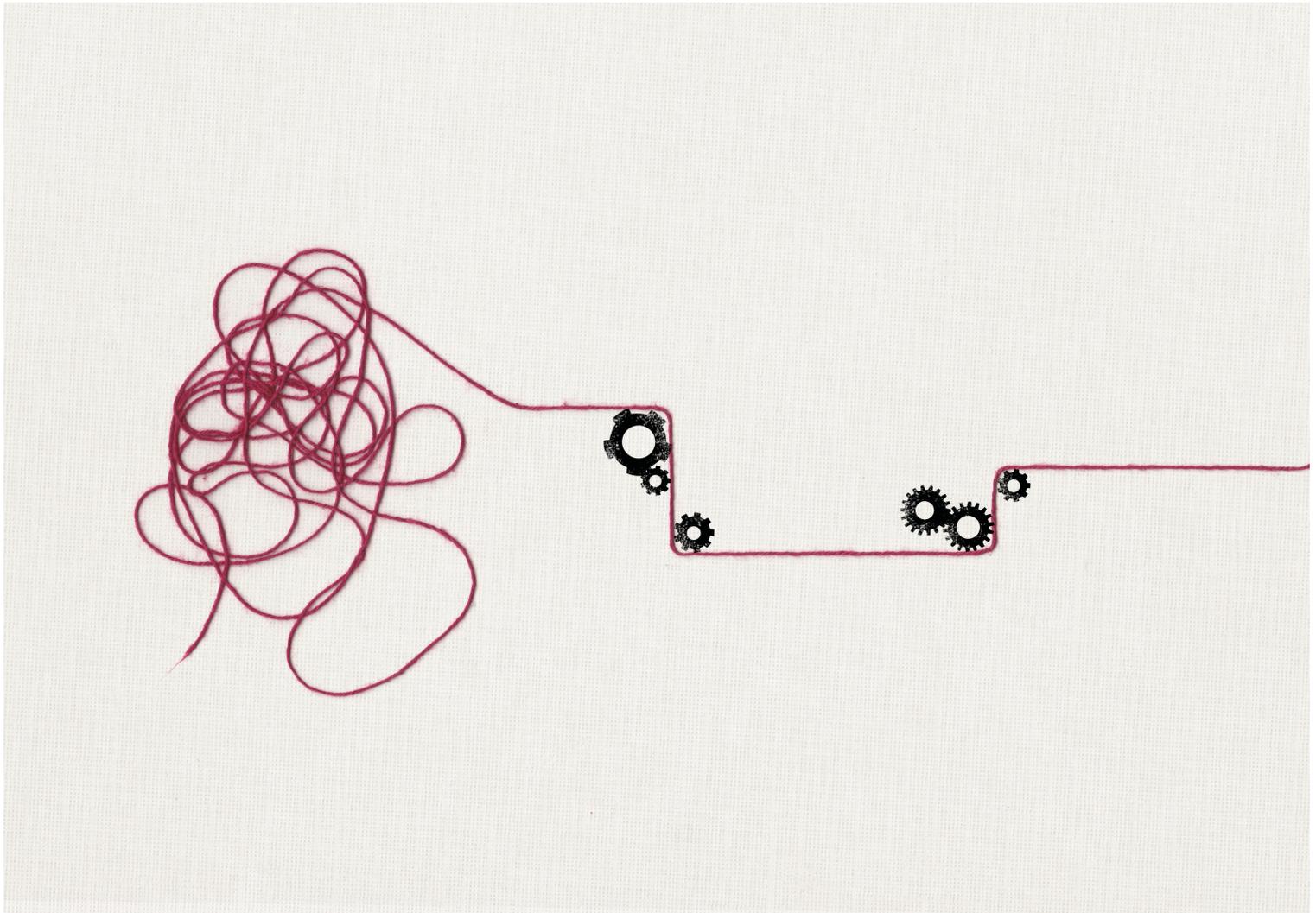


# THE UN COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES AND CHILDREN'S RIGHTS - AN ANALYSIS



**Acknowledgements:**

Illustrations by Miriam Sugranyes Coca

Designed by Remember Creative

First published December 2015

Child Rights International Network is a charity registered in England and Wales (1125925). Registered Company No. 6653398.

CRIN encourages personal and educational use of this publication and grants permission for its reproduction in this capacity where proper credits are given in good faith.

# CONTENTS

## **Introduction**

### **Rationale**

### **Methodology**

### **An analysis of children's rights in the work of the Committee on the Rights of Persons with Disabilities**

Article 1 - Purpose

Article 2 - Definitions

Article 3 - General principles

Article 4 - General obligations

Article 5 - Equality and non-discrimination

Article 6 - Women with disabilities

Article 7 - Children with disabilities

Article 8 - Awareness-raising

Article 9 - Accessibility

Article 10 - Right to life

Article 11 - Situations of risk and humanitarian emergencies

Article 12 - Equal recognition before the law

Article 13 - Access to justice

Article 14 - Liberty and security of the person

Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

Article 16 - Freedom from exploitation, violence and abuse

Article 17 - Protecting the integrity of the person

Article 18 - Liberty of movement and nationality

Article 19 - Living independently and being included in the community

Article 20 - Personal mobility

Article 21 - Freedom of expression and opinion, and access to information

Article 22 - Respect for privacy

Article 23 - Respect for and the family

Article 24 - Education

Article 25 - Health

Article 26 - Habilitation and rehabilitation

Article 27 - Work and employment

Article 28 - Adequate standard of living and social protection

Article 29 - Participation in political and public life

Article 30 - Participation in cultural life, recreation, leisure and sport

## **Key findings and recommendations**

### **Annex 1: Children's rights in the concluding observations of the Committee**

PART I

INTRODUCTION

“Children with disabilities and their families constantly experience barriers to the enjoyment of their basic human rights and to their inclusion in society. Their abilities are overlooked, their capacities are underestimated and their needs are given low priority. Yet, the barriers they face are more frequently as a result of the environment in which they live than as a result of their impairment.”<sup>1</sup>

All human rights apply to children, but even with the advent of the Convention on the Rights of the Child (CRC) 25 years ago, which set out specific rights for children, violations of the rights of children with disabilities continue unabated.

The rights of children with disabilities are specifically recognised in article 23 of the CRC, but the Convention on the Rights of Persons with Disabilities (the Convention) and its Optional Protocol establishing a complaints procedure expand these rights. These treaties were adopted on 13 December 2006 and entered into force on 3 May 2008. Together, they challenge the medicalisation of disability which locates the “problem” with the individual - a problem to be met with charity. Instead they focus on the human rights of persons with disabilities. In other words, they recognise that it is not individuals’ impairments that are disabling as such; but rather the attitudes and environment around them that are disabling and stop them from accessing society. This puts the onus on the State and others to guarantee their rights and provide avenues for redress where these are violated.

All the rights recognised in the Convention apply to children with disabilities, and in fact, the number of specific references to children in the Convention is second only to the CRC among the UN’s core human rights conventions.

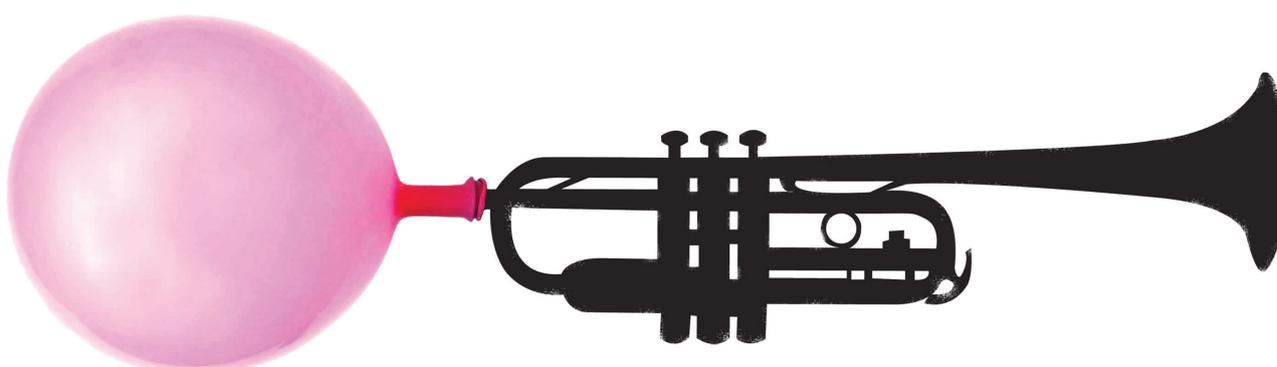
States’ obligations under this Convention are reviewed by the Committee on the Rights of Persons with Disabilities (the Committee), which provides a strong platform to bolster guarantees for children with disabilities.

