



The Right to Adequate  
**Housing for Persons  
with Disabilities**  
Living in Cities

Towards Inclusive Cities

## THE RIGHT TO ADEQUATE HOUSING FOR PERSONS WITH DISABILITIES LIVING IN CITIES - TOWARDS INCLUSIVE CITIES

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OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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# Foreword



**O**n the occasion of World Cities Day 2015 “Designed to Live Together” I am pleased to launch this report on the Right to Adequate Housing for Persons with Disabilities Living in Cities.

Too often, we see the existing barriers in public spaces and buildings, as well as the lack of safe, affordable, accessible and barrier-free housing and transportation, obstruct persons with disabilities from fully enjoying their rights and living in dignity and safety in their communities.

Urban spaces may exacerbate segregation and the exclusion of people in vulnerable situations, including persons with disabilities. Innovative housing, transportation and building programmes that make our cities accessible to all are urgently needed. Urban spaces have to be resilient and accessible if we want to build inclusive,

dynamic, resilient and sustainable cities and communities. The “Three-Pronged approach” – designed to better respond to the challenges and harness the opportunities of cities and human settlements by integrating urban planning, economy and legislation – is a very powerful tool in building this accessibility and resilience..

The growing urgency to provide adequate housing to millions of households and the need to do so in ways to guarantee a sustainable future for cities calls for a paradigm shift in housing policy and practice. UN-Habitat proposes that this shift, referred to as ‘Housing at the Centre’, comes to position housing as a priority in the public debate around urbanization, integrated within the framework of national urban policies and urban planning. ‘Housing at the Centre’ re-establishes the important role housing has in development, stimulating the economy, reducing

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poverty and promoting inclusion in cities, and positions housing issues on the international development agenda in an increasingly strategic manner vis-a-vis the New Urban Agenda.

‘Housing at the Centre’ departs from an understanding of housing as more than a roof and four walls, but the right to live somewhere in security, peace and dignity. It not only takes into account the socio-developmental dimension of housing, but places people and human rights at the forefront of urban sustainable development. Accessibility and universal design - in terms of making the design of all infrastructure, services, ICT and public facilities usable by all persons- is a precondition for achieving inclusion and equality for persons with disabilities in cities.

The Third UN Conference on Housing and Sustainable Urban Development

(Habitat III), which will take place in 2016, will be an important occasion for States and other parties to renew their commitments to protect and promote the rights of people with disabilities in cities. – and the timing could not be better: With the first ever worldwide Sustainable Development Goal to then year 2030 to “make cities and human settlements inclusive, safe, resilient and sustainable” and targets to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums.



*Dr Joan Clos*  
*Executive Director, UN-Habitat*

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# Executive Summary

“We shape our buildings; and afterwards our buildings shape us.”

*Winston Churchill, House of Commons, 28 October 1943*

The Convention on the Rights of Persons with Disabilities (CRPD) makes a significant contribution to understanding the right to adequate housing for persons with disabilities. This study explores the questions of who persons with disabilities are, where they live, the barriers they encounter and how their right to adequate housing should be conceptualized. While General Comment 4 of the Committee on Economic, Social and Cultural Rights, on the right to adequate housing, provides the framework for understanding the right to adequate housing, the CRPD shows that additional considerations are needed so that persons with disabilities enjoy that right on an equal basis with others.

The CRPD does this by explaining the requirements that need to be in place for persons with disabilities to exercise that right. Some of

the requirements, such as support services and reasonable accommodation are introduced in the Convention to be understood as measures to facilitate exercising existing rights, not as the creation of new rights. Other requirements, such as non-discrimination, have long-standing status within the international framework. For persons with disabilities there are additional sets of systemic barriers that prevent or restrict the right to adequate housing. For example, if people do not have legal capacity or if they are subjected to involuntary treatment they are then prevented from realizing their right to adequate housing.

Persons with disabilities do not constitute a homogenous group. Each person with an impairment has a varying degree of support needs, from none at all to complex and multi-layered needs, that should be in place to facilitate the right to adequate housing. While this study takes the seven aspects of adequate housing (per the Committee on Economic, Social and Cultural Rights) as a starting point and interprets what those mean for persons with disabilities, there is no presentation of specific considerations by type of impairment. That decision is due not only to space limitations but also a change in perspective from the medical model to the human rights model. Rather than focus on the individual as the problem, the human rights model begins with the premise that persons with disabilities have rights on an equal basis with others but have been restricted in their enjoyment of them due to various legal,

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environmental and attitudinal barriers. This study notes that people in vulnerable situations - that may include children, youth, elderly, persons with disabilities, displaced persons and migrants, indigenous people, homeless persons, minorities, people living with HIV/AIDS, and especially women in these categories - face exceptional barriers that prevent their enjoyment of the right to housing.

