

## DISABILITY

### II. GENERAL COMMENTS AND RECOMMENDATIONS

- ICESCR General Comment 5 (Eleventh session, 1994): Persons with Disabilities, E/1995/22 (1994) 99 at paras. 1-38.

1. The central importance of the International Covenant on Economic, Social and Cultural Rights in relation to the human rights of persons with disabilities has frequently been underlined by the international community. <sup>1/</sup> Thus a 1992 review by the Secretary-General of the implementation of the World Programme of Action concerning Disabled Persons and the United Nations Decade of Disabled Persons concluded that "disability is closely linked to economic and social factors" and that "conditions of living in large parts of the world are so desperate that the provision of basic needs for all - food, water, shelter, health protection and education - must form the cornerstone of national programmes". <sup>2/</sup> Even in countries which have a relatively high standard of living, persons with disabilities are very often denied the opportunity to enjoy the full range of economic, social and cultural rights recognized in the Covenant.

2. The Committee on Economic, Social and Cultural Rights, and the working group which preceded it, have been explicitly called upon by both the General Assembly <sup>3/</sup> and the Commission on Human Rights <sup>4/</sup> to monitor the compliance of States parties to the Covenant with their obligation to ensure the full enjoyment of the relevant rights by persons with disabilities. The Committee's experience to date, however, indicates that States parties have devoted very little attention to this issue in their reports. This appears to be consistent with the Secretary-General's conclusion that "most Governments still lack decisive concerted measures that would effectively improve the situation" of persons with disabilities. <sup>5/</sup> It is therefore appropriate to review, and emphasize, some of the ways in which issues concerning persons with disabilities arise in connection with the obligations contained in the Covenant.

3. There is still no internationally accepted definition of the term "disability". For present purposes, however, it is sufficient to rely on the approach adopted in the Standard Rules of 1993, which state:

"The term 'disability' summarizes a great number of different functional limitations occurring in any population...People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature." <sup>6/</sup>

4. In accordance with the approach adopted in the Standard Rules, this General Comment uses the term "persons with disabilities" rather than the older term "disabled persons". It has been suggested that the latter term might be misinterpreted to imply

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that the ability of the individual to function as a person has been disabled.

5. The Covenant does not refer explicitly to persons with disabilities. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the Covenant's provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant. In addition, in so far as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability. Moreover, the requirement contained in article 2 (2) of the Covenant that the rights "enunciated...will be exercised without discrimination of any kind" based on certain specified grounds "or other status" clearly applies to discrimination on the grounds of disability.

6. The absence of an explicit, disability-related provision in the Covenant can be attributed to the lack of awareness of the importance of addressing this issue explicitly, rather than only by implication, at the time of the drafting of the Covenant over a quarter of a century ago. More recent international human rights instruments have, however, addressed the issue specifically. They include the Convention on the Rights of the Child (art. 23); the African Charter on Human and Peoples' Rights (art. 18 (4)); and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (art. 18). Thus it is now very widely accepted that the human rights of persons with disabilities must be protected and promoted through general, as well as specially designed, laws, policies and programmes.

7. In accordance with this approach, the international community has affirmed its commitment to ensuring the full range of human rights for persons with disabilities in the following instruments: (a) the World Programme of Action concerning Disabled Persons, which provides a policy framework aimed at promoting "effective measures for prevention of disability, rehabilitation and the realization of the goals of 'full participation' of [persons with disabilities] in social life and development, and of 'equality'"; <sup>7/</sup> (b) the Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies, adopted in 1990; <sup>8/</sup> (c) the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted in 1991; <sup>9/</sup> (d) the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (hereinafter referred to as the "Standard Rules"), adopted in 1993, the purpose of which is to ensure that all persons with disabilities "may exercise the same rights and obligations as others". <sup>10/</sup> The Standard Rules are of major importance and constitute a particularly valuable reference guide in identifying more precisely the relevant obligations of States parties under the Covenant.