In this context, in 2011, CRIN launched the Children’s Rights Wiki (the Wiki),<sup>2</sup> an online tool which brings together all information about children’s rights country by country. The aim is to draw a clear picture of persistent violations of children’s rights in a given country, as raised by UN human rights mechanisms, with the eventual goal of matching them with avenues of redress. The extracts also reveal gaps in reporting on certain violations of children’s rights by civil society.

This analysis of children’s rights in the concluding observations and general comments of the Committee looks at how the Convention is interpreted for children, focusing on the most frequently raised violations as well as those that are rarely - if ever - addressed.

The aim is twofold: we hope to encourage the Committee to address all children’s rights, and to help advocates strengthen their reporting on children’s rights issues.

The analysis is evolving, rather than comprehensive, and is meant as a starting point for others to take on. We welcome comments at [info@crin.org](mailto:info@crin.org)



1 Innocenti Research Centre, Promoting the Rights of Children with Disabilities, Digest no.13, 2007, available at: [http://www.un.org/esa/socdev/unyin/documents/children\\_disability\\_rights.pdf](http://www.un.org/esa/socdev/unyin/documents/children_disability_rights.pdf).

2 The Wiki includes extracts of recommendations issued by UN human rights mechanisms, such as UN special procedures and treaty bodies, including the Committee on Economic, Social and Cultural Rights, the Universal Periodic Review (UPR), as well as relevant regional and international court decisions. The Wiki is available at: [http://wiki.crin.org/wiki?title=Main\\_Page](http://wiki.crin.org/wiki?title=Main_Page). At a later stage the information in the Wiki will only be available on CRIN's main website.

PART II

METHODOLOGY

The following analysis stems from a thorough study of all references to children's rights made by the Committee, mainly through its concluding observations. It is based on an interpretation of the rights of children with disabilities and how every right enshrined in the Convention applies to children.

The Wiki enabled us to assemble extracts of all children's rights recommendations made by the Committee to all States parties to the Convention. We also researched how the Committee's general comments address children's rights.

As a next step, we clustered all extracts of the concluding observations for each country under the relevant articles of the Convention (see annex 1). This allowed us to see gaps in how recommendations cover children's rights.

While analysing the results, we took into account that apparent gaps in the review of States' compliance with certain rights are not always linked to a failure to highlight violations of these rights for children. Instead they may be linked to other factors such as the lack of available data on the issue for children, or even that the issue doesn't affect children in a particular way.

## PART III

# AN ANALYSIS OF CHILDREN'S RIGHTS IN THE WORK OF THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

The Committee holds two sessions a year during which it reviews State party reports, examines individual complaints about alleged violations of the Convention by States parties and adopts general comments on thematic issues.

The Committee has adopted two general comments relating to the Convention (General Comment 1 on equal recognition before the law and General Comment 2 on accessibility).

It should be emphasised, however, that the Convention is relatively new. At the time of writing, the records of 33 States parties have been reviewed. Concluding observations and general comments have therefore not yet covered violations of children's rights in relation to all the articles of the Convention.

### Article 1 - Purpose

*The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.*

*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.*

Even when they have the same impairments as adults, children with disabilities confront additional challenges. Children with disabilities are often placed in institutions, abandoned or neglected.

Children with disabilities need particular attention and, sometimes extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.

### Article 2 - Definitions

*For the purposes of the present Convention:*

*“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;*

*“Language” includes spoken and signed languages and other forms of non-spoken languages;*

*“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;*

*“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportional*

*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.*

Language plays a key role in reinforcing or challenging negative stereotypes of disability, it can also create a barrier to the full and effective participation and inclusion in society of children with disabilities.

Practices, attitudes and language must change in order to effectively promote the creation of inclusive environments in which the rights of all children, including those with disabilities, are respected and valued.

### 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;*

*(b) Non-discrimination;*

*(c) Full and effective participation and inclusion in society;*

*(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*

*(e) Equality of opportunity;*

*(f) Accessibility;*

*(g) Equality between men and women;*

*(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*

The Convention's general principles include respect for the evolving capacities of the child and children's right to preserve their identity. The preamble of the Convention recognises that children with disabilities have full enjoyment of all human rights on an equal basis with others and several articles make explicit reference to their rights.

While introducing the principle of autonomy and independence, article 3 also includes a requirement to respect the evolving capacities of children with disabilities.<sup>1</sup>

Article 5 of the Convention on the Rights of the Child (CRC) on parental guidance and the child's evolving capacities introduces the idea that children should be able to exercise their rights as they acquire the competence to do so. Article 5 seeks to

<sup>1</sup> Save the Children, See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthash.PfQVg7hs.dpuf>

encourage respect for children's capacity to exercise their rights and involve them in decisions, while balancing this with their relative lack of experience to protect them from harm, such as violence and economic exploitation.

Many references to children with disabilities in the concluding observations are very general, for example, recommendations to "provide special protection"<sup>2</sup> to children with disabilities or end discrimination against them. While in theory, these recommendations cover a wide range of rights violations (nearly all violations of the Convention can arguably be considered "discrimination"), their very general nature necessarily makes them less useful for advocacy.<sup>3</sup>

#### **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;*

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

*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. 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.*

*4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.*

*5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.*

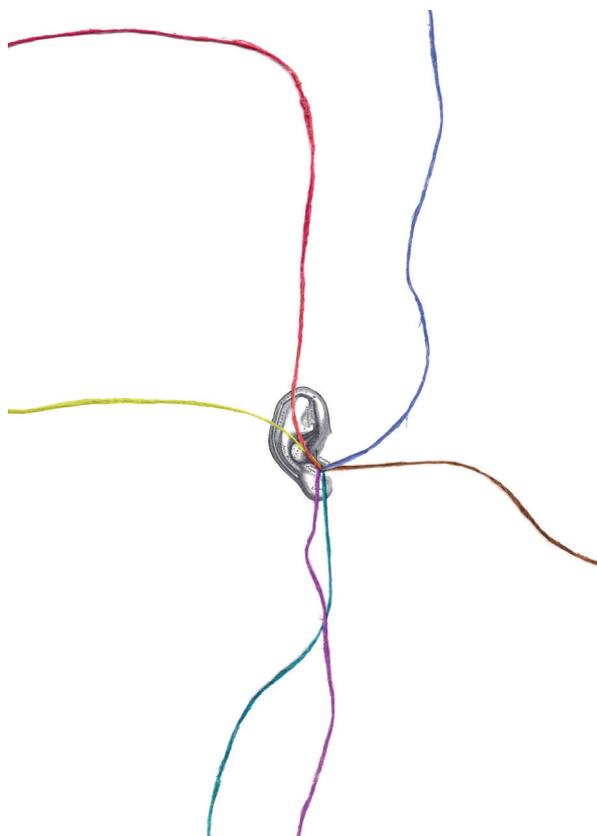
Children with disabilities face particular difficulties in securing their civil and political rights. Article 4 explicitly requires that children with disabilities be consulted when States parties are developing and implementing legislation and policies. This includes a wide range of formal decision-making processes - from court hearings to custody decisions through to decisions about health and environmental policy.

The Committee almost systematically calls on States to ensure the right of children with disabilities to express their views on all matters concerning them and often reminds them that children must be actively involved in the planning, implementation, monitoring and evaluation of the strategy to realise their rights.<sup>4</sup>

<sup>2</sup> See Peru, 2012, CRPD/C/PER/CO/1.

<sup>3</sup> Elinor Milne, To what extent are the rights of children with disabilities included in the work of the United Nations Committee on the Rights of Persons with Disabilities?, Master's Thesis, September 2014, on file with CRIN.

<sup>4</sup> See for example: Argentina, 2012, CRPD/C/ARG/1.



### 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.

The Committee has raised issues around the discrimination faced by indigenous and minority children with disabilities,<sup>5</sup> for example the barriers Maori children face in accessing government services in New Zealand<sup>6</sup> and discrimination against children with disabilities in the education system in Croatia.<sup>7</sup>

5 See Peru, 2012, CRPD/C/PER/CO/1.

6 See New Zealand, 2014, CRPD/C/NZL/CO/1.

7 See Croatia, 2015, CRPD/C/HRV/CO/1.

The Committee has expressed concern about discrimination against children with disabilities because of their age during its review of the Czech Republic.<sup>8</sup>

Article 5 introduces specific measures which elaborate and strengthen the provisions in the CRC by requiring that governments prohibit all discrimination on the basis of disability and guarantee effective legal protection for children with disabilities; introducing the concept of 'reasonable accommodation'; and establishing recognition that positive measures introduced to enable children with disabilities to achieve equality are not considered to be discrimination.<sup>9</sup>

Discrimination and harmful treatment suffered by children with disabilities is exacerbated by virtue of their age. Children must enjoy at least the same guarantees and protection afforded to adults. Additionally, States must adapt all proceedings to the particular circumstances of the children involved and develop a child friendly justice system that addresses children's precarious situation in the justice system.