Efforts to promote the realization of the right to adequate housing can be grouped into six broad topics.

### **1. Addressing discrimination in housing:**

Non-discrimination and equality are founding principles of the Universal Declaration of Human Rights and are essential in all binding international human rights instruments. Efforts to promote non-discrimination include broadening legislation and policies to address inaccessibility in the built environment and in communication technologies, introducing the concept of 'reasonable accommodation', and defining the denial of reasonable accommodation as discrimination on the basis of disability, as well as requirements for new construction, retro-fitting of inaccessible housing stock and other inaccessible features.

One very important sub-theme within non-discrimination concerns conditions for persons with disabilities in institutions: a concerted effort by States Parties (countries which have adhered to the CRPD) to reexamine the practices by

which people have been deprived of their legal capacity, the prohibition of new admissions to and involuntary treatment within institutions (broadly defined), and the development of specific plans to close institutions while simultaneously developing and funding community services targeted first and foremost to former residents of institutions. Sweden's process of deinstitutionalization is included as one of three good-practice case studies in Chapter 5 of this study.

### **2. Support for living independently and in the community:**

This includes addressing the lack of choice in housing and the lack of support, as well as addressing the lack of accessible and affordable services in the community. Legislation is needed to mandate the provision of and funding for services in the community. This could include the provision of mobility devices, personal assistants and stipends for persons with disabilities so they can select appropriate support, and mandating the introduction of changes to ensure general community services are accessible.

### **3. Removing barriers in the built environment, both in the home as well as in the community:**

This includes the lack of accessible housing stock, the inhabitability of housing stock (due to overcrowding, lack of available services, materials, and infrastructure), and inaccessible transportation.

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**4. Taking measures to accelerate equality for persons with disabilities:** Measures could ensure that persons with disabilities have the opportunity to participate in the design, implementation and monitoring of support services to facilitate their right to adequate housing. Other measures could provide access to resources and economic and social opportunities to support inclusion into the community. When addressing homelessness, for example, States Parties and local entities also can and should bear in mind the significant overrepresentation of persons with disabilities within the population who are homeless.

**5. Monitoring, data collection, and functioning of effective and safe complaint mechanisms:** A major barrier for government has been the lack of data on persons with disabilities, so it is extremely important for first adopters (in government and civil society organizations) to guide other governmental bodies on how to do this better. The UN Washington Group on Disability Statistics has designed a short set and an extended set of questions to be used in censuses and disability surveys and has provided guidance to governments on how to use them. The use of these tools and effective monitoring of their use will support



The right to adequate housing is linked with other human rights including inclusive education and health. © UN-Habitat

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better data collection. In addition, there should be measures for submitting complaints due to perceived discrimination (including denial of requests for reasonable accommodation) or when support and services for persons with disabilities are found to be inadequate.

**6. Intersectional, or multiple, discrimination:**

This can include efforts to gather better data on disability, disaggregated along other variables (such as gender, age, type of impairment, race, ethnicity, and homelessness). The case study on the Regional Equity Atlas shows how this was done in Portland, Oregon, USA. Another effort to shine a light on the importance of intersectionality could focus on promoting efforts to end violence against women and children with disabilities since social protection is a precondition for exercising the right to adequate housing. Other efforts could focus on raising awareness on the intersection of disability with other communities who face marginalization such as those in extreme poverty, the elderly, indigenous populations, migrant communities, and persons living with HIV-AIDS. The third case study looks at the intersection of disability and HIV-AIDS status.

The opening quote from Winston Churchill reminds us that nations and communities make choices regarding the built environment, including the location and construction of housing, and those choices reveal who we are: whether we choose to live in communities that tolerate discrimination

and, in fact, passively encourage discrimination through the denial of access for persons with disabilities and other marginalized groups. Nations and communities can choose a different path, and can provide adequate housing for all.