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### I. GENERAL OBLIGATIONS OF STATES PARTIES

8. The United Nations has estimated that there are more than 500 million persons with disabilities in the world today. Of that number, 80 per cent live in rural areas in developing countries. Seventy per cent of the total are estimated to have either limited or no access to the services they need. The challenge of improving the situation of persons with disabilities is thus of direct relevance to every State party to the Covenant. While the means chosen to promote the full realization of the economic, social and cultural rights of this group will inevitably differ significantly from one country to another, there is no country in which a major policy and programme effort is not required. 11/

9. The obligation of States parties to the Covenant to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required.

10. According to a report by the Secretary-General, developments over the past decade in both developed and developing countries have been especially unfavourable from the perspective of persons with disabilities:

"...current economic and social deterioration, marked by low-growth rates, high unemployment, reduced public expenditure, current structural adjustment programmes and privatization, have negatively affected programmes and services...If the present negative trends continue, there is the risk that [persons with disabilities] may increasingly be relegated to the margins of society, dependent on ad hoc support." 12/

As the Committee has previously observed (General Comment No. 3 (Fifth session, 1990), para. 12), the duty of States parties to protect the vulnerable members of their societies assumes greater rather than less importance in times of severe resource constraints.

11. Given the increasing commitment of Governments around the world to market-based policies, it is appropriate in that context to emphasize certain aspects of States parties' obligations. One is the need to ensure that not only the public sphere, but also the private sphere, are, within appropriate limits, subject to regulation to ensure the

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equitable treatment of persons with disabilities. In a context in which arrangements for the provision of public services are increasingly being privatized and in which the free market is being relied on to an ever greater extent, it is essential that private employers, private suppliers of goods and services, and other non-public entities be subject to both non-discrimination and equality norms in relation to persons with disabilities. In circumstances where such protection does not extend beyond the public domain, the ability of persons with disabilities to participate in the mainstream of community activities and to realize their full potential as active members of society will be severely and often arbitrarily constrained. This is not to imply that legislative measures will always be the most effective means of seeking to eliminate discrimination within the private sphere. Thus, for example, the Standard Rules place particular emphasis on the need for States to "take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution". 13/

12. In the absence of government intervention there will always be instances in which the operation of the free market will produce unsatisfactory results for persons with disabilities, either individually or as a group, and in such circumstances it is incumbent on Governments to step in and take appropriate measures to temper, complement, compensate for, or override the results produced by market forces. Similarly, while it is appropriate for Governments to rely on private, voluntary groups to assist persons with disabilities in various ways, such arrangements can never absolve Governments from their duty to ensure full compliance with their obligations under the Covenant. As the World Programme of Action concerning Disabled Persons states, "the ultimate responsibility for remedying the conditions that lead to impairment and for dealing with the consequences of disability rests with Governments". World Programme of Action concerning Disabled Persons (see note 3 above), para. 3. 14/

## II. MEANS OF IMPLEMENTATION

13. The methods to be used by States parties in seeking to implement their obligations under the Covenant towards persons with disabilities are essentially the same as those available in relation to other obligations (see General Comment No. 1 (Third session, 1989)). They include the need to ascertain, through regular monitoring, the nature and scope of the problems existing within the State; the need to adopt appropriately tailored policies and programmes to respond to the requirements thus identified; the need to legislate where necessary and to eliminate any existing discriminatory legislation; and the need to make appropriate budgetary provisions or, where necessary, seek international co-operation and assistance. In the latter respect, international co-operation in accordance with articles 22 and 23 of the Covenant is likely to be a particularly important element in enabling some developing countries to fulfil their obligations under the Covenant.

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14. In addition, it has been consistently acknowledged by the international community that policy-making and programme implementation in this area should be undertaken on the basis of close consultation with, and involvement of, representative groups of the persons concerned. For this reason, the Standard Rules recommend that everything possible be done to facilitate the establishment of national co-ordinating committees, or similar bodies, to serve as a national focal point on disability matters. In doing so, Governments should take account of the 1990 Guidelines for the Establishment and Development of National Co-ordinating Committees on Disability or Similar Bodies. 8/

### III. THE OBLIGATION TO ELIMINATE DISCRIMINATION ON THE GROUNDS OF DISABILITY

15. Both *de jure* and *de facto* discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more "subtle" forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers.

For the purposes of the Covenant, "disability-based discrimination" may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.

