



# **Achieving Transformative Equality for Persons with Disabilities:** Submission to the CRPD Committee for General Comment No.6 on Article 5 of the UN Convention on the Rights of Persons with Disabilities

Sandra Fredman FBA, QC (hon), Rhodes Professor of Law, University of Oxford  
Meghan Campbell, Lecturer in Law, University of Birmingham  
Shreya Atrey, Lecturer in Law, University of Bristol  
Jason Brickhill, DPhil Candidate, University of Oxford  
Nomfundo Ramalekana, DPhil Candidate, University of Oxford  
Sanya Samtani, DPhil Candidate, University of Oxford



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The views expressed in this paper are those of its independent authors.

## Executive Summary

We welcome General Comment No. 5 which is an important evolution in the concept of equality. However, we believe it can be significantly clarified and strengthened in four main ways.

First, the meaning of equality should be clearly defined and consistently applied. We recommend that a four dimensional evaluative framework be incorporated.<sup>1</sup> This would give clarity and strength to the conception of transformative equality frequently referred to but not defined in the General Comment. This conception requires that, to achieve transformative equality, measures must (i) redress the social and economic disadvantage associated with disability; (ii) address stigma, stereotyping, prejudice and violence on the basis of disability; (iii) enhance participation and voice of people with disabilities and (iv) accommodate difference by achieving structural change. These dimensions need to be considered simultaneously in evaluating whether a measure advances equality. Such a conception would give states clearer guidance and enable the Committee to evaluate state performance in a consistent manner.

Secondly, specific measures should be regarded as an essential element of transformative equality rather than an exception. This means that specific measures should constitute a mandatory positive obligation on states. Furthermore, to fully address the structural and systemic nature of discrimination that persons with disabilities experience, specific measures should be designed to address the four dimensions of transformative equality. First, such measures should redistribute material resources, including jobs, education, skills development and training. Second, they should dismantle stereotypes, stigma and prejudice; prevent and redress violence; and positively affirm the dignity and equal worth of persons with disabilities. Thirdly, they should ensure that persons with disabilities are involved in all decisions affecting them. Fourth, they should render participation in social life and institutions an actual realisable possibility through structural and systematic change, including reasonable accommodation and access obligations.

Thirdly, we recommend the adoption of a clearer definition of intersectional discrimination for the purposes of Article 5(2). Inspired by the work of the CEDAW Committee, we recommend that the current definition in paragraph 20(e) of the General Comment be replaced by: 'Intersectional discrimination, which occurs when persons with disabilities suffer discrimination in any form, including direct and indirect discrimination, denial of reasonable accommodation, and harassment, on the basis of disability combined with race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.' This definition conveys the synergistic nature of intersectional discrimination; eliminates the confusing references to grounds/characteristics/life circumstances and identities; and provides for a list of grounds which is consistent with other references in the General Comment while remaining open ended. We further recommend that the separate definition of 'multiple discrimination' be removed, as it is subsumed into the broader

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<sup>1</sup> Sandra Fredman, *Discrimination Law* 2<sup>nd</sup> ed (Clarendon, 2011) 18; Sandra Fredman, 'Substantive Equality Revisited' (2016) 14(3) Int'l J of Con L 712;

definition recommended above. Finally, we recommend twin-tracking references to intersectional discrimination in relation to specific measures, remedies and disaggregated data.

Fourthly, we recommend that the General Comment stress that reasonable accommodation and undue burden be assessed from the perspective of persons with disabilities. We further recommend that the General Comment remind states that, in calculating reasonable accommodation and undue burden, appropriate weight be given to the impact of not accommodating persons with disabilities.

## Transformative Equality

Equality is a complex and contested concept. It is crucial that the CRPD Committee provide guidance on the meaning of equality that is clear, consistent, easy for states to apply, and for the Committee to draw on in its Concluding Observations and at the same time, nuanced and sophisticated. The General Comment is a significant evolution in the concept of equality at international human rights law, notably in explicitly embracing transformative equality. However, there remain areas of the General Comment that are underdeveloped; risk generating confusion; or being misinterpreted by the states.