Sufficient attention to issues affecting persons with disabilities, particularly their right to adequate housing, must be adequately reflected in UN-Habitat's development policies and strategies, as well as in its partnerships with e.g. the Office of the High Commissioner for Human Rights (OHCHR), UN Department of Economic and Social Affairs (UN-DESA), United Nations Partnership to Promote the Rights of Persons with Disabilities (UNPRPD), the CRPD Committee, as well as with leading disability and human rights advocates and their representative organizations. More coordinated work is needed to support the development of laws, policies and practices at the national and local level that promote the right to adequate housing for persons with disabilities.

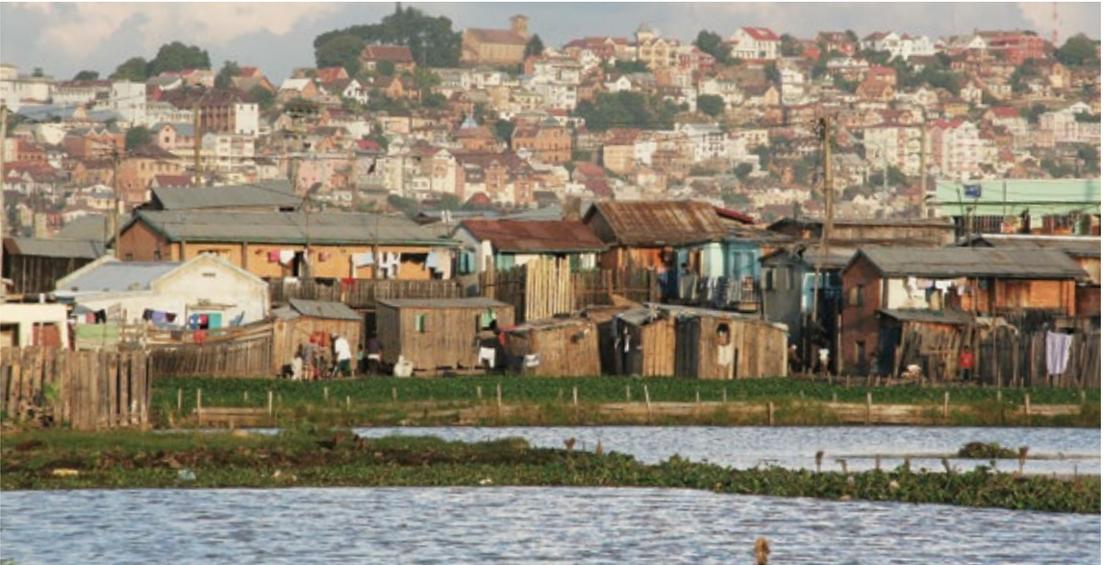
While Sustainable Development Goal (SDG) 11 looks to ensure settlements are inclusive, safe, resilient and sustainable, in the final draft<sup>1</sup> only two targets (regarding transportation and green/public spaces) under that goal directly refer to persons with disabilities. Persons with disabilities must be understood as being part of every target within SDG 11. Otherwise, the term 'inclusive city' is hollow. Given the current conditions for persons with disabilities and the barriers they face

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(discussed in Chapter 3 of this study), persons with disabilities need to be considered and supported through revisions of housing legislation, policies and programmes. To meet Goal 11 every city needs an active, participatory and well-funded effort to address barriers that prevent persons with disabilities from having adequate housing, feeling safe, and being included in the community.

This study tries to highlight that housing is a cross-cutting issue for persons with disabilities. If persons with disabilities do not have adequate housing, then their ability to enjoy other rights such as inclusive education, health care, employment, and social protection is significantly compromised.

If persons with disabilities do not have adequate housing, they will be in more vulnerable positions given external factors such as war and climate change, and the inequity between those with and without disabilities will increase further. Given the legacy of discrimination when it comes to housing, it is important for UN-Habitat to raise awareness and advocate with other United Nations bodies on the need for greater inclusion of persons with disabilities in all sectors. Though solving housing for persons with disabilities is absolutely necessary, in isolation it will not be sufficient to enable persons with disabilities to enjoy all their rights on an equal basis with others. It is, nonetheless, a necessary first step.