### Article 6 - Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

On the issue of gender, the Committee has made recommendations on a wide range of issues, including: to address the high rates of violence perpetrated against women and girls living in institutions and other segregated settings,<sup>10</sup> the fact that women and girls with disabilities are not properly addressed in legislation,<sup>11</sup> the lack of any specific initiatives aimed at women and girls with disabilities in the education system,<sup>12</sup> the limited access to justice for women and girls with disabilities who are victims of abuse or neglect,<sup>13</sup> and forced sterilisation of women and girls with disabilities despite the existence of legal provisions prohibiting the practice.<sup>14</sup>

8 See Czech Republic, 2015, CRPD/C/CZE/CO/1.

9 Save the Children, See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthash.PfqVg7hs.dpuf>

10 See for example: Australia, 2013, CRPD/C/AU/CO/1 and Croatia, 2015, CRPD/C/HRV/CO/1.

11 See for example: Argentina, 2012, CRPD/C/ARG/1 and Denmark, 2014, CRPD/C/DNK/CO/1.

12 See Denmark, 2014, CRPD/C/DNK/CO/1.

13 See El Salvador, 2013, CRPD/C/SLV/CO/1.

14 See Republic of Korea, 2014, CRPD/C/KOR/CO/1.

The Committee has made several recommendations urging States to incorporate a “gender perspective”, but none to incorporate an age or child perspective. Furthermore, it pays little attention to issues which affect only or mostly girls. This of course reflects a similar issue in the wider UN human rights system, where girls are often overlooked in work on “women and girls”. When they are included, they are seen first and foremost as females and only secondly as children: rights violations which stem from their status as children are therefore easily neglected.<sup>15</sup>

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

Article 7 reaffirms that children with disabilities have the same human rights as all other children. Paragraph 2 and 3 add that the best interests of the child must be a primary consideration in all actions concerning children with disabilities and that they have the right to express their views on all matters affecting them.

Building upon the CRC, the principles summarised in article 7 of the Convention affirm the fundamental rights of all children with disabilities to the entire range of human rights inherent to all children. Requirements for the best interests of the child to be a primary consideration, and to ensure the participation of children themselves in decision-making are particularly important for children with disabilities, whose interests and voices are all too frequently overlooked and undervalued.

The CRC, in its article 23, emphasises the right of children with disabilities to a ‘full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community’. It imposes obligations on States to provide special care and assistance to enable the child to achieve the ‘fullest possible social integration and individual development, including his or her spiritual or cultural development’.

Article 23 is based on “the earlier thinking of disability as a problem located within the individual, needing targeted or special services, rather than the current understanding which locates the multiple barriers in society as the disabling factors impeding the realisation of rights.”<sup>16</sup>

The Convention builds on article 23 of the CRC by introducing specific obligations to remove the barriers that prevent the social inclusion and independence of people with disabilities, including children and takes a step forward by including a broad range of provisions that require States to remove the barriers that impede effective or meaningful participation of children.

### Article 8 - Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:
  - (a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
  - (b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
  - (c) To promote awareness of the capabilities and contributions of persons with disabilities.
2. Measures to this end include:
  - (a) Initiating and maintaining effective public awareness campaigns designed:
    - (i) To nurture receptiveness to the rights of persons with disabilities;
    - (ii) To promote positive perceptions and greater social awareness towards persons with disabilities;
    - (iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
  - (b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
  - (c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
  - (d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

The underestimation of the potential of children with disabilities is perhaps the greatest obstacle to the achievement of their rights. It is important to make all information available to persons with disabilities, their families, service providers and the public to raise awareness of the measures needed to ensure respect for the rights of children with disabilities. Raising chil-

<sup>15</sup> Elinor Milne, To what extent are the rights of children with disabilities included in the work of the United Nations Committee on the Rights of Persons with Disabilities?, Master’s Thesis, September 2014, on file with CRIN.

<sup>16</sup> UNICEF, Discussion paper: Using the human rights framework to promote the rights of children with disabilities, September 2012, available at: [http://www.unicef.org/disabilities/files/Synergies\\_paper\\_V6\\_Web\\_REVISED\(1\).pdf](http://www.unicef.org/disabilities/files/Synergies_paper_V6_Web_REVISED(1).pdf).

dren's awareness of their own rights is also key for overcoming prejudice and discrimination.

### 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 to:

(a) 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) 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) Provide training for stakeholders on accessibility issues facing persons with disabilities;

(d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) 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) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) 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.

The Committee on the Rights of the Child in its General Comment No. 9 on the rights of children with disabilities explains that “[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.”

Children with disabilities, by virtue of their age, are usually more reliant on adults. States must take all appropriate measures to promote their self-reliance and provide special care to support their access to services and achieve their full potential and participation in society.

### 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.

The Committee has made a number of recommendations about violations of children's right to life, including the high risk faced by children with disabilities living in institutions of being targeted by organ traffickers;<sup>17</sup> an increasingly high rate of suicide among persons with disabilities, including children;<sup>18</sup> and the abduction of persons with intellectual disabilities, most of them children.<sup>19</sup>

Children with disabilities are at greater risk of being subject to harmful traditional practices because their lives are often less valued than those of other children because of their impairments or because their disability is considered, in certain cultures, as being a sign of evil.<sup>20</sup>

The Committee on the Rights of the Child in its General Comment No. 9 on the rights of children with disabilities urges State parties “to undertake all the necessary measures required to put an end to these practices, including raising public awareness, passing 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.”

“The right to life is often violated for children with disabilities, both directly and indirectly. In some communities, children with disabilities are abandoned and left to die. Parents who either kill or allow a disabled child to die often attract far lower penalties than if the child were not disabled. In institutions in some countries, children with disabilities are denied food and warmth in order that they will die. In addition, there is a widespread practice in health systems of making a decision that the quality of life of a child with a disability does not justify his or her continued existence and accordingly they are denied either resuscitation, or food and fluids. These decisions to allow

<sup>17</sup> Ukraine, 2015, CRPD/C/UKR/CO1.

<sup>18</sup> See Sweden, 2014, CRPD/C/SWE/CO/1.

<sup>19</sup> See China, 2012, CRPD/C/CHN/CO/1.

<sup>20</sup> See UNICEF WCARO, 2010, Children Accused of Witchcraft: An Anthropological Study of Contemporary Practices in Africa.

a child to die are justified in the best interests of children.”<sup>21</sup>

### **Article 11 - Situations of risk and humanitarian emergencies**

*States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.*

The Committee has urged Mexico to train all civil defence staff to ensure security and protection for persons with disabilities in situations of risk and include a gender and age perspective in that training.<sup>22</sup>

Emergency responses rarely take into account the particular needs of persons with disability. Children are more vulnerable in any emergency situation and children with disabilities are among the most vulnerable. They are more likely to be abandoned or unable to escape; for example, a child in a wheelchair may be unable to flee a natural disaster or gunfire and may be abandoned by her or his family. Children with disabilities can also be directly involved in conflict. They may be pressed into service as fighters, cooks or porters precisely because they are considered to be less valuable.

### **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.*
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.*

In its first General Comment, on equal recognition before the law, the Committee urges States to “examine their laws to ensure that the will and preferences of children with disabilities are respected on an equal basis with other children.”

During its review of the Cook Islands, the Committee raised the need to develop support mechanisms at the community level to promote choice, autonomy and inclusion for children and adults with disabilities. This recommendation was made in light of the current legislation that enables the appointment of a trustee to make legal decisions on behalf of a person with intellectual and/or psychosocial disabilities.<sup>23</sup>

While children must be enjoy legal capacity, this ability is rarely recognised. Under article 12, the CRC requires that States “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”. This means, for example, that children who are able to form their own views should be allowed to make decisions about their health care. Children with mental health problems are very often held in institutions without their consent and may be victims of human rights abuses such as forced sterilisation and abortion, denial of essential pain relief, and the use of involuntary detention as “treatment”. Children must be allowed to express how they ought to be treated and be able to give an informed consent.<sup>24</sup> Where a child lacks capacity to consent, any decision taken concerning the child must be taken in his or her best interests.<sup>25</sup>

### **Article 13 - Access to justice**

1. *States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, includ-*

<sup>23</sup> Cook Islands, 2015, CRPD/C/COK/CO/1.