16. Despite some progress in terms of legislation over the past decade, 15/ the legal situation of persons with disabilities remains precarious. In order to remedy past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability would seem to be indispensable in virtually all States parties. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible and appropriate, but also provide for social-policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life.

17. Anti-discrimination measures should be based on the principle of equal rights for persons with disabilities and the non-disabled, which, in the words of the World Programme of Action concerning Disabled Persons, "implies that the needs of each and every individual are of equal importance, that these needs must be made the basis for the planning of societies, and that all resources must be employed in such a way as to ensure, for every individual, equal opportunity for participation. Disability policies should

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ensure the access of [persons with disabilities] to all community services". 16/

18. Because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such actions should not be considered discriminatory in the sense of article 2 (2) of the International Covenant on Economic, Social and Cultural Rights as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective.

### IV. SPECIFIC PROVISIONS OF THE COVENANT

#### A. Article 3 - Equal rights for men and women

19. Persons with disabilities are sometimes treated as genderless human beings. As a result, the double discrimination suffered by women with disabilities is often neglected. 17/ Despite frequent calls by the international community for particular emphasis to be placed upon their situation, very few efforts have been undertaken during the Decade. The neglect of women with disabilities is mentioned several times in the report of the Secretary-General on the implementation of the World Programme of Action. 18/ The Committee therefore urges States parties to address the situation of women with disabilities, with high priority being given in future to the implementation of economic, social and cultural rights-related programmes.

#### B. Articles 6-8 - Rights relating to work

20. The field of employment is one in which disability-based discrimination has been prominent and persistent. In most countries the unemployment rate among persons with disabilities is two to three times higher than the unemployment rate for persons without disabilities. Where persons with disabilities are employed, they are mostly engaged in low-paid jobs with little social and legal security and are often segregated from the mainstream of the labour market. The integration of persons with disabilities into the regular labour market should be actively supported by States.

21. The "right of everyone to the opportunity to gain his living by work which he freely chooses or accepts" (art. 6 (1)) is not realized where the only real opportunity open to disabled workers is to work in so-called "sheltered" facilities under substandard conditions. Arrangements whereby persons with a certain category of disability are effectively confined to certain occupations or to the production of certain goods may violate this right. Similarly, in the light of principle 13 (3) of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, 9/ "therapeutical treatment" in institutions which amounts to forced labour is also incompatible with the Covenant. In this regard, the prohibition on forced labour contained in the International Covenant on Civil and Political Rights is also of potential

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relevance.

22. According to the Standard Rules, persons with disabilities, whether in rural or urban areas, must have equal opportunities for productive and gainful employment in the labour market. <sup>19/</sup> For this to happen it is particularly important that artificial barriers to integration in general, and to employment in particular, be removed. As the International Labour Organisation has noted, it is very often the physical barriers that society has erected in areas such as transport, housing and the workplace which are then cited as the reason why persons with disabilities cannot be employed. <sup>20/</sup> For example, as long as workplaces are designed and built in ways that make them inaccessible to wheelchairs, employers will be able to "justify" their failure to employ wheelchair users. Governments should also develop policies which promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers.

23. Similarly, the failure of Governments to ensure that modes of transportation are accessible to persons with disabilities greatly reduces the chances of such persons finding suitable, integrated jobs, taking advantage of educational and vocational training, or commuting to facilities of all types. Indeed, the provision of access to appropriate and, where necessary, specially tailored forms of transportation is crucial to the realization by persons with disabilities of virtually all the rights recognized in the Covenant.

24. The "technical and vocational guidance and training programmes" required under article 6 (2) of the Covenant should reflect the needs of all persons with disabilities, take place in integrated settings, and be planned and implemented with the full involvement of representatives of persons with disabilities.

25. The right to "the enjoyment of just and favourable conditions of work" (art. 7) applies to all disabled workers, whether they work in sheltered facilities or in the open labour market. Disabled workers may not be discriminated against with respect to wages or other conditions if their work is equal to that of non-disabled workers. States parties have a responsibility to ensure that disability is not used as an excuse for creating low standards of labour protection or for paying below minimum wages.