Solving housing problems for persons with disabilities is a necessary first step for persons with disabilities to enjoy their rights.  
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# Abbreviations

<b>ANED</b> .....	Academic Network of European Disability Experts
<b>CAT</b> .....	Convention Against Torture
<b>CEDAW</b> .....	Convention on the Elimination of Discrimination Against Women
<b>CRC</b> .....	Convention on the Rights of the Child
<b>CRPD</b> .....	Convention on the Rights of Persons with Disabilities
<b>DFID</b> .....	Department for International Development
<b>DPO</b> .....	Disabled Persons Organization
<b>DRI</b> .....	Disability Rights International
<b>DRIP</b> .....	Declaration on the Rights of Indigenous Persons
<b>ICESCR</b> .....	International Covenant on Economic, Social and Cultural Rights
<b>ICRMW</b> .....	International Convention on the Protection of Migrant Workers and their Families
<b>IDA</b> .....	International Disability Alliance
<b>ILO</b> .....	International Labour Organization
<b>IDP</b> .....	Internally displaced person
<b>MDGs</b> .....	Millennium Development Goals
<b>OHCHR</b> .....	Office of the High Commissioner for Human Rights
<b>SDGs</b> .....	Sustainable Development Goals
<b>UN-DESA</b> .....	United Nations Department of Economic and Social Affairs
<b>UNHCR</b> .....	United Nations High Commissioner for Refugees
<b>UNICEF</b> .....	United Nations Children’s Fund
<b>UNPRPD</b> .....	United Nations Partnership to Promote the Rights of Persons with Disabilities
<b>WHO</b> .....	World Health Organization

Committees of the different international treaty bodies are abbreviated as follows:

<b>CEDAW Committee</b> .....	Committee on the Convention on the Elimination of Discrimination Against Women
<b>CESCR</b> .....	Committee on Economic Social and Cultural Rights
<b>CRC Committee</b> .....	Committee of the Convention on the Rights of the Child
<b>CRPD Committee</b> .....	Committee on the Convention on the Rights of Persons with Disabilities

# PART I

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# INTRODUCTION



States have a duty to ensure that persons with disabilities have their right to adequate housing respected. © UN-Habitat

# The Right to Adequate Housing for Persons With Disabilities Living in Cities

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This study on the right to adequate housing for persons with disabilities has been undertaken to identify first, “trends in relation to the policy and legal national and sub-national solutions in relation to the realization of the rights of persons with disabilities” and second, “possible areas of engagement of UN-Habitat...in view of its mandate and programmatic priorities.”

The right to adequate housing has its origins in the Universal Declaration of Human Rights (UDHR), and was brought into binding international law through Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Convention on the Rights of Persons with Disabilities (CRPD) further elaborates the meaning of the right to adequate housing as it pertains to persons with disabilities. Most directly the CRPD creates a new benchmark for the realization of the right of persons with disabilities to adequate housing through Article 28 on Adequate standard of living and social protection. Many other articles in the CRPD inform and add nuance to this right, and this study explores the ways in which the Convention contributes to and advances the meaning of the right.

The CRPD and the work of its Committee are primary sources for this study. In addition, reports from other treaty bodies have been consulted, as well as reports from several of the Special Procedures mandate holders, who are independent human rights experts on different themes and countries and who are appointed by the Human Rights Council. For the purposes of this study, the most relevant are the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living (hereinafter: Special Rapporteur on Adequate Housing) and the Special Rapporteur on the Rights of Persons with Disabilities.

The Convention on the Rights of Persons with Disabilities, adopted in 2006, represents a paradigm shift in how society is required to look at and include persons with disabilities on an equal basis with others. As noted disability scholar Gerard Quinn wrote, “If there is one core message from the convention it is that persons with disabilities should henceforth not be seen as objects to be managed but as human subjects deserving of equal respect and treatment.”<sup>2</sup>

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The Special Rapporteur on Adequate Housing has emphasized that the right to adequate housing is explained within the CRPD, with its emphasis on non-discrimination and substantive equality, as well as its “unique provisions regarding ‘access to justice’ and ‘national implementation and monitoring’ to ensure that principles of substantive equality are full implemented through domestic law and policy.”<sup>3</sup>

The CRPD is binding international law. The open-ended definition of persons with disabilities (Article 1), the observation that disability is an evolving concept (Preamble [e]), and emphasis on women with disabilities and children with disabilities (multiple articles) all serve to broaden and deepen our understanding of persons with disabilities as a heterogeneous group. This requires recognition of the multiple layers of discrimination, the interconnectedness of different forms of oppression and the interdependence of all human rights.