### I. Beyond Equality of Opportunity

Paragraphs 9 and 10 refer to equality of opportunities and describe it as a 'fundamental concept'. We submit that providing equality of opportunities on its own is not, however, able to fully break cycles of disadvantage experienced by persons with disabilities.<sup>2</sup> This is because in practice equality of opportunity has been used procedurally rather than substantively, for example, to remove word-of-mouth job recruitment. It has rarely been used to ensure that persons with disabilities have the education, support and skills to achieve success in the labour market.

Although equality of opportunity is referred to in the CRPD, to avoid confusion, we submit that the General Comment needs to make explicit that equality of opportunity is but one link in achieving a larger understanding of equality, and that it has now given way to a more finely calibrated model.<sup>3</sup>

#### **We recommend the following addition to paragraph 10:**

This definition of equalization of opportunities marks a significant development from a formal model of equality to a substantive model of equality. **The concept of equality in the CPRD, however, goes beyond equality of opportunity.**

Similarly, paragraph 18 conflates equality of opportunity and transformative equality. **We recommend that reference to equality of opportunity in paragraph 18 should be removed and replaced with transformative equality.**

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<sup>2</sup> Sandra Fredman, *Discrimination Law* 2<sup>nd</sup> ed (Clarendon, 2011) 18.

<sup>3</sup> Sandra Fredman, 'Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights' in I. Boerefijn et al, eds, *Temporary Special Measures* (Intersentia, 2003).

## II. Meaning of Transformative Equality

The General Comment embraces transformative equality but fails to provide a coherent definition of the term. Without a clear definition, the General Comment provides insufficient guidance to states on the fulfilment of their obligations under the CRPD, or for the Committee to use in evaluating state compliance in its Concluding Observations. Furthermore, without squarely engaging with the meaning of transformative equality, the Committee misses an opportunity to make a landmark contribution to international human rights law.

**We recommend that the Committee explicitly adopt Fredman’s four dimensional model of transformative equality.**<sup>4</sup> This model comprehensively and harmoniously synthesizes many of the elements of equality that are referred to in the General Comment. **It pursues four-overlapping dimensions:**

- **redressing the social and economic disadvantage associated with disability;**
- **addressing stigma, stereotyping, prejudice and violence;**
- **enhancing participation; and**
- **accommodating difference by achieving structural change**

The first dimension requires specific measures to address the social and economic disadvantage associated with disability, including a comprehensive social welfare scheme. Equal treatment is clearly not sufficient. The second element addresses recognition harms such as: harassment, violence, prejudice, stereotypes, stigmas, negative cultural attitudes, indignity and humiliation. Third, the participation dimension requires inclusion of people with disabilities in all public, private, political and social decision making processes. Fourth, the structural dimension requires institutions rather than individuals to change.<sup>5</sup>

These dimensions need to be considered simultaneously in evaluating whether a measure advances equality. For example, treating people with disabilities as welfare beneficiaries might address material disadvantage among persons with disabilities but reinforce negative stereotypes and perpetuate relations of dependency. Applying the first and second dimensions simultaneously requires states to model social benefits on the basis that persons with disabilities are rights-holders and agents, so that disadvantage can be redressed without

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<sup>4</sup> Sandra Fredman, ‘Substantive Equality Revisited’ (2016) 14(3) Int’l J of Con L 712.

<sup>5</sup> Sandra Fredman and Beth Goldblatt, ‘Discussion Paper: Gender Equality and Human Rights’ (2014) UN Women, <http://www.austlii.edu.au/au/journals/UTSLRS/2014/8.pdf>.

perpetuating stigma and stereotyping. The participation dimension in turn requires persons with disabilities to be involved in decisions that affect them, a central tenet of the CRPD. Similarly, duties of accommodation should be formulated in ways which incorporate the other dimensions, particularly avoiding stereotyping and insisting on participation. Duties of accommodation should also move beyond individual exceptions and include structural change. In this way, the dimensions enrich each other to arrive at a more in-depth analysis.

