitate the smooth transition of the child.

Following identification, the systems in place must be capable of early intervention including treatment and rehabilitation providing all necessary devices that enable children with disabilities to achieve their full functional capacity in terms of mobility, hearing aids, visual aids, and prosthetics among others. It should also be emphasized that these provisions should be offered free of cost, whenever possible, and the process of acquiring such services should be efficient and simple avoiding long waits and bureaucracies(Matrix I8 top).

#### *D. Multidisciplinary care*

Children with disabilities very often have multiple health issues that need to be addressed in a team approach. Very often, many professionals are involved in the care of the child, such as neurologists, psychologists, psychiatrists, orthopaedic surgeons and physiotherapists among others. Ideally these professionals should collectively identify a plan of management for the child with disability that would ensure the most efficient healthcare is provided.

#### *E. Adolescent health and development*

The Committee notes that children with disabilities are, particularly during their adolescence, facing multiple challenges and risks in the area of establishing relationships with peers and reproductive health. Therefore, the Committee recommends that States parties provide adolescents with disabilities with adequate, and where appropriate, disability specific information, guidance and counselling and fully take into account the Committee's general comments No. 3 (2003) on HIV/AIDS and the rights of the child and No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child(Matrix I8 bottom).

The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilisation of children on grounds of disability.

#### *F. Research*

Causes, prevention and management of disabilities do not receive the much needed attention on national and international research agendas. States parties are encouraged to award this issue priority status ensuring funding and monitoring of disability focused research paying particular attention to ethical implications.

### **VIII Education and leisure (Articles 28, 29 and 31)**

#### *A. Quality education*

Children with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention.<sup>4</sup> For this purpose, effective access of children with

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<sup>4</sup> In this context the Committee would like to make a reference to the United Nations Millennium Declaration (A/RES/55/2) and in particular to the Millennium Development Goal No. 2 relating to universal primary education according to which Governments are committed to "ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete

disabilities to education has to be ensured to promote “the development of the child’s personality, talents and mental and physical abilities to their fullest potential (see articles 28 and 29 of the Convention and the Committee’s general comment No. 1 (2001) on the aims of education) (Matrix F1 and Matrix F9 top). The Convention recognizes the need for modification to school practices (Matrix F2) and for training of regular teachers (Matrix F9) to prepare them to teach children with diverse abilities and ensure that they achieve positive educational outcomes.

As children with disabilities are very different from each other, parents, teachers and other specialized professionals have to help each individual child to develop his or her ways and skills of communication, language, interaction, orientation and problem-solving which best fit the potential of this child. Everybody, who furthers the child’s skills, abilities and self-development, has to precisely observe the child’s progress and carefully listen to the child’s verbal and emotional communication in order to support education and development in a well-targeted and most appropriate manner (Matrix F4 bottom).

#### *B. Self-esteem and self-reliance*

It is crucial that the education of a child with disability includes the strengthening of positive self-awareness, making sure that the child feels he or she is respected by others as a human being without any limitation of dignity. The child must be able to observe that others respect him or her and recognize his or her human rights and freedoms. Inclusion of the child with disability in the groups of children of the classroom can show the child that he or she has recognized identity and belongs to the community of learners, peers, and citizens. Peer support enhancing self-esteem of children with disabilities should be more widely recognized and promoted. Education also has to provide the child with empowering experience of control, achievement, and success to the maximum extent possible for the child (Matrix F4).

#### *C. Education in the school system*

Early childhood education is of particular relevance for children with disabilities as often their disabilities and special needs are first recognized in these institutions. Early intervention is of utmost importance to help children to develop their full potential. If a child is identified as having a disability or developmental delay at an early stage, the child has much better opportunities to benefit from early childhood education which should be designed to respond to her or his individual needs. Early childhood education provided by the State, the community or civil society institutions can provide important assistance to the well-being and development of all children with disabilities (see the Committee’s general comment No. 7 (2005) on implementing child rights in early childhood). Primary education, including primary

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a full course of primary schooling and that girls and boys will have equal access to all levels of education”. The Committee would also like to refer to other international commitments which endorse the idea of inclusive education, inter alia, the Salamanca Statement and Framework for Action on Special Needs Education adopted by the World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7-10 June 1994 (UNESCO and Ministry of Education and Science of Spain) and the Dakar Framework for Action, Education for All: Meeting our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000.