26. Trade union-related rights (art. 8) apply equally to workers with disabilities and regardless of whether they work in special work facilities or in the open labour market. In addition, article 8, read in conjunction with other rights such as the right to freedom of association, serves to emphasize the importance of the right of persons with disabilities to form their own organizations. If these organizations are to be effective in "the promotion and protection of [the] economic and social interests" (art. 8 (1) (a)) of such persons, they should be consulted regularly by government bodies and others in relation to all matters affecting them; it may also be necessary that they be supported financially

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and otherwise so as to ensure their viability.

27. The International Labour Organization has developed valuable and comprehensive instruments with respect to the work-related rights of persons with disabilities, including in particular Convention No. 159 (1983) concerning vocational rehabilitation and employment of persons with disabilities. 21/ The Committee encourages States parties to the Covenant to consider ratifying that Convention.

### C. Article 9 - Social security

28. Social security and income-maintenance schemes are of particular importance for persons with disabilities. As stated in the Standard Rules, "States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities". 22/ Such support should reflect the special needs for assistance and other expenses often associated with disability.

In addition, as far as possible, the support provided should also cover individuals (who are overwhelmingly female) who undertake the care of a person with disabilities. Such persons, including members of the families of persons with disabilities, are often in urgent need of financial support because of their assistance role. 23/

29. Institutionalization of persons with disabilities, unless rendered necessary for other reasons, cannot be regarded as an adequate substitute for the social security and income-support rights of such persons.

### D. Article 10 - Protection of the family and of mothers and children

30. In the case of persons with disabilities, the Covenant's requirement that "protection and assistance" be rendered to the family means that everything possible should be done to enable such persons, when they so wish, to live with their families. Article 10 also implies, subject to the general principles of international human rights law, the right of persons with disabilities to marry and have their own family. These rights are frequently ignored or denied, especially in the case of persons with mental disabilities. 24/ In this and other contexts, the term "family" should be interpreted broadly and in accordance with appropriate local usage. States parties should ensure that laws and social policies and practices do not impede the realization of these rights. Persons with disabilities should have access to necessary counselling services in order to fulfil their rights and duties within the family. 25/

31. Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, "persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and



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experience parenthood". 26/ The needs and desires in question should be recognized and addressed in both the recreational and the procreational contexts. These rights are commonly denied to both men and women with disabilities worldwide. 27/ Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2).

32. Children with disabilities are especially vulnerable to exploitation, abuse and neglect and are, in accordance with article 10 (3) of the Covenant (reinforced by the corresponding provisions of the Convention on the Rights of the Child), entitled to special protection.

### E. Article 11 - The right to an adequate standard of living

33. In addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it is also necessary to ensure that "support services, including assistive devices" are available "for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights". 28/ The right to adequate clothing also assumes a special significance in the context of persons with disabilities who have particular clothing needs, so as to enable them to function fully and effectively in society. Wherever possible, appropriate personal assistance should also be provided in this connection. Such assistance should be undertaken in a manner and spirit which fully respect the human rights of the person(s) concerned. Similarly, as already noted by the Committee in paragraph 8 of General Comment No. 4 (Sixth session, 1991), the right to adequate housing includes the right to accessible housing for persons with disabilities.

### F. Article 12 - The right to physical and mental health

34. According to the Standard Rules, "States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society". 29/ The right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services – including orthopaedic devices - which enable persons with disabilities to become independent, prevent further disabilities and support their social integration. 30/ Similarly, such persons should be provided with rehabilitation services which would enable them "to reach and sustain their optimum level of independence and functioning". 31/ All such services should be provided in such a way that the persons concerned are able to maintain full respect for their rights and dignity.

### G. Articles 13 and 14 - The right to education

35. School programmes in many countries today recognize that persons with

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disabilities can best be educated within the general education system. <sup>32/</sup> Thus the Standard Rules provide that "States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings". <sup>33/</sup> In order to implement such an approach, States should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers. In the case of deaf children, for example, sign language should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment.

### H. Article 15 - The right to take part in cultural life and enjoy the benefits of scientific progress

36. The Standard Rules provide that "States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas. ...States should promote the accessibility to and availability of places for cultural performances and services...". <sup>34/</sup> The same applies to places for recreation, sports and tourism.