### III. Transformative Equality as a Monitoring Framework

A preponderance of rights in the CRPD are guaranteed on the 'basis of equality'. In the treaty, therefore, equality is a right, a principle and the test to determine if the state has fulfilled its obligations. The Committee needs to develop tools to monitor if the state has fulfilled its obligations on the basis of equality. None of the treaty bodies have reflected on how best to monitor the implementation of rights on the basis of equality.<sup>6</sup> This is another opportunity for the Committee to break new ground and is a further compelling reason for adopting Fredman's four-dimensional model of equality.<sup>7</sup> This model offers an evaluative framework and criteria 'to determine whether a law, policy, practice or institution is likely to fulfill the right to equality and points to ways in which they should be reformed better to do so.'<sup>8</sup>

Achieving equality for persons with disabilities is challenging. It can be difficult to detect inequalities; and measures that on the surface appear to enhance equality might in practice reinforce inequalities. The strength of the four dimensional model is its ability to grapple with these complexities. It offers an easy to use but rigorous framework for states on how to develop laws, policies and programmes that achieve transformative equality for persons with disabilities. This is imperative in providing guidance to states in how to translate the open-textured obligations in the CRPD to the state's unique legal, political, economic and cultural context and in crafting tailored recommendations for states in the Committee's Concluding Observations.

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<sup>6</sup> Meghan Campbell, 'Women's Rights and the Convention on the Elimination of Discrimination Against Women: Unlocking the Potential of the Optional Protocol' (2016) 34(4) *Nordic Journal of Human Rights* 242.

<sup>7</sup> Meghan Campbell, 'Monitoring Women's Socio-Economic Equality Under ICESCR' (2018) *Canadian Journal of Women and the Law* (forthcoming).

<sup>8</sup> Sandra Fredman, 'Substantive Equality Revisited' (2016) 14(3) *Int'l J of Con L* 712, 713.

## Specific Measures: A Facet of Transformative Equality

We submit that paras 29 and 30 of the General Comment, that describe specific measures, are inadequate. A stronger statement on specific measures is required, making their provision a mandatory positive obligation on states. In order to achieve transformative equality, it is not enough to require specific measures only in exceptional cases.

Specific measures are provided for in paragraphs 29 and 30 of the General Comment. It states that specific measures 'are generally not mandatory' and are 'required' only when they are 'deemed necessary to accelerate or achieve de facto equality.'

Under a transformative approach to equality as adopted by the Committee, and understood as submitted in our recommendations above, we submit that specific measures are a necessary component of realising transformative equality for persons with disabilities.

We submit that it is not enough for the Committee to simply assert that the adoption of specific measures does not constitute discrimination. The Committee must support an interpretation of specific measures that is consistent with and illustrative of the four dimensions of transformative equality explained above. The provision of specific measures must thus be considered to play a necessary role in the achievement of the four dimensions of transformative equality. In order to support our proposition, we submit that the Canadian and South African courts have interpreted equality to include, as a necessary component thereof, specific measures.

In the South African Constitutional Court case of *Minister of Finance and Other v Van Heerden*, the Court held, referring to specific measures under section 9(2) of the Constitution, that 'absent a positive commitment progressively to eradicate socially constructed barriers to equality and to root out systematic or institutionalised under-privilege, the constitutional promise of equality before the law and its equal protection and benefit must, in the context of our country, ring hollow.'<sup>9</sup> Similarly, the Canadian Supreme Court in *R v Kapp*, found that the prohibition of discrimination in section 15(1) and the provision for ameliorative measures in section 15(2) of the Canadian Charter of Rights and Freedoms 'work together to promote the vision of substantive equality'.<sup>10</sup> Essentially, in

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<sup>9</sup> *Minister of Finance and Others v Van Heerden* 2004 (6) SA 121 (CC) [31]. See also the four dimensional approach in the South African context: Catherine Albertyn and Sandra Fredman, *Acta Juridica* – 'Equality Beyond Dignity: Multi-dimensional Equality and Justice Langa's Judgments: part III: Reflections on Themes in Justice Langa's Judgments' (2015) 2015 (1) *Acta Juridica* 430.

