



21 February 2014

UN Committee on the
Rights of Persons with Disabilities

by email to crpd@unhchr.org

Draft General Comments

Articles 9 and 12 of the CRPD

The Finnish Human Rights Centre (HRC), or more precisely the Finnish NHRI¹, is intended to become the independent Framework under Article 33.2 of the Convention when Finland ratifies it during 2014-2015.

As a starting point, it must be noted that the General Comments are respected tools for the interpretation of the human rights conventions and the development of the human rights in practise. This is their intended role. However, they cannot place binding obligations to the contracting parties nor can they, even while interpreting the text in any given time and place, extent the scope of the obligations, agreed by the State parties upon ratification.

The HRC wishes to thank the Committee for the opportunity to comment on the draft General Comments and makes the following observations and proposals to the text.

Article 9 - Accessibility

Article 9 of the Convention imposes a duty on States to ensure accessibility. Article 5 covers equality and non-discrimination. Article 3 defines that denial of reasonable accommodation to persons with disabilities constitutes a form of discrimination under the Convention.

However, it does not follow from any of these Articles that denial of accessibility to the physical environment, goods and services open to the public will amount to discrimination in violation of Article 5. In accessibility cases an individual assessment must be made which takes into account the nature of the situation and the needs of the individual in question. Denial of accessibility² can lead to

¹ Finnish NHRI, founded in 2012, consists of the Human Rights Centre, its pluralistic Human Rights Delegation and the Parliamentary Ombudsman. The NHRI does not yet have ICC accreditation.

² in previous version this sentence said erroneously "denial of reasonable accommodation".



discrimination but as such it is not within the definition of discrimination.

- The distinction between accessibility (Article 9) and reasonable accommodation (Article 5), in the context of the prohibition of discrimination, should be made clearer in the General Comment.
- The wording "... constitutes an act of disability-based discrimination" should be changed to "may constitute an act of disability-based discrimination".

Article 12 – Equal recognition before the law

Article 12 of the Convention provides that States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

As noted above, General Comments cannot place binding obligations to the contracting parties. Therefore the wording like "States must..." which occurs throughout the document seems inappropriate. Any recommendations given in General Comments should be identifiable as such and not be phrased as legal obligations.

Equally, General Comments cannot extent the scope of the obligations, agreed by the State parties upon ratification. To state that there has been "a general misunderstanding" among States Parties, explicitly acknowledges that the Committee's interpretation differs profoundly from the interpretation of the States that participated in the drafting of the Convention and that are parties or signatories to it. This is further evidenced by the initial reports of State Parties so far and the many declarations made by State Parties upon ratification.

Article 12 of the Convention is interpreted in the draft General Comment as obliging States Parties to replace regimes of substitute decision-making by supported decision-making regimes, which among other things is viewed as calling for the abolishment of substitute decision-making regimes.

Many countries have legislation whereby an individual's legal capacity can be restricted, where his or her decision-making skills are found deficient. It is claimed in the draft General Comment that such legislation constitutes discriminatory denial of legal capacity.

While agreeing that the provision of support for persons with disabilities is the best option to help them exercise their rights, there are situations in which such support is not sufficient. The Convention cannot, and by the pure text and the general understanding of it, does not totally ban the possibility of substitute decision-making in some, be it limited and clearly specified, cases.



Most State Parties acknowledge in their legal systems the right of parents or legal guardians to represent a minor without distinction as to the existence of a disability. Such support may also be given to adults by ordering legal representation or guardianship, also without distinction regarding the existence of a disability. All forms of representation or guardianship exist for the benefit of the supported person and may only be used according to the will and preferences or the best interests of the persons concerned and in accordance with the law. This is also what the phrase “on an equal basis with others” in the text signifies.

- Wording like “States must...” which occurs throughout the document should be replaced by text more appropriate to the nature of a General Comment.
- The interpretation of Article 12 proposed by the Committee should be reconsidered in the light of the general understanding of the Article by State Parties and Signatories.

The Finnish HRC looks forward to the finalised General Comments which will have the opportunity to further increase the importance of the Committee and its valuable work in the fulfilment of the Convention in the State parties.

Any questions you might have on these submission, do not hesitate to contact the Finnish Human Rights Centre.

Respectfully,

Leena Leikas
Expert
Human Rights Centre