37. The right to full participation in cultural and recreational life for persons with disabilities further requires that communication barriers be eliminated to the greatest extent possible. Useful measures in this regard might include "the use of talking books, papers written in simple language and with clear format and colours for persons with mental disability, [and] adapted television and theatre for deaf persons". <sup>35/</sup>

38. In order to facilitate the equal participation in cultural life of persons with disabilities, Governments should inform and educate the general public about disability. In particular, measures must be taken to dispel prejudices or superstitious beliefs against persons with disabilities, for example those that view epilepsy as a form of spirit possession or a child with disabilities as a form of punishment visited upon the family. Similarly, the general public should be educated to accept that persons with disabilities have as much right as any other person to make use of restaurants, hotels, recreation centres and cultural venues.

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### Notes

<sup>1/</sup> For a comprehensive review of the question, see the final report prepared by Mr Leandro Despouy, Special Rapporteur, on human rights and disability (E/CN.4/Sub.2/1991/31).

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2/ A/47/415, para. 5.

3/ See General Assembly resolution 37/52 of 3 December 1982, by which the Assembly adopted the World Programme of Action concerning Disabled Persons. See also A/37/351/Add.1 and Corr.1, chapter VIII.

4/ See Commission on Human Rights resolutions 1992/48, para. 4 and 1993/29, para. 7.

5/ A/47/415, para. 6.

6/ General Assembly resolution 48/96 of 20 December 1993, annex, Introduction, para. 17.

7/ World Programme of Action concerning Disabled Persons, see A/37/351/Add.1 and Corr.1, chapter VIII, para.1.

8/ A/C.3/46/4, annex I. See also the Report on the International Meeting on the Roles and Functions of National Coordinating Committees on Disability in Developing Countries, Beijing, 5-11 November 1990 (CSDHA/DDP/NDC/4). See also Economic and Social Council resolution 1991/8 and General Assembly resolution 46/96 of 16 December 1991.

9/ General Assembly resolution 46/119 of 17 December 1991, annex.

10/ See note 6 above, Introduction, para.15..

11/ A/47/415, *passim*.

12/ *Ibid.*, para. 5.

13/ See note 6 above, Rule 1.

14/ See note 7 above, para. 3.

15/ A/47/415, paras. 37-38.

16/ See note 7 above, para. 25.

17/ See note 1 above, para.140.

18/ A/47/415, paras. 35, 46, 74 and 77.

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19/ See note 6 above, Rule 7.

20/ See A/CONF.157/PC/61/Add.10, p.12.

21/ See also Recommendation No.99 (1955) concerning vocational rehabilitation of the disabled, and Recommendation No. 168 (1983) concerning vocational rehabilitation of persons with disabilities.

22/ See note 6 above, Rule 8, para.1.

23/ A/47/415, para. 78.

24/ See note 1 above, paras. 190 and 193.

25/ See note 7 above, para. 74.

26/ See note 6 above, Rule 9, para. 2.

27/ E/CN.6/1991/2, paras. 14 and 59-68.

28/ See note 6 above, Rule 4.

29/ Ibid., Rule 2, para. 3.

30/ See the Declaration on the Rights of Disabled Persons (General Assembly resolution 3447 (XXX) of 9 December 1975), para. 6. See also note 7 above, paras. 97-107.

31/ See note 6 above, Rule 3.

32/ A/47/415, para. 73.

33/ See note 6 above, Rule 6.

34/ Ibid., Rule 10, paras.1 and 2.

35/ A/47/415 para. 79.

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- ICESCR General Comment 14 (Twenty-second session, 2000): Article 12: The Right to the Highest Attainable Standard of Health, E/2001/22 (2000) 128 at paras. 12(b)(ii), 22 and 26.

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12. The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

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(b) *Accessibility*...Accessibility has four overlapping dimensions:

...

(ii) Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS...Accessibility further includes adequate access to buildings for persons with disabilities;

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### Children and adolescents

22. Article 12, paragraph 2 (a), of the Covenant outlines the need to take measures to reduce infant mortality and promote the healthy development of infants and children...Children with disabilities should be given the opportunity to enjoy a fulfilling and decent life and to participate within their community.

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### Persons with disabilities

26. The Committee reaffirms paragraph 34 of its General Comment No. 5 (1994) on persons with disabilities, in particular the issue of persons with disabilities and the right to physical and mental health. Moreover, the Committee stresses the need to ensure that not only the public health sector but also private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities.