<sup>10</sup> *R v Kapp* [2008] 2 SCR 483 [16].

addition to acknowledging specific measures as a legitimate means to achieving equality, the Committee must make it clear that the adoption of specific measures constitute a substantive and composite part of the guarantee of equality for persons with disabilities.

While the South African and Canadian interpretations of equality, particularly the meaning of ‘equal protection and equal benefit of the law’, are not decisive or binding on the Committee, we submit that these approaches should be taken as persuasive in interpreting the scope of transformative equality. We provide two reasons in support of our submission. First, as noted by the Committee,<sup>11</sup> the drafting history of the CRPD reveals that, like the South African and Canadian approaches, the provisions in Articles 5(1)-(4) embody a substantive and transformative rather than a formal view of equality. Secondly, the text in both the Canadian Charter of Fundamental Rights and Freedoms<sup>12</sup> and the South African Constitution<sup>13</sup> use the same language of equal protection and equal benefit of the law, as of that in the Article 5(1) of the CRPD. Indeed, as noted by the Committee, the Canadian provision influenced the drafting of the equality provision in the CRPD. The Canadian provision also influenced the drafting of the South African Constitution’s guarantee of the right to equality.

We further submit that it is inadequate for the General Comment to simply identify a category of exceptional cases wherein specific measures are ‘required’ or ‘deemed necessary’. The Committee must bear in mind the deeply embedded structural and systemic ways in which persons with disabilities have been discriminated against and in doing so, articulate a stronger position in relation to the protection and advancement of equality of persons with disabilities.

Finally, the scope of the current category of exceptions is vague and open to abuse. It is highly likely that states will invariably argue that specific measures are not strictly ‘necessary’ for the achievement of transformative equality, and that the ‘essence’ of the protection of a human right was not threatened by the failure to provide for such measures.

In light of the above submissions, **we recommend that paragraph 30 be replaced by:**

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<sup>11</sup> Committee, Draft General Comment No. 5 [19].

<sup>12</sup> Section 15(1) of The Canadian Charter of Rights and Freedoms: Every individual is *equal before and under the law* and has the right to the *equal protection and equal benefit of the law* without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

<sup>13</sup> Section 9 of the South African Constitution: (1) Everyone is equal before the law and has the right to equal protection and benefit of the law; (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

**Specific measures are necessary for the achievement of transformative equality. States should adopt temporary or permanent specific measures under Article 5 (4) of the CRPD to ensure that the right to equality of persons with disabilities is realised. A failure to do so could render the right to equality a mere formal guarantee, without substantive and transformative effect.**

**Specific measures are necessary to address the structural and systemic nature of discrimination that persons with disabilities experience. To do this however, these measures must be designed to address the four dimensions of transformative equality. First, such measures should redistribute material resources, including jobs, education, skills development and training. Second, they should dismantle stereotypes, stigma and prejudice; prevent and redress violence; and positively affirm the dignity and equal worth of persons with disabilities. Thirdly, they should ensure that persons with disabilities are involved in all decisions affecting them. Fourth, they should render participation in social life and institutions an actual realisable possibility through structural and systematic change, including reasonable accommodation and access obligations.**

## Intersectional Discrimination

We recommend the adoption of a clearer definition of intersectional discrimination for the purposes of Article 5(2), and suggest two principal amendments to the General Comment in this regard, to the meaning of intersectional discrimination and for twin-tracking intersectional discrimination.

### I. The Meaning of ‘Intersectional Discrimination’

The current definition at paragraph 20(e) of the General Comment provides that: ‘Intersectional discrimination when a person having a status or a characteristic associated with one or more prohibited grounds is discriminated on several prohibited grounds or statuses. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation and as harassment.’

We submit that this definition is vague and unclear. It uses too many unexplained terms such as statuses, characteristics, and grounds; elsewhere the General Comment uses ‘life circumstances’ and ‘identities’ to define intersectional discrimination. It also does not link intersectional discrimination to disability which is important in the present context.