This fits within the theory of intersectionality, which argues that different forms of oppression are connected to one another. As author and lecturer Andrew Solomon explained, “You cannot, for example, eliminate sexism without addressing racism.”<sup>4</sup> By the same logic, any goal to achieve adequate housing cannot be realized unless states, regions and cities address discrimination against persons with disabilities, build an understanding of the requirements for adequate housing for persons

with disabilities and promote the right to housing through legislation, policies and programmes.

While a person’s multiple identity markers help to explain the extent to which he or she is in a position to exercise rights (or not), the interdependence of different rights also affect whether people are able to enjoy specific rights. Laura Track, a lawyer with the British Columbia Civil Liberties Association, has noted that certain rights (including adequate housing and nutrition) need to be realized in order to be able to exercise other rights such as freedom of speech, freedom of assembly and the right to vote. Noting a “certain level of socio-economic security” is required, she wrote, “Without that security, it is incredibly difficult for a person to take advantage of those rights, and existing inequalities and rights infringements are exacerbated.”<sup>5</sup> The International Labour Organization (ILO) expressed a similar sentiment, noting, “Poverty denies the enjoyment of practically all human rights.”<sup>6</sup>

The requirement to facilitate inclusion also requires a shift in how we think about different identity markers. Persons with disabilities should no longer be considered in isolation as just persons with disabilities but rather as women, refugees, migrants, persons in institutions, persons who are homeless, elderly, children, extremely poor persons, and those who are stateless, and also as persons who contribute positively to the community. There has been a gradual gaining in awareness of the importance of these dimensions. The Committee

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on the Rights of the Child (CRC Committee), for example, issued its General Comment 9 (2007) on the rights of children with disabilities, and some states have begun to shine a light on the rights and needs of children with disabilities. Nonetheless, a more complete transformation is required.

The right to adequate housing is complex and further showcases the interrelatedness and indivisibility of all human rights. The Committee on Economic, Social and Cultural Rights defined seven aspects of this right: (1) legal security of tenure; (2) availability of services, materials, facilities, and infrastructure; (3) affordability; (4) habitability; (5) accessibility; (6) location and (7) cultural adequacy.<sup>7</sup> While these aspects will be discussed in more detail in the main body of this report, greater attention needs to be paid to ensure persons with disabilities can access housing that is adequate in each of these aspects. The CRPD has given further depth to each of those seven aspects and articulated considerations that need to be addressed to ensure persons with disabilities can enjoy this right on an equal basis with others.

States have a duty to ensure that persons with disabilities have their right to adequate housing respected. While the right to adequate housing, as a right contained within the ICESCR, is subject to progressive realization, States Parties are obliged “to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available

resources” towards the realization of that right.<sup>8</sup> Measures to level up conditions and opportunities are required, not only when persons with disabilities ask for assistance or reasonable accommodation but also as a part of an effort to apply the principle of universal design and restore the legal capacity of all persons with disabilities.

Housing advocates at all levels (international, national, regional, and local) tend to refer to certain groups of persons as ‘vulnerable’ when it comes to accessing their right to adequate housing. A somewhat standard list of ‘vulnerable persons’ in reports includes: those who are extremely poor (including slum residents), women, those with a sexual orientation that is not heteronormative, migrants, refugees, persons with disabilities, people who are stateless, people who are homeless, people in institutions, ethnic/religious minorities, people in disaster-prone regions and/or those exposed to conflict and so on.

When these groups are identified it is often just in passing, without proper attention. Moreover, rather than thinking of groups of people as inherently ‘vulnerable’, focus should be on identifying the systems and processes that exclude or marginalize groups of people and to recognize how the multiple layers of identity impact upon one’s access to resources and opportunities and whether or not one is subjected to discrimination.

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The more traditional approach to labelling people does not take into account the multiple identities that everyone has or account for the effects of double or triple discrimination. How are the rights of female refugees with disabilities respected among people who share only their status as refugees? How are they respected in the communities they are not part of? This could include, for example, men and women who are not refugees but who work in the camp or men and women without disabilities outside the camp.

Persons with disabilities tend to be overrepresented and yet marginalized within each of the above 'vulnerable categories'. Nonetheless, there is little information about the right to adequate housing provision by, for example, Syrian refugee children with disabilities or Roma women with disabilities.