<sup>24</sup> UN CRC, General Comment No. 4, paragraph 32, available at: <http://www.unicef.org/CRCCom- mitAdolesc.doc>

<sup>25</sup> UN CRC, 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.” See also Colombia Constitutional Court’s case on sterilisation of minors: the Court upheld the national prohibition on performing surgical sterilisation of children, read more here: <https://www.crin.org/en/home/what-we-do/crin-mail/children-court-crinmail-33>.

<sup>21</sup> Save the Children, See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthash.PfqVg7hs.dpuf>

<sup>22</sup> Mexico, 2014, CRPD/C/MEX/CO/1.

ing through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The Committee's recommendations under article 13 to date all relate to women and girls who have been victims of violence and abuse.<sup>26</sup>

Children's ability to enforce their rights and challenge violations, is largely neglected or ignored. Children, or their legal representatives where applicable, must be able to use and trust the legal system to protect their human rights. The importance of access to justice applies equally to children and adults and whether children come into contact with the law as victims, witnesses, offenders or complainants, it is equally important that they are met with a system that understands and respects both their rights and their unique vulnerability. According to the Committee on the Rights of the Child in its General Comment 12 on the right to be heard: "A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms."

The Convention requires that children with disabilities must be able to access the justice system on an equal basis with others.<sup>27</sup> This means governments must provide them with relevant support to enable them to participate in all legal proceedings, including as witnesses, and at investigative and other preliminary stages. This might include interpreting, access to sign language, access to information in accessible and age-appropriate forms, physical access to the courts, sufficient time made available to ensure the child fully understands the court procedures, video-taped interviews, and forms of questioning that promote children's understanding and capacity to express themselves.<sup>28</sup>

## Article 14 - Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;  
(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

The Committee has raised a number of issues relating to violations of children's right to liberty and security, including: the committal of children, women and men with disabilities to homes or psychiatric hospitals without their free and informed consent and for lengthy periods of time,<sup>29</sup> involuntary hospitalisation and forced institutionalisation of children and adults with intellectual and/or psychosocial disabilities,<sup>30</sup> the placement of newborn boys or girls in the custody of the State by their parents solely on the basis of their disability,<sup>31</sup> the over-representation of persons with disabilities in both the prison and juvenile justice systems,<sup>32</sup> and disability-based forced detention of children and adults.<sup>33</sup>

Article 37(b) of the Convention on the Rights of the Child (CRC) clearly states that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". The text of paragraphs 17(b)<sup>34</sup> and 19<sup>35</sup> of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules")<sup>36</sup> is in line with article 37 of the CRC and implies that punitive approaches are not appropriate.

The Convention requires that measures be taken to help children with disabilities

26 See for example El Salvador, 2013, CRPD/C/SLV/CO/1; Germany, 2015, CRPD/C/DEU/CO/1 and Mexico, 2014, CRPD/C/MEX/CO/1.

27 For more information on access to justice for children with disabilities, see the results of Mental Disability Advocacy Centre's two-year study investigating access to justice for children with mental disabilities across ten EU Member States: <http://www.mdac.org/en/accessing-justice-children>

28 See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthash.PfqVg7hs.dpuf>.

29 See Paraguay, 2013, CRPD/C/PRY/CO/1.

30 See Azerbaijan, 2014, CRPD/C/AZE/CO/1.

31 Ibid

32 See Australia, 2013, CRPD/C/AU/CO/1.

33 See Turkmenistan, 2015, CRPD/C/TKM/CO/1.

34 UN General Assembly, UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 29 November 1985, A/RES/40/33, available at: <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>. Paragraph 17(b) "restriction on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum"

35 Ibid, paragraph 19: "the placement of juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period"

36 Ibid, paragraph 19: "the placement of juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period"

get access to justice (see below). It also specifically lays down that all those working in the field of administration of justice, including police and prison staff, must be appropriately trained.

Placement of children in institutional care remains a common response to disability in some parts of the world. In its General Comment No. 7 on implementing child rights in early childhood, the CRC clearly states that “young children should never be institutionalised solely on the grounds of disability.”<sup>37</sup>

Where children with disabilities are charged with or convicted of a criminal offence it may be justifiable to detain them based on the individual’s circumstances, but detention here would have to be justified in the same manner as any other criminal detention and in relation to children would have to take account of the best interests of the child and limitations on detention of children in the criminal setting. Children should be dealt with in a system which rejects retribution and where the only justification for locking up children can be that they pose an assessed serious risk to others’ safety and other ways of minimising this risk are considered inadequate.<sup>38</sup>

The World Report on Violence against Children, issued following the UN Secretary General’s Study on Violence against Children, urges governments to “ensure that detention is only used for child offenders who are assessed as posing a real danger to others, and then only as a last resort, for the shortest necessary time, and following judicial hearing, with greater resources invested in alternative family- and community-based rehabilitation and reintegration programmes.”<sup>39</sup>

### **Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment**

*1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.*

*2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.*

The Committee has raised the issue of coercive and involuntary treatments inflicted on boys and girls with disabilities in men-

tal health care settings, particularly the use of straps, belts or prolonged isolation<sup>40</sup> and other forms of abuse that can amount to cruel, inhuman or degrading treatment against persons with disabilities, that children face in institutions.<sup>41</sup>

Research conducted by UNICEF in 26 countries shows that children with disabilities held in institutions have been given electric shocks, physically restrained for long periods and isolated with the express purpose of causing pain, with the theory that this ‘aversive therapy’ would extinguish behaviour deemed inappropriate. A teacher in the United States described the case of one girl – blind, deaf and non-verbal – who was subjected to electroshock treatment for moaning. It turned out she had a broken tooth.<sup>42</sup>

The UN Special Rapporteur on torture or cruel, inhuman or degrading treatment or punishment, in his 2013 annual report to the UN Human Rights Council, explained that “[c]hildren who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, “in an attempt to fix their sex”, leaving them with permanent, irreversible infertility and causing severe mental suffering.” (para. 77).

The prescription of drugs is often an important component of health care. But over the past several years, lawsuits and investigations have cropped up around the world that raise concerns about not only testing drugs on children, but also administering untested or unnecessary drugs on children.<sup>43</sup>

Children with disabilities are particularly vulnerable to medical interventions to ‘cure’ their conditions, or to experimentation for the purposes of medical research. Article 15 of the Convention explicitly prohibits such interventions without the free consent of the individual.<sup>44</sup>

### **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*

<sup>40</sup> See Sweden, 2014, CRPD/C/SWE/CO/1.

<sup>41</sup> See Ukraine, 2015 CRPD/C/UKR/CO1 and El Salvador, 2013, CRPD/C/SLV/CO/1.

<sup>42</sup> UNICEF, the State of the World’s Children: Children with Disabilities, May 2013, available at [http://www.unicef.org/sowc2013/files/SWCR2013\\_ENG\\_Lo\\_res\\_24\\_Apr\\_2013.pdf](http://www.unicef.org/sowc2013/files/SWCR2013_ENG_Lo_res_24_Apr_2013.pdf).

<sup>43</sup> CRIN, “Children’s rights and the pharmaceutical industry”, 3 October 2012, available at <https://www.crin.org/en/library/publications/health-childrens-rights-and-pharmaceutical-industry>.

<sup>44</sup> Save the Children, See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthash.PfQVg7hs.dpuf>.

<sup>37</sup> UN Committee on the Rights of the Child (CRC), General Comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1, available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf>

<sup>38</sup> See CRIN, Stop making children criminals for further discussion of the legitimate grounds for the detention of children in the criminal justice system, available at: [www.crin.org/node/31378](http://www.crin.org/node/31378).

<sup>39</sup> UN General Assembly, Report of the independent expert for the UN study on violence against children, Paulo Sérgio Pinheiro, 26 August 2006, A/61/299, available at: <http://www.unicef.org/violencestudy/reports.html>

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.