**We recommend that the current definition be replaced by:**

**‘Intersectional discrimination, which occurs when persons with disabilities suffer discrimination in any form, including direct and indirect discrimination, denial of reasonable accommodation, and harassment, on the basis of disability combined with race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.’**

This definition is inspired by the work of the CEDAW Committee which is at the forefront of recognising intersectional discrimination in international human rights law.<sup>14</sup> We think that this definition is more accessible for five reasons. First, the operative word in this definition is ‘combined’ which neatly explains the

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<sup>14</sup> The CEDAW Committee, ‘General Recommendation No. 28 on the Core Obligations’ (2010) CEDAW/C/GC/28 [18]. Followed in: The CEDAW Committee, ‘General Recommendation No. 34 on Rights of Rural Women’ (2016) CEDAW/C/GC/34 [14] [15]; The CEDAW Committee, ‘General Recommendation No. 35 on Gender-based Violence against Women; (2017) CEDAW/C/GC/25 [12] [23] [28] [37b] [41] [43] [48] [49] [50]].

nature of intersectional discrimination by conveying that intersectional discrimination based on two or more grounds is inextricably synergistic and hence cannot be separated out into discrimination based on each ground individually.<sup>15</sup> Secondly, the definition eliminates confusing references to grounds/statuses/characteristics/life circumstances/identities.<sup>16</sup> Thirdly, the grounds listed in this definition are consistent with the grounds listed in the CRPD in preamble paragraph (p) while ultimately being open-ended ('or other status'). Fourthly, the definition corresponds with the definitions of direct, indirect, denial of reasonable accommodation and harassment in paragraphs 20(a)-(d). Fifthly, it establishes the connection with intersectional discrimination and other forms of discrimination in a seamless way.<sup>17</sup>

## II. Intersectional Discrimination is Distinct from Multiple Discrimination

The distinction between multiple and intersectional discrimination as proposed in the General Comment in paragraph 22(1) is vague and confusing. We urge the Committee to remove the separate definition of 'multiple discrimination' and adopt a single phrase and definition of 'intersectional discrimination', for consistency and clarity.

The distinction between multiple and intersectional discrimination is artificial and conceptually ill-advised. On one hand, multiple discrimination assumes that persons with disabilities can face multiple discrimination based on several grounds in a way such that discrimination can be separated out into individual grounds. This gives the impression that where two or more grounds are involved, discrimination can potentially be divided up based on each ground separately to establish discrimination. On the other hand, intersectional discrimination is 'inseparable'. The concept of intersectionality and intersectional discrimination fundamentally opposes the notion of multiple discrimination adopted in the General Comment.<sup>18</sup>

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<sup>15</sup> See also an illustration of this concept in the context of gender violence, Shreya Atrey, 'Lifting as We Climb: Recognising Intersectional Gender Violence in Law' (2015) 5(6) *Oñati Socio-Legal Series*. Available at SSRN: <https://ssrn.com/abstract=2709972>

<sup>16</sup> Meghan Campbell, 'CEDAW and Women's Intersecting Identities: A Pioneering Approach to Intersectionality' (2015) *Revista Direito GV* 479.

<sup>17</sup> For instance, in the EU context, see Sandra Fredman, 'Intersectional Discrimination in EU gender equality and non-discrimination law, Report for the European Network of legal experts in gender equality and non-discrimination' (2016) European Commission <http://ec.europa.eu/justice/gender-equality/document/files/intersectionality.pdf>

<sup>18</sup> Shreya Atrey, 'Fifty years On: The Curious Case of Intersectional Discrimination in the ICCPR' (2017) 35(3) *Nordic Journal of Human Rights* 220.