Appendix 2: Rights explained – a list of human rights Articles and Conventions used in “We want to help people see things our way”

school and, in many States parties, also secondary school, has to be provided for children with disabilities free of costs. All schools should be without communicational barriers as well as physical barriers impeding the access of children with reduced mobility. Also higher education, accessible on the basis of capacities, has to be accessible for qualified adolescents with disabilities. In order to fully exercise their right to education, many children need personal assistance, in particular, teachers trained in methodology and techniques, including appropriate languages, and other forms of communication, for teaching children with a diverse range of abilities capable of using child-centred and individualised teaching strategies, and appropriate and accessible teaching materials, equipment and assistive devices, which States parties should provide to the maximum extent of available resources.

#### *D. Inclusive education*

Inclusive education<sup>5</sup> should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system. The Committee notes the explicit commitment towards the goal of inclusive education contained in the draft convention on the rights of persons with disabilities and the obligation for States to ensure that persons including children with disabilities are not excluded from the general education system on the basis of disability and that they receive the support required, within the general education system, to facilitate their effective education. It encourages States parties which have not yet begun a programme towards inclusion to introduce the necessary measures to achieve this goal. However, the Committee underlines that the extent of inclusion within the general education system may vary. A continuum of services and programme options must be maintained in circumstances where fully inclusive education is not feasible to achieve in the immediate future (Matrix F6).

The movement towards inclusive education has received much support in recent years. However, the term inclusive may have different meanings. At its core, inclusive education is a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students. This goal can be achieved by different organizational means which respect the diversity of children. Inclusion may range from full-time placement of all students with disabilities into one regular classroom or placement into the regular class room with varying degree of inclusion, including a certain portion of special education. It is important to understand that inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs. Close cooperation among special educators and regular

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<sup>5</sup>UNESCO's Guidelines for Inclusion: Ensuring Access to Education for All (UNESCO 2005) provides the following definition "Inclusion is seen as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children...Inclusion is concerned with the identification and removal of barriers..." (p. 13 and 15)

educators is essential. Schools' curricula must be re-evaluated and developed to meet the needs of children with and without disabilities. Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education(Matrix F6).

#### *E. Career education and vocational training*

Education for career development and transition is for all persons with disabilities regardless of their age. It is imperative to begin preparation at an early age because career development is seen as a process that begins early and continues throughout life. Developing career awareness and vocational skills as early as possible, beginning in the elementary school, enables children to make better choices later in life in terms of employment. Career education in the elementary school does not mean using young children to perform labour that ultimately opens the door for economic exploitation. It begins with students choosing goals according to their evolving capacities in the early years. It should then be followed by a functional secondary school curriculum that offers adequate skills and access to work experience, under systematic coordination and monitoring between the school and the work place.

Career development and vocational skills should be included in the school curriculum. Career awareness and vocational skills should be incorporated into the years of compulsory education. In countries where compulsory education does not go beyond the elementary school years, vocational training beyond elementary school should be mandatory for children with disabilities. Governments must establish policies and allocate sufficient funds for vocational training(Matrix F9 Top).

#### *F. Recreation and cultural activities*

The Convention stipulates in Article 31 the right of the child to recreation and cultural activities appropriate to the age of the child. This article should be interpreted to include mental, psychological as well as the physical ages and capabilities of the child. Play has been recognized as the best source of learning various skills, including social skills. The attainment of full inclusion of children with disabilities in the society is realized when children are given the opportunity, places, and time to play with each other (children with disabilities and no disabilities). Training for recreation, leisure and play should be included for school-aged children with disabilities.

Children with disabilities should be provided with equal opportunities to participate in various cultural and arts activities as well as sports. These activities must be viewed as both medium of expression and medium of realizing self-satisfying, quality of life.

#### *G. Sports*

Competitive and non-competitive sports activities must be designed to include children with disabilities in an inclusive manner, whenever possible. That is to say, a child with a disability who is able to compete with children with no disability should be encouraged and supported to do so. But sports are an area where, because of the physical demands of the sport, children with disabilities will often need to have

exclusive games and activities where they can compete fairly and safely. It must be emphasized though that when such exclusive events take place, the media must play its role responsibly by giving the same attention as it does to sports for children with no disabilities(Matrix Hd8).

### ***IX. Special protection measures (Articles 22, 38, 39, 40, 37 b–d, and 32–36)***

#### ***A. Juvenile justice system***

In the light of article 2 States parties have the obligation to ensure that children with disabilities who are in conflict with the law (as described in article 40, paragraph 1) will be protected not only by the provisions of the Convention which specifically relate to juvenile justice (arts. 40, 37 and 39) but by all other relevant provisions and guarantees contained in the Convention, for example in the area of health care and education. In addition, States parties should take where necessary specific measures to ensure that children with disabilities de facto are protected by and do benefit from the rights mentioned above.