The Committee has raised many violations of children's right to freedom from violence, such as the higher rates of violence to which children with disabilities are exposed,<sup>45</sup> insufficient measures to prevent violence against children with disabilities in all settings, and to protect the victims,<sup>46</sup> the need to adopt specific legislation to criminalise all forms of violence against women and girls,<sup>47</sup> the lack of structures and procedural accommodation within the justice sector specifically designed to provide assistance for girls who are victims of violence and abuse,<sup>48</sup> the high incidence of sexual abuse,<sup>49</sup> and the use of force against children with disabilities "by way of correction", authorised by the law.<sup>50</sup>

According to the 2006 UN Study on Violence against Children, in the home "Children with disabilities are at heightened risk of violence for a variety of reasons, ranging from deeply ingrained cultural prejudices to the higher emotional, physical, economic, and social demands that a child's disability can place on his or

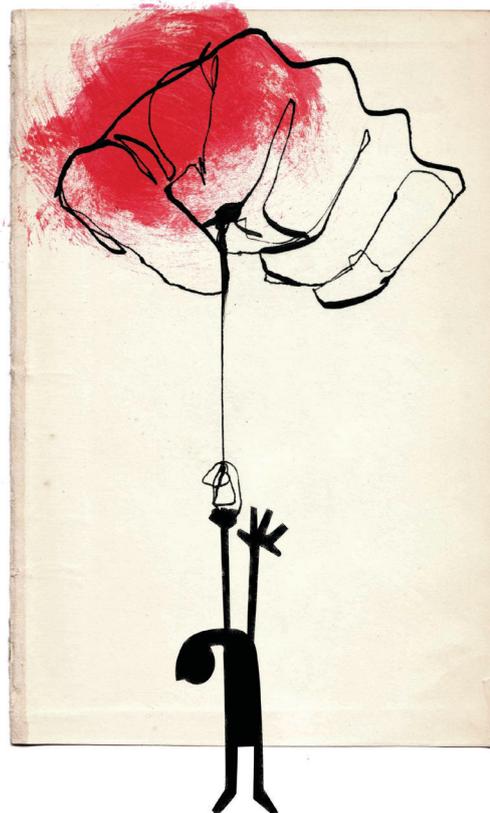
her family", in schools "children with disabilities and learning difficulties are often targeted for exclusion, discrimination and bullying" and in institutions "Stigma [...] contributes to violence against children with disabilities. Research has shown that they are frequently at higher risk of staff violence in institutions than other boys and girls."<sup>51</sup>

Article 16(4) of the Convention places an obligation on governments to ensure that all services for children with disabilities are effectively monitored. It is imperative that any monitoring systems are fully independent of the government, or the provider of the service, in order to ensure rigorous scrutiny and the power and authority to expose abuse of the rights of children with disabilities.<sup>52</sup>

The CRC, in its General Comment No. 9 on the rights of children with disabilities explains that "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

51 UN General Assembly, Report of the independent expert for the UN study on violence against children, Paulo Sérgio Pinheiro, 26 August 2006, A/61/299, available at: <http://www.unicef.org/violencestudy/reports.html>.

52 Save the Children, See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthsh.Pf0Va7hs.douf>.



45 See Sweden, 2014, CRPD/C/SWE/CO/1.

46 See Turkmenistan, 2015, CRPD/C/TKM/CO/1; Qatar, 2015, CRPD/C/QAT/CO/1 and Tunisia, 2011, CRPD/C/TUN/1.

47 Qatar, 2015, CRPD/C/QAT/CO/1.

48 Germany, 2015, CRPD/C/DEU/CO/1.

49 Ecuador, 2014, CRPD/C/ECU/CO/1.

50 Cook Islands, 2015, CRPD/C/COK/CO/1.

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.”

The Convention introduces obligations on State Parties to introduce specific measures to ensure that violence against children with disabilities is identified, investigated and, where appropriate, prosecuted. It requires that any legislation and policies must be disability, gender and child focused. This will necessitate legislative measures to punish and remove perpetrators from the home and ensure that the child is not deprived of his or her family and can continue to live in a safe and healthy environment; accessible and safe disability and child-sensitive complaint mechanisms; and access to the necessary communication, physical and other supports to enable them to participate in legal proceedings.<sup>53</sup>

### Article 17 - Protecting the integrity of the person

*Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.*

The Committee has raised a number of violations of article 17, including the sterilisation of children with disabilities without their free and informed consent,<sup>54</sup> forced treatment in hospitals and institutions,<sup>55</sup> violation of the bodily integrity of intersex children through routine surgical alterations<sup>56</sup> and forced sexual and reproductive health procedures on girls.<sup>57</sup>

Children with disabilities are more often victims of violations of their right to physical and mental integrity than other children. For example, the CRC, in its General Comment No. 9 on the rights of children with disabilities expresses concern over “the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects.”

<sup>53</sup> Ibid.

<sup>54</sup> See Brazil, 2015, CRPD/C/BRA/CO/1; Mexico, 2014, CRPD/C/MEX/CO/1; Croatia, 2015, CRPD/C/HRV/CO/1 and Mauritius, CRPD/C/MUS/CO/1, 2015.

<sup>55</sup> See Mauritius, CRPD/C/MUS/CO/1, 2015.

<sup>56</sup> See Germany, 2015, CRPD/C/DEU/CO/1.

<sup>57</sup> See Cook Islands, 2015, CRPD/C/COK/CO/1.

### Article 18 - Liberty of movement and nationality

*1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:*

*(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;*

*(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;*

*(c) Are free to leave any country, including their own;*

*(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.*

*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.*

All recommendations of the Committee refer to the lack of birth registration of children with disabilities.<sup>58</sup>

Restrictions on freedom of movement are harsher for children in general and children with disabilities in particular. The Committee on the Rights of the Child, in its General Comment No. 9 on the rights of children with disabilities, “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.”

According to the Committee on the Rights of the Child, children with disabilities are disproportionately vulnerable to non-registration at birth, affecting their recognition as a person before the law and their access to social and health services and to education. (GC9)

### Article 19 - Living independently and being included in the community

*States Parties to this 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*

<sup>58</sup> See El Salvador, 2013, CRPD/C/SLV/CO/1; Gabon, 2015, CRPD/C/GAB/CO/1 and Kenya, 2015, CRPD/C/KEN/CO/1.

*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.*

Recommendations made by the Committee highlight the particularly high level of institutionalisation of children with disabilities,<sup>59</sup> the lack of monitoring of institutions that care for children with disabilities,<sup>60</sup> and the removal of children from family settings and their placement in residential institutions.<sup>61</sup>

Children rarely have opportunities to be active members of the community, and this situation is exacerbated for children with disabilities. Often, the community itself disables them with physical barriers - such as buildings, transportation and access to recreational facilities - or with misconceptions about their abilities and potential.

### **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.*

Mobility is one of the barriers that impedes the realisation of children's rights, including their involvement in decisions that affect them. Ensuring children's personal mobility is fundamental to their inclusion in society. It is more difficult for

children with reduced mobility to access services.

### **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:*

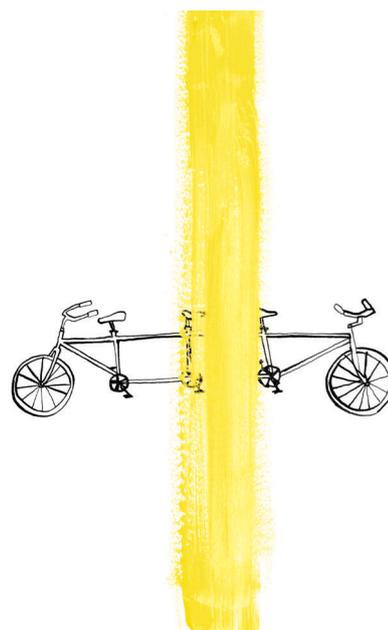
*(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;*

*(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;*

*(e) Recognizing and promoting the use of sign languages.*



<sup>59</sup> See Azerbaijan, 2014, CRPD/C/AZE/CO/1; Paraguay, 2013, CRPD/C/PRY/CO/1 and El Salvador, 2013, CRPD/C/SLV/CO/1.

<sup>60</sup> See Belguim, 2014, CRPD/C/BEL/CO/1.

<sup>61</sup> Mauritius, CRPD/C/MUS/CO/1, 2015

During most State reviews, the Committee has highlighted the fact that children with disabilities are not systematically involved in decisions that affect their lives and do not have the opportunity to express their opinion on matters that affect them directly.<sup>62</sup> During the review of Gabon, the Committee underlined the lack of adequate support and opportunities given to children with disabilities to express their views and exercise their right to be heard, including in consultations on the drafting of laws and policies.<sup>63</sup>

According to General Comment No. 9 of the Committee on the Rights 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.” Children with disabilities face particular difficulties in securing their civil and political rights, for example, children can sometimes be committed to mental health institutions without their views being taken into account, where adults cannot.<sup>64</sup>

CRC General Comment No. 9 explains:

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.

Societies rarely acknowledge that children with disabilities have sexual feelings, needs, and desires, regardless of their physical and/or mental abilities. This is usually based on the assumption that persons with disabilities are not sexual and

are too dependent to be able to engage in a sexual act. As a result, children are often refused access to sexuality education either in school or at home.<sup>65</sup>

### Article 22 - Respect for privacy

1. *No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.*
2. *States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.*

Article 16 of the CRC extends the right to privacy to all children and protects children from unlawful attacks on their honour and reputation.