- CEDAW General Recommendation 18 (Tenth session, 1991): Disabled Women, A/46/38 (1991) 7.

The Committee on the Elimination of Discrimination against Women,

Taking into consideration particularly article 3 of the Convention on the Elimination of All Forms of Discrimination against Women,

Having considered more than 60 periodic reports of States parties, and having recognized that they provide scarce information on disabled women,

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Concerned about the situation of disabled women, who suffer from a double discrimination linked to their special living conditions,

Recalling paragraph 296 of the Nairobi Forward-looking Strategies for the Advancement of Women, in which disabled women are considered as a vulnerable group under the heading "areas of special concern",

Affirming its support for the World Programme of Action concerning Disabled Persons (1982),

Recommends that States parties provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life.

- CEDAW General Recommendation 24 (Twentieth session, 1999): Article 2 : Women and Health, A/54/38/Rev.1 part I (1999) 3 at paras. 6 and 25.

...

6. While biological differences between women and men may lead to differences in health status, there are societal factors which are determinative of the health status of women and men and which can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

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25. Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States parties should take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.

- CEDAW General Recommendation 25 (Thirtieth session, 2004): Article 4, Paragraph 1: Temporary Special Measures, A/59/38 part I (2004) 78 at para. 12.

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12. Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.

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- CRC General Comment 1 (Twenty-sixth session, 2001): Article 29 (1): The Aims of Education, CRC/C/103 (2001) 150 at para. 10.

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10. Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect...Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home. <sup>4/</sup> Children with HIV/AIDS are also heavily discriminated against in both settings. <sup>5/</sup> All such discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

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### Notes

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<sup>4/</sup> See General Comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights on persons with disabilities.

<sup>5/</sup> See the recommendations adopted by the Committee on the Rights of the Child after its day of general discussion in 1998 on children living in a world with HIV/AIDS (A/55/41, para. 1536).

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- CRC General Comment 2 (Thirty-first session, 2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, A/59/41 (2004) 82 at para. 15.

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15. NHRIs [national human rights institutions] should be geographically and physically accessible to all children. In the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education. NHRI legislation should include the right of the institution to have access in conditions of privacy to children in all forms of alternative care and to all institutions that include children.

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- CRC General Comment 6 (Thirty-ninth session, 2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, A/61/41 (2005) 15 at para. 41.

...

41. States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in line with articles 28, 29, paragraph 1 (c), 30 and 32 of the Convention and the general principles developed by the Committee. Such access should be granted without discrimination and in particular, separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.

...

- ICCPR General Comment 25 (Fifty-seventh session, 1996): Article 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, A/51/40 vol. I (1996) 98 at paras. 10 and 20. For text of General Comment, see **POLITICAL RIGHTS**.
- ICESCR General Comment 4 (Sixth session, 1991): Article 11 (1): The Right to Adequate Housing, E/1992/23 (1991) 114 at para. 8(e). For text of General Comment, see **ADEQUATE OR DECENT STANDARD OF LIVING - FOOD, CLOTHING, SHELTER**.
- ICESCR General Comment 15 (Twenty-ninth session, 2002): The Right to Water (arts.



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11 and 12 of the Covenant), E/2003/22 (2002) 120 at paras. 13-15 and 16(h). For text of General Comment, see **ADEQUATE OR DECENT STANDARD OF LIVING - FOOD, CLOTHING, SHELTER**.

- ICESCR General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, E/2006/22 (2005) 116 at paras. 5 and 10. For text of General Comment, see **EQUALITY AND DISCRIMINATION - GENDER DISCRIMINATION - General**.
- CRC General Comment 3 (Thirty-second session, 2003): HIV/AIDS and the Rights of the Child, A/59/41 (2004) 89 at paras. 6, 17, 21 and 30. For text of General Comment, see **CHILDREN'S RIGHTS - GENERAL**.
- CRC General Comment 4 (Thirty-third session, 2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, A/59/41 (2004) 102 at paras. 12, 13, 19, 21, 23 and 35. For text of General Comment, see **CHILDREN'S RIGHTS - HEALTH**.