With reference to the rights enshrined in article 23 and given the high level of vulnerability of children with disabilities, the Committee recommends – in addition to the general recommendation made in paragraph 73 above – that the following elements of the treatment of children with disabilities (allegedly) in conflict with the law be taken into account:

- a) A child with disability who comes in conflict with the law should be interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard;
- b) Governments should develop and implement alternative measures with a variety and a flexibility that allow for an adjustment of the measure to the individual capacities and abilities of the child in order to avoid the use of judicial proceedings. Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures. Such procedures should only be considered when necessary in the interest of public order. In those cases special efforts have to be made to inform the child about the juvenile justice procedure and his or her rights therein;
- c) Children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pre-trial detention nor by way of a punishment. Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime and the child should be placed in an institution that has the specially trained staff and other facilities to provide this specific treatment. In making such decisions the competent authority should make sure that the human rights and legal safeguards are fully respected.

### *B. Economic exploitation*

Children with disabilities are particularly vulnerable to different forms of economic exploitation, including the worst forms of child labour as well as drug trafficking and begging. In this context, the Committee recommends that States parties which have not yet done so ratify the Convention No. 138 of the International Labour Organization (ILO) concerning the minimum age for admission to employment and ILO Convention No. 182 concerning the prohibition of and immediate action for the elimination of the worst forms of child labour. In the implementation of these conventions States parties should pay special attention to the vulnerability and needs of children with disabilities.

### *C. Street children*

Children with disabilities, specifically physical disabilities, often end up on the streets for a variety of reasons, including economic and social factors. Children with disabilities living and/or working on the streets need to be provided with adequate care, including nutrition, clothing, housing, educational opportunities, life-skills training as well as protection from the different dangers including economic and sexual exploitation. In this regard an individualized approach is necessary which takes full account of the special needs and the capacities of the child. The Committee is particularly concerned that children with disabilities are sometimes exploited for the purpose of begging in the streets or elsewhere; sometimes disabilities are inflicted on children for the purpose of begging. States parties are required to take all necessary actions to prevent this form of exploitation and to explicitly criminalize exploitation in such manner and take effective measures to bring the perpetrators to justice.

### *D. Sexual exploitation*

The Committee has often expressed grave concern at the growing number of child victims of child prostitution and child pornography. Children with disabilities are more likely than others to become victims of these serious crimes. Governments are urged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) and, in fulfilling their obligations to the Optional Protocol, States parties should pay particular attention to the protection of children with disabilities recognizing their particular vulnerability.

### *E. Children in armed conflict*

As previously noted above, armed conflicts are a major cause of disabilities whether children are actually involved in the conflict or are victims of combat. In this context, Governments are urged to ratify and implement the Optional Protocol on the involvement of children in armed conflict (OPAC). Special attention should be paid to the recovery and social re-integration of children who suffer disabilities as a result of armed conflicts. Furthermore, the Committee recommends that States parties explicitly exclude children with disabilities from recruitment in armed forces and take the necessary legislative and other measures to fully implement that prohibition.

### *F. Refugee and internally displaced children, children belonging to minorities and indigenous children*

Certain disabilities result directly from the conditions that have led some individuals to become refugees or internally displaced persons, such as human-caused or natural disasters. For example, landmines and unexploded ordnance kill and injure refugee, internally displaced and resident children long after armed conflicts have

ceased. Refugee and internally displaced children with disabilities are vulnerable to multiple forms of discrimination, particularly refugee and internally displaced girls with disabilities, who are more often than boys subject to abuse, including sexual abuse, neglect and exploitation. The Committee strongly emphasizes that refugee and internally displaced children with disabilities should be given high priority for special assistance, including preventative assistance, access to adequate health and social services, including psychosocial recovery and social reintegration. The Office of the United Nations High Commissioner for Refugees (UNHCR) has made children a policy priority and adopted several documents to guide its work in that area, including the Guidelines on Refugee Children in 1988, which are incorporated into UNHCR Policy on Refugee Children. The Committee also recommends that States parties take into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside of their country of origin.

All appropriate and necessary measures undertaken to protect and promote the rights of children with disabilities must include and pay special attention to the particular vulnerability and needs of children belonging to minorities and indigenous children who are more likely to be already marginalized within their communities. Programmes and policies must always be culturally and ethnically sensitive.

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