The right to privacy of children with disabilities, especially those living in institutions, is very often violated. They may have their communications intercepted and be subject to searches of their personal belongings. The physical design and layout of such institutions, particularly bedrooms and toilets, may also lead to overcrowding and breaches of privacy.<sup>66</sup> Article 22 of the Convention balances the importance of addressing parents' legitimate protective responsibilities for children with disabilities, who lack capacity for independent decision-making, with their obligation to respect children's emerging capacities to exercise their own rights.<sup>67</sup>

### 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:*
  - (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, reproduc-*

62 See Brazil, 2015, CRPD/C/BRA/CO/1; Germany, 2015, CRPD/C/DEU/CO/1; Croatia, 2015, CRPD/C/HRV/CO/1; Czech Republic, 2015, CRPD/C/CZE/CO/1; Mexico, 2014, CRPD/C/MEX/CO/1; Cook Islands, 2015, CRPD/C/COK/CO/1; Belgium, 2014, CRPD/C/BEL/CO/1; Mongolia, 2015, CRPD/C/MNG/CO/1 and Sweden, 2014, CRPD/C/SWE/CO/1.

63 Gabon, 2015, CRPD/C/GAB/CO/1

64 See Stone, “The Civil Commitment Process for Juveniles: An Empirical Study” University of Detroit Law Review, Vol. 65, 1988, p. 679 for examples of involuntary commitment procedures for children with mental health problems.

65 Advocates for Youth, Sex Education for Physically, Emotionally, and Mentally Challenged Youth, April 2006, available at: <http://www.advocatesforyouth.org/publications/publications-a-z/479-sex-education-for-physically-emotionally-and-mentally-challenged-youth>.

66 See for example, UN Committee on the Rights of the Child, Concluding Observations: Japan, 26 February 2004, CRC/C/15/Add.231, available at: <http://www.refworld.org/docid/41178bd04.html>

67 Save the Children, See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthash.PfqVg7hs.dpuf>

*tive 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.*

Article 23 sets high standards for the protection of the rights of children with disabilities, highlighting children's equal rights with respect to family life and that their best interests should be paramount in any decision taken on their behalf, including when there is a need to separate them from their parents.

The Committee has highlighted many violations of article 23, including the lack of adequate support to facilitate the adoption of children with disabilities,<sup>68</sup> the limited support provided to families of children with disabilities,<sup>69</sup> greater risk of abandonment and placement in institutions faced by children with disabilities living in poverty,<sup>70</sup> and the forced placement in institutions of children with disabilities imposed on families by public officials and professionals.<sup>71</sup>

Children with disabilities are more vulnerable to violence and abuse within the family setting. But no child should be removed from their family home by state intervention without very good reason, and after considering all views, including the child's, in light of what is in the child's best interests. The Convention contains a key requirement that a child must never be separated from their parents on the basis of their disability. The decision about whether to separate a child from their parents must always be taken by the competent authorities subject to judicial review. Such a separation must be determined in accordance with applicable law and procedures and be in the best interests of the child.<sup>72</sup>

The Convention introduces specific provisions which take account of the nature of rights violations experienced by children in relation to family life, and it places additional obligations on governments to take the necessary action to address these rights violations.

- The Convention places the emphasis on early provision. The sooner a disability is recognised or diagnosed, the sooner the child can start receiving the help she or he needs.
- Parents need information about the causes and nature of the impairment, whether there is any treatment necessary, and how to help the child accommodate or compensate for the impairment.
- Parents also need to be aware of their child's rights and need to be supported and encouraged to ensure that all these rights are respected. They also have a responsibility to advocate for their child's rights when they are not being fulfilled by governments and others.
- Parents need services, such as different forms of respite care, care assistance in the home, community-based daycare facilities, mobility devices, adaptations to the home, appropriately designed furniture, as well as help with laundry and consumable supplies.<sup>73</sup>

In some countries, children with disabilities are sterilised in order to avoid the inconvenience of menstruation and unwanted pregnancy. It is sometimes even used as a form of 'child protection' to ensure that, given their disproportionate vulnerability to sexual abuse, they do not get pregnant if they are raped. Article 23(1)(c) of the CRPD emphasises the right of children with disabilities to retain their fertility. In other words, it is prohibited to sterilise them for any reasons other than clinical need.<sup>74</sup>

68 See Germany, 2015, CRPD/C/DEU/CO/1 and Kenya, 2015, CRPD/C/KEN/CO/1.

69 See Gabon, 2015, CRPD/C/GAB/CO/1 and Republic of Korea, 2014, CRPD/C/KOR/CO/1.

70 See Mexico, 2014, CRPD/C/MEX/CO/1.

71 See Ukraine, 2015, CRPD/C/UKR/CO/1.

72 Save the Children, See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthash.PfqVg7hs.dpuf>

73 Ibid.

74 Ibid.

## 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 life long 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 deafblind, 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.

Article 24 explains in detail the measures that should be taken to ensure persons with disabilities not only have access to education, but are allowed to develop to their full potential through education. The system should be inclusive at all levels, ensure that persons with disabilities are not discriminated against, and enable them to learn life and social development skills. States must take various steps to create such a system, including by facilitating the learning of Braille, sign language and other means of communication, making sure they are not excluded from the general education system on the basis of disability and by employing trained and qualified teachers.

States also have an obligation to provide support to facilitate the effective education of persons with disabilities, including by providing reasonable accommodation, adapted equipment and individualised support measures.

The Committee has raised concerns over a wide range of issues relating to the right to education, including the need to

develop policies to guarantee the right to inclusive education,<sup>75</sup> lack of reasonable accommodation and accessible school environments,<sup>76</sup> the high number of children placed in special boarding and other specialised schools,<sup>77</sup> insufficient budget allocation and provision of support for inclusive education,<sup>78</sup> the low number of teachers trained to teach children with disabilities<sup>79</sup> and bullying in schools.<sup>80</sup>

The Convention establishes an obligation on States parties to provide education to children with disabilities on an equal basis with other children and provide that education within an inclusive system. This means that States must ensure that persons with disabilities are not excluded from the general education system on the basis of disability and accommodate the differing needs of individual students to remove the barriers that impede their access to education.

The Committee on the Rights of the Child, in its General Comment No. 9 on the rights of children with disabilities, provides recommendations for the effective realisation of the right to education of children with disabilities and confirms that inclusive education should be the goal.

In October 2015, the Supreme Court of Slovakia ruled that denying individualised support to children with disabilities so that they can be educated at mainstream schools could amount to unlawful discrimination. The case concerned a 10-year-old girl with an intellectual disability and a hearing impairment who was refused enrolment at the local primary school because the school said it could not cope with her disabilities. The ruling is of significance to more than 20,000 children with disabilities in Slovakia who end up being placed in segregated schools.<sup>81</sup>

Comprehensive, accurate, and inclusive sexuality education is a key component of ensuring that reproductive rights are fulfilled, including for persons with disabilities, by providing needed information at an early age to break down stereotypes and ensure that people can make decisions about their sexuality and reproduction that can have significant impacts on their lives.

Comprehensive and inclusive sexuality education is a means to empower all persons with disabilities, and particularly women and girls, to protect themselves from sexual abuse and unwanted pregnancies and sexually transmitted infections such as HIV/AIDS. Access to sexual and reproductive health services on the basis of free and informed consent is also a particularly

important element of reproductive rights for women and girls with disabilities given historical (and current) violations of their reproductive rights.<sup>82</sup>

Children with disabilities also experience indirect discrimination; in law, for example, they may have equal access to education, but in practice, schools and other public buildings may not be accessible and teaching may not be adapted to their needs.

## 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.*

The Committee has highlighted many violations of article 25, including the lack of access for women and girls to the highest

75 See Argentina, 2012, CRPD/C/ARG/1.

76 See Australia, 2013, CRPD/C/AU/CO/1; Belgium, 2014, CRPD/C/BEL/CO/1

77 See Azerbaijan, 2014, CRPD/C/AZE/CO/1; Belgium, 2014, CRPD/C/BEL/CO/1; China, 2012, CRPD/C/CHN/CO/1 and Czech Republic, 2015, CRPD/C/CZE/CO/1

78 See Cook Islands, 2015, CRPD/C/COK/CO/1 and Brazil, 2015, CRPD/C/BRA/CO/1.

79 See Mongolia, 2015; CRPD/C/MNG/CO/1 and Ukraine, 2015, CRPD/C/UKR/CO1.

80 See New Zealand, 2014, CRPD/C/NZL/CO/1.

81 See <https://www.crin.org/en/home/what-we-do/crinmail/children-court-crinmail-54#C>

82 UNESCO, the Rationale for Sexuality Education: International Guidance on Sexuality Education, December 2009, available at: <http://unesdoc.unesco.org/images/0018/001832/183281e.pdf>. For a detailed review of inclusive sexuality education, read the International Disability Alliance and the Center for Reproductive Rights' submission to the Committee's Half Day of General Discussion on the Right to Education, available at [http://www.ohchr.org/Documents/HRBodies/CRPD/DGD/2015/IDA\\_CRR.doc](http://www.ohchr.org/Documents/HRBodies/CRPD/DGD/2015/IDA_CRR.doc).

attainable standard of health,<sup>83</sup> restricted access to information on sexual and reproductive health,<sup>84</sup> high rates of mental health problems, psychosocial issues and disorders among young people<sup>85</sup> and restrictions on the exercise of the right to free and informed consent regarding health interventions.<sup>86</sup>

Despite the attainment of the highest possible standard of health being an inherent right for all children, children with disabilities are often left out because of discrimination, lack of financial resources and inaccessibility of health care facilities.