Although there is reference to multiple discrimination in the preamble and has been used in relation to discrimination against women with disabilities,<sup>19</sup> this is no bar in now dropping the reference to multiple discrimination and adopting the more inclusive and broader understanding of intersectional discrimination. The CEDAW Committee has done just this: its current view on intersectional discrimination having developed from earlier references to multiple discrimination to the more nuanced intersectional discrimination now. Since adopting the more sophisticated explanation of intersectionality and intersectional discrimination in General Recommendation No. 28, the CEDAW Committee has dropped the reference to multiple discrimination all together. This is most noticeable in the updated General Recommendation No. 35 on violence against women which only uses the terms ‘intersectional discrimination’ and ‘intersecting forms of discrimination’. We suggest that the CRPD Committee also adopt this approach.

**We recommend the deletion of references to ‘multiple’ discrimination at these points and retaining only ‘intersectional discrimination’: paragraphs 3, 10, 22, 33, 38, 41, 42, 44, 73(c), 73 (I) of the General Comment.**

### III. Twin-Tracking Intersectional Discrimination

In addition to the two principal amendments suggested above, we recommend twin-tracking the reference to intersectional discrimination at these relevant points:

#### (i) Specific Measures Under Article 5(4)

**In paragraph 28, include reference to intersectional discrimination in addition to structural and systemic discrimination.**

**In paragraph 37, recommend that states identify subgroups of persons with disabilities that need specific measures to accelerate or achieve transformative equality, including those who suffer from intersectional discrimination.**

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<sup>19</sup> The Committee, ‘General Comment No. 3 on Article 6 Girls and Women with Disabilities’ (2016) CRPD/C/GC/3.

## **(ii) Remedies**

**At paragraph 23 and paragraph 76(h), recommend that the state provide for appropriate and effective remedies in relation to intersectional discrimination.** This is keeping in mind general remedies for disability discrimination will be inadequate for and different from disability discrimination which is intersectional in nature.

## **(iii) Disaggregate Data**

**In paragraph 76(k), recommend that data in relation to inclusive equality policies be disaggregated further on the basis of ‘race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status’.**

**In paragraph 75, recommend that data be disaggregated on the basis of ‘race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status’.** The Committee must adopt a single consistent open-ended list of grounds rather than a variable list which appears in the General Comments at different places.

## Reasonable Accommodation and Undue Burden

The General Comment appropriately identifies the duty of reasonable accommodation and emphasises its importance in giving effect to the CRPD.

The General Comment recognises at paragraph 25 that reasonable accommodation must be ‘negotiated with the individual person with a disability concerned’ and that the choices of the individual must be taken into account. It further notes that ‘reasonable’ should be understood as relating to effectiveness (paragraph 26). **We recommend that it be made clear, by adding a further factor to paragraph 27, that whether an accommodation is effective so as to render it reasonable must be assessed from the perspective of the individual person with disability concerned.**

This section of the General Comment further discusses the concept of disproportionate or undue burden. Paragraph 27(b) confirms that cost is a factor in determining whether an accommodation would impose a disproportionate or undue burden, but not a factor in determining whether the accommodation is reasonable. It is unclear in paragraph 27(e) where it identifies a set of ‘potential factors’ whether these factors relate to reasonableness or to whether a disproportionate or undue burden is imposed. **We recommend clarifying that the factors in paragraph 27(e) relate to disproportionate or undue burden and not to reasonableness.**

In considering whether a disproportionate or undue burden is imposed, in individual cases, it is important to reiterate that it is these public authorities and institutions and private persons, organisations or enterprises on whom the duty to provide reasonable accommodation rests. In assessing whether reasonable accommodation imposes a disproportionate or undue burden, the relative positions of these parties must be borne in mind. In individual cases, even if the reasonable accommodation would impose a significant burden on the duty bearer, such as a public authority or private enterprise, the burden may still not be disproportionate or undue when assessed in light of the burden that it would constitute for the individual person with disability. We recommend adding this explanation to paragraph 27:

State parties have obligations to ensure that public authorities and institutions do not discriminate and to take appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise.<sup>20</sup> In individual cases, it is these public authorities and institutions and private persons,

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<sup>20</sup> Article 4(d) and (e) of the CRPD.

organisations or enterprises on whom the duty to provide reasonable accommodation rests. In assessing whether reasonable accommodation imposes a disproportionate or undue burden, the relative positions of these parties must be borne in mind. Even if the reasonable accommodation would impose a significant burden on the duty bearer, the burden may still not be disproportionate or undue when assessed in light of the burden that it would constitute for the individual person with disability.