The Convention reinforces children's right to express their views freely on all matters of concern to them and to have their views given due weight in accordance with their age and maturity, this means that children are entitled to be involved in decisions concerning their healthcare and treatment. In other words, children with disabilities must be listened to, respected and involved in decision-making on exactly the same basis as all other children. These principles must be respected by all health professionals.<sup>87</sup>

According to the UN Secretary-General's Study on Violence against Children, children with disabilities have been subjected to unnecessary or unproven surgical and medical interventions that would be considered unacceptable if carried out on children without disabilities in the same community, with examples including electroshock therapy, excessive medication and routine hysterectomies.<sup>88</sup>

## 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.*

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

*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.*

During its review of Croatia, the Committee expressed concern that many boys and girls with disabilities have no access to early intervention services, and that the situation is particularly hard for children with autism.<sup>89</sup>

Article 23 of the CRC on the rights of children with disabilities refers to the obligations of State parties and recognises that a child with mental or physical disabilities is entitled to enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Basic primary health care facilities can be lifesaving for children with severe disabilities. But rehabilitation services are often concentrated in urban areas and can be very expensive. Even the simplest aids and appliances to reduce the impact of a child's impairment may not be available. Of the 200 million children reported to be living with disabilities, few of those living in developing countries have effective access to health and rehabilitation or support services. For example, they may miss out on vaccinations, or treatment for simple fever or diarrhoea, easily curable illnesses which can become life-threatening if left untreated.<sup>90</sup>

## 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:*

<sup>83</sup> See Gabon, 2015, CRPD/C/GAB/CO/1.

<sup>84</sup> See Cook Islands, 2015, CRPD/C/COK/CO/1 and Ukraine, 2015, CRPD/C/UKR/CO1.

<sup>85</sup> See Sweden, 2014, CRPD/C/SWE/CO/1.

<sup>86</sup> See Australia, 2013, CRPD/C/AU/CO/1; Gabon, 2015, CRPD/C/GAB/CO/1 and Cook Islands, 2015, CRPD/C/COK/CO/1.

<sup>87</sup> Save the Children, See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthash.PfqVg7hs.dpuf>

<sup>88</sup> UN Secretary-General's Study on Violence against Children, Summary Report of the Thematic Meeting on Violence against Children with Disabilities, 28 July 2005, United Nations, New York, p. 18

<sup>89</sup> See Croatia, 2015, CRPD/C/HRV/CO/1.

<sup>90</sup> Innocenti Research Centre, Promoting the Rights of Children with Disabilities, Digest no.13, 2007, available at: [http://www.un.org/esa/socdev/unyin/documents/children\\_disability\\_rights.pdf](http://www.un.org/esa/socdev/unyin/documents/children_disability_rights.pdf).

(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.

In addition to the special protection required for children with disabilities, it is crucial to highlight the need to formalise and regulate their labour activities in order to grant them the same labour and rights protections as their adult counterparts; including by establishing a minimum age of admission to employment, ensuring the regulation of their working hours and conditions, and applying appropriate penalties and other sanctions in cases of non-compliance. Of course, this approach should exclude labour activities that are dangerous, harmful or hazardous or interfere with their development.

States must support young people with disabilities who are seeking employment. This might include the provision of vocational training, meaningful work experience for individuals of at least the minimum age of access to employment, and tax

incentives to mobilise employers wherever feasible.<sup>91</sup>

### 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.

The Committee has raised several violations of article 28, including the need to review legislation on the provision of benefits to persons with disabilities, with their genuine participation, to reintroduce an additional social allowance to bring the standard of living of families with children with disabilities above the subsistence level. It has also asserted the need to broaden the range of and facilitate access to assistive devices for persons with disabilities, regardless of age.<sup>92</sup>

Because the costs associated with disability may be higher than for other children, the Convention recognises that children with disabilities may need a larger income to enable them to develop adequately. Article 28, therefore, sets out more specific obligations to provide for children with disabilities. Governments must provide services, devices and assistance to address

91 CRIN, Child labour and protecting working children, 8 June 2015, available at: <https://www.crin.org/en/home/what-we-do/crinmail/crinmail-1432#CL>.

92 See Czech Republic, 2015, CRPD/C/CZE/CO/1.

all disability-related needs, ensure access to social protection and poverty reduction programmes, in particular for women and girls and provide assistance with other disability related expenses such as training, respite care and counselling.<sup>93</sup>

Many countries have recently introduced austerity measures which have a big impact on children's enjoyment of their rights. Children suffer disproportionately from poverty as do persons with disabilities so children with disabilities are particularly vulnerable. Governmental spending decisions have a direct impact on children with disabilities as they are more dependent on welfare payments.

States should look at the structures that create poverty and revisit relevant government policies and budget allocations to fulfill children's right to social security and an adequate standard of living. A rights-based approach to decisions about resource allocation is critical because it tackles the structural causes of rights violations, instead of blaming individuals for being poor or bestowing help out of charity.<sup>94</sup>

#### **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 to:*

*(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:*

*(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;*  
*(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;*

*(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;*

*(b) 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.*

During its review of Argentina, the Committee recommended that persons with disabilities, including children, be actively involved in the planning, implementation, monitoring and evaluation of the strategy to realise their rights.<sup>95</sup>

Children in general are rarely given opportunities to participate in public life because they are seen as simply appendages of their parents, community or the State.

They are often ineligible to vote on the grounds that they are perceived to have a limited capacity, literacy, level of education and so on. Such perceptions are compounded for children with disabilities.

#### **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*

<sup>93</sup> Save the Children, See Me, Hear Me: A guide to using the UN Convention on the Rights of Person with Disabilities to promote the rights of children, March 2009, available at: <http://www.savethechildren.org.uk/resources/online-library/see-me-hear-me-guide-using-un-convention-rights-person-disabilities-promote#sthash.PfqVg7hs.dpuf>

<sup>94</sup> CRIN, Investment in Children, submission to the 2014 report of the High Commissioner for Human Rights, October 2014, available at: <https://www.crin.org/en/home/what-we-do/policy/investment-children>.

<sup>95</sup> See Argentina, 2012, CRPD/C/ARG/1.

- 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.

According to the Committee on Economic, Social and Cultural Rights, “children play a fundamental role as the bearers and transmitters of cultural values from generation to generation. States parties should take all the steps necessary to stimulate and develop children’s full potential in the area of cultural life, with due regard for the rights and responsibilities of their parents or guardians”.<sup>96</sup>

The Committee also emphasises that schools must respect the cultural specificities of national or ethnic, linguistic and religious minorities and indigenous peoples, incorporating their history and values into the school curriculum for all pupils. Education for minorities and indigenous groups must also be conducted in their own language.

The Committee has highlighted several children’s rights issues under article 30, including the fact that schools and sports centres do not promote inclusive sports programmes for persons with disabilities, especially for the very young,<sup>97</sup> and the meagre progress by the private sector in promoting participation in cultural life by persons with disabilities, including children and adolescents.<sup>98</sup>

General Comment 2 on accessibility calls on States “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”.

The UN Committee on the Elimination of Racial Discrimination has also issued relevant guidance in several general comments on respect for minority cultures through teacher training, curricula and textbooks; it has further urged States to review language and textbooks to eliminate stereotypes.

The right to cultural and artistic life requires States to ensure children’s access to and freedom to initiate or get involved in such activities.

Article 29. 1 of the CRC explains that education should also be directed to develop “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.” In promoting respect both for minority cultures and for the country in which a child lives, this part of the article emphasises education’s role in reconciling diverse values through discussion and promoting respect for difference.

Article 31 of the CRC protects children’s right to rest, leisure, play, recreation and participation in cultural and artistic life. The Committee on the Rights of the Child encourages States to provide safe and accessible spaces and facilities for children’s play and recreation, which contain the possibility of discovery and learning.<sup>99</sup>



<sup>96</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/gc/E-C-12-GC-21.doc>

<sup>97</sup> See Ecuador, 2014, CRPD/C/ECU/CO/1

<sup>98</sup> See El Salvador, 2013, CRPD/C/SLV/CO/1

<sup>99</sup> UN Committee on the Rights of the Child, General comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), 17 April 2013, CRC/C/GC/17, available at: [http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-17\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-17_en.doc)

# PART VII

## KEY FINDINGS AND RECOMMENDATIONS

## Recommendations to the Committee on the Rights of Persons with Disabilities

All rights in the Convention apply to children, and some require greater protections for children than for adults because discrimination suffered by children with disabilities is exacerbated by virtue of their age. It is on this basis that we have analysed the Committee's concluding observation.

As a general observation, we note that States are urged to take action on a wide range of issues facing children. Many of the violations raised relate to the forced placement of children with disabilities in institutions or other closed settings, their situation in those settings, including the torture and other cruel and inhuman treatment to which they are subjected, and medical interventions carried out without their free and informed consent.

Nevertheless, the Committee sometimes fails to consider the specific implications certain rights have for children.

We therefore recommend that the Committee systematically address children's rights in its interpretation of each article of the Convention and recognise the highest standards of protection for the rights of children with disabilities by, for example:

- Reminding States that, regarding the principle of progressive realisation of economic, social and cultural rights reaffirmed in article 4 of the Convention, all steps taken, including legal reform and the provision of judicial remedies, should not only apply to children with disabilities but must also take into account their unique needs and vulnerabilities.
- Addressing the barriers that children with disabilities face in accessing sexuality education and in exercising their reproductive rights. In this regard, the Committee should urge States to take all necessary measures to end harmful practices such as forced sterilisation and discriminatory beliefs about children with disabilities' sexual and reproductive capacities and guarantee access to the full range of sexual and reproductive health information and services.
- While stressing the need to protect children with disabilities from labour activities that are dangerous, harmful or hazardous or interfere with their development, the Committee must highlight the need to secure children employed in suitable work the special protection they need as well as all the guarantees provided for adults.
- Reaffirming the right to privacy of children with disabilities. Children, especially those living in institutions, are particularly vulnerable to breaches of their privacy because of the range of situations in which adults have power over them.
- Raising issues of harmful traditional practices against children with disabilities, with a focus on

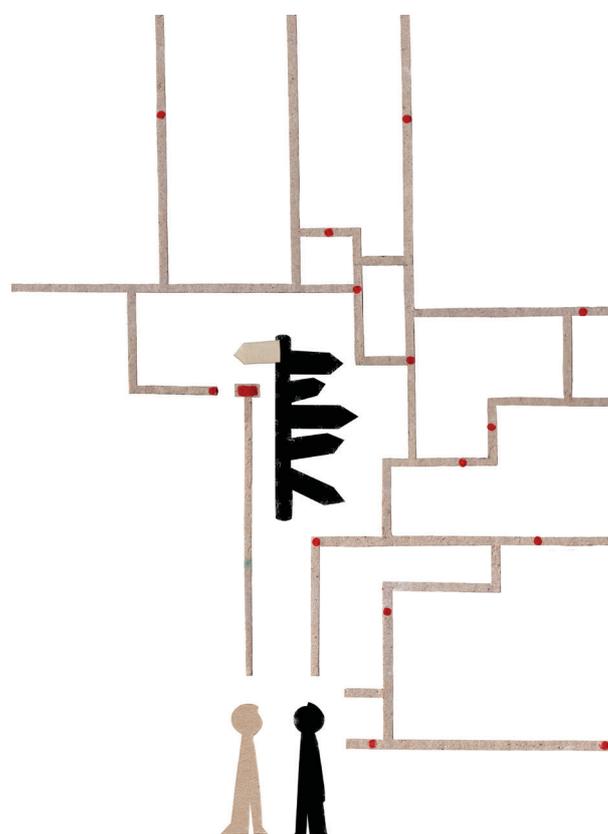
violations against both boys and girls.

- Raising the issues faced by LGBTI children with disabilities, especially in light of the bans on "homosexual propaganda" that have either been passed or proposed in many countries to 'protect children from information deemed harmful to their health and development'.<sup>1</sup>

We also urge the Committee to challenge emerging issues in its interpretation of the Covenant, for example, by:

- Challenging austerity measures recently adopted in a number of countries to minimise their effects on children with disabilities and encourage States to allocate more resources for the realisation of children's rights under the Convention.
- Examining specific violations unfolding in private institutions. Violations of children's rights in institutions and other closed settings are highlighted throughout the concluding observations of the Committee. This is particularly important in light of the current wave of privatisation of public services.

Please note that these recommendations are not exhaustive. We encourage others to use our research to highlight violations and share their recommendations with the Committee and with us at [info@crin.org](mailto:info@crin.org)



<sup>100</sup> For more on this, including the list of countries and laws, see CRIN, Campaigns: Protect children, end censorship, available at: <https://www.crin.org/en/home/campaigns/protect-children-end-censorship/problem>.

## The role of children's rights advocates

The Committee is a body of [18 independent experts](#) which monitors implementation of the Convention on the Rights of Persons with Disabilities. All States parties have to submit regular reports to the Committee on how the rights enshrined in the Convention are being implemented. States must report initially within two years of ratifying the Convention and, thereafter, every four years. The Committee examines each report and makes suggestions and general recommendations on the report. It forwards these recommendations, in the form of concluding observations, to the State concerned. An Optional Protocol, which entered into force at the same time as the Convention, establishes two additional mandates for the Committee:

1. The receipt and examination of individual complaints
2. The undertaking of inquiries in the case of reliable evidence of grave and systematic violations of the Convention

### NGO Advocacy at the CRPD

There are a number of ways for NGOs to engage with the CRPD:

1. Written submissions
2. Oral statements
3. Attending sessions
4. Informal meetings and lunchtime briefings
5. Contact information

#### 1. Written submissions

NGOs can make written submissions providing a brief description of its activities, mission/vision statement, what role persons with disabilities play in the organisation and the level of inclusiveness and participation of persons with disabilities in the drafting of the submission. Submissions should contain an executive summary, no longer than one page, make reference to specific articles of the Convention addressed in the submission; and propose recommendations.

The submission should be sent to [jaraya@ohchr.org](mailto:jaraya@ohchr.org). Please indicate in the subject of the email: "submission" and the "name of the country" (e.g. "Submission Germany"). Submissions should be no longer than 10,700 words in the case of alternative reports; a maximum of 5,350 words for other submissions. The introduction and executive summary do not count towards a final word count. Written submissions should be in word format. Please avoid PDF formats and hardcopies.

- Written submissions for the follow-up to the Committee's recommendations  
NGOs may submit written information to the Committee under a follow-up procedure on the implementation of recommendations by the State party. Further information on this procedure can be found on the website under the [follow-up](#) webpage.

#### 2. Oral statements

NGOs can make oral statements and speakers are encouraged to make short statements to allow time for the experts of the Committee to raise questions. Priority will be given to those applicant organisations that have also submitted written information.

#### 3. Attending sessions

As meetings are open to the public, NGOs can observe the dialogues between the delegations of these States parties and the Committee, but they cannot make statements or raise questions from the floor. To get accreditation to attend, please send the relevant forms to [aquist@ohchr.org](mailto:aquist@ohchr.org), copying [rouko@ohchr.org](mailto:rouko@ohchr.org).

#### 4. Informal meetings and lunchtime briefings

NGOs can request a briefing meeting with the Committee. The requests should specify the name of the organisation (coalitions are encouraged to make a brief description of their comprising organisations, their mission/vision statement and what role persons with disabilities play in the organisation), followed by the title of the briefing event, a brief description of the topics that will be addressed during the country specific briefing and the name/s and function of the speaker(s).

#### 5. Contact information

Committee on the Rights of Persons with Disabilities:  
Human Rights Treaties Division  
Office of the United Nations High Commissioner for Human Rights  
Palais Wilson - 52, rue des Pâquis  
CH-1201 Geneva (Switzerland)

Mailing address:  
UNOG-OHCHR  
CH-1211 Geneva 10 (Switzerland)  
Tel.: +41 22 917 97 03  
Fax: +41 22 917 90 08  
[crpd@ohchr.org](mailto:crpd@ohchr.org)

For individual complaints:  
Petitions Team  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
1211 Geneva 10 (Switzerland)  
Fax: + 41 22 917 9022 (particularly for urgent matters)  
E-mail: [petitions@ohchr.org](mailto:petitions@ohchr.org)



---

Contact CRIN at [info@crin.org](mailto:info@crin.org) or visit our website at [www.crin.org](http://www.crin.org)

---