## Recommendations

We recommend:

1. **After the first sentence, in the paragraph 10, that the Committee adds the sentence: The concept of equality in the CPRD, however, goes beyond equality of opportunity.**
2. **Remove 'equality of opportunity' and replace it with transformative equality in paragraph 18.**
3. **Define transformative equality as including the four dimensions: (i) redressing disadvantage; (ii) addressing stigma, stereotyping, prejudice and violence on the basis of disability; (iii) enhancing participation and voice of people with disabilities and (iv) accommodating difference by achieving structural change.**
4. **The four dimensions of transformative equality be employed as a monitoring device for the Concluding Observations and Individual Communications.**
5. **That paragraph 30 be replaced with:**

**Specific measures are necessary for the achievement of transformative equality. States should adopt temporary or permanent specific measures under Article 5 (4) of the CRPD to ensure that the right to equality of persons with disabilities is realised. A failure to do so could render the right to equality a mere formal guarantee, without substantive and transformative effect.**

**Specific measures are necessary to address the structural and systemic nature of discrimination that persons with disabilities experience. To do this however, these measures must be designed to address the four dimensions of transformative equality. First, such measures should redistribute material resources, including jobs, education, skills development and training. Secondly, they should dismantle stereotypes, stigma and prejudice; prevent and redress violence; and positively affirm the dignity and equal worth of persons with disabilities. Thirdly, they should ensure that persons with disabilities are involved**

**in all decisions affecting them. Fourthly, they should render participation in social life and institutions an actual realisable possibility through structural and systematic change, including reasonable accommodation and access obligations.**

- 6. Intersectional discriminations should be defined as ‘Intersectional discrimination, which occurs when persons with disabilities suffer discrimination in any form, including direct and indirect discrimination, denial of reasonable accommodation, and harassment, on the basis of disability combined with race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.’**
- 7. The deletion of references to ‘multiple’ discrimination at these points and retaining only ‘intersectional discrimination’: paragraphs 3, 10, 22, 33, 38, 41, 42, 44, 73(c), 73 (l) of the General Comment.**
- 8. In paragraph 28, include reference to intersectional discrimination in addition to structural and systemic discrimination.**
- 9. In paragraph 37, recommend that states identify subgroups of persons with disabilities that need specific measures to accelerate or achieve transformative (inclusive) equality, including those who suffer from intersectional discrimination.**
- 10. Paragraph 23 and paragraph 76(h), recommend that the state provide for appropriate and effective remedies in relation to intersectional discrimination.**
- 11. Paragraph 75 and 76(k) include reference to intersectional discrimination and disaggregated data.**
- 12. The addition to paragraph 27 of a new paragraph 27(d) after the current paragraph 27(c) to read ‘Whether an accommodation is effective so as to render it reasonable must be assessed from the perspective of the individual person with disability concerned’.**
- 13. Adding to paragraph 27(e) after the words ‘Potential factors to be considered...’ the words ‘in assessing whether reasonable accommodation would impose a disproportionate or undue burden’.**
- 14. Adding to the end of paragraph 27(e) a new paragraph to read:**

**State parties have obligations to ensure that public authorities and institutions do not discriminate and to take appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise.<sup>21</sup> In individual cases, it is these public authorities and institutions and private persons, organisations or enterprises on whom the duty to provide reasonable accommodation rests. In assessing whether reasonable accommodation imposes a disproportionate or undue burden, the relative positions of these parties must be borne in mind. Even if the reasonable accommodation would impose a significant burden on the duty bearer, the burden may still not be disproportionate or undue when assessed in light of the burden that it would constitute for the individual person with disability.**

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<sup>21</sup> Article 4(d) and (e) of the CRPD.