Chapter 2 looks at persons with disabilities from an intersectional lens, highlighting different identity markers that may place people in positions of greater vulnerability, data on disability, and how



Persons with disabilities are often denied access to the resources that would enable them to live in safety and security. © UN-Habitat

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urbanization has affected persons with disabilities. Chapter 3 opens with a brief background on the right to adequate housing and notes that the seven aspects identified by the Committee on Economic Social and Cultural Rights, while necessary conditions, do not sufficiently explain the requirements to ensure that diverse persons with disabilities can exercise their right to adequate housing. It highlights the significant contribution that the Convention on the Rights of Persons with Disabilities has made with regard to an understanding of the right to adequate housing for persons with disabilities. Finally, five main barriers are described which limit persons with disabilities enjoying the right to adequate housing on an equal basis with others.

The first Special Rapporteur on Adequate Housing described the “human right to adequate housing” as: “the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.”<sup>9</sup> Persons with disabilities are often denied access to the resources that would enable them to live in safety and security and are denied the opportunities to participate in the economic, cultural, and social lives of the community. While there is a significant gap between theory and practice, different international actors have made comprehensive recommendations to States Parties on what can be done to close that gap. These recommendations are shared in Chapter 4.

Chapter 5 offers three case studies. Two of the case studies highlight different positive steps that states and cities have made with regard to ensuring greater enjoyment of the right to adequate housing: the deinstitutionalization process in Sweden, and efforts to collect, analyze, and use data in Portland, Oregon, United States. A final case study looks at the intersection of disability and HIV-AIDS. Part III provides brief conclusions and recommendations for engagement for UN-Habitat.

**Note on terminology:** Aside from direct quotes, this report uses the following terms:

- ‘Persons with disabilities’ is used as the plural form of ‘person with a disability’. In contrast, ‘non-disabled’ is used for persons without disabilities. ‘People’ is used for groups that include persons who are non-disabled and persons with disabilities.
- ‘Persons with intellectual disabilities’ describes persons with developmental disabilities or those who, in the past, were referred to as persons with ‘mental retardation’.
- ‘Persons with psychosocial disabilities’ describes persons who were or are users and/or survivors of psychiatry or mental health services.

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- The more neutral terms ‘lower-income’, ‘middle-income’, and ‘higher-income’ when referring to countries are used in place of ‘less developed’ or ‘developing’.

### **Scope and limitations**

This is a desk review only, with no opportunity to undertake field visits to obtain additional materials or interview key stakeholders. Two of the three cases focused on practices in higher-income countries and there is a need to identify good practices in lower and middle-income countries. There is need for further study of the impact of disasters on persons with disabilities and to involve persons with disabilities in disaster response mechanisms.

There is not space to cover the issue of employment discrimination in full, the material challenges that persist due to that discrimination, or the effect that has on the enjoyment of the right to adequate housing. While this paper argues that the right to adequate housing is linked with other human rights (including inclusive education, employment, and health), the scope does not permit an exploration of all those linkages. For example, increasing attention has been paid to the need to involve persons with disabilities

in disaster response efforts.<sup>10</sup> It is evident that a greater proportion of persons with disabilities are vulnerable to and are killed in disasters<sup>11</sup> and that persons with disabilities would benefit from more inclusive response measures, including evacuation procedures, accessible temporary housing, and services. The Special Rapporteur on Adequate Housing has highlighted the need to review post-conflict and post-disaster response to address the needs of persons with disabilities.<sup>12</sup>

There is not much information about how adolescents and young adults with disabilities make the transition from living with their families or in institutions to other housing arrangements including the types of barriers they face and what their needs are. Likewise, while a concerted attempt has been made to look at the intersection of many different identity markers, there is no information about persons with disabilities who are undergoing or have undergone gender transitions.

Michael Szporluk was the lead author. Anirban Pal reviewed state reports for Habitat III, and wrote the section on Urbanization, and the case study on the Regional Equity Atlas. Meritt Buyer wrote case studies on Sweden, and people living with HIV-AIDS.

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Eighty per cent of the population of persons with disabilities live in 'developing countries. © hikrcn / Shutterstock.com



# Towards Inclusive Cities for Persons with Disabilities

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## A. Who are persons with disabilities?

The Convention on the Rights of Persons with Disabilities (CRPD) uses an open-ended definition for persons with disabilities: “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”<sup>13</sup> The shift in focus from the individual to their interaction with society is intentional — and not only reflects the desire to focus on social obligation but also recognizes that persons with disabilities are extremely diverse and experience discrimination and challenges that vary depending on the context. In other words, disability is not a fixed concept.

The World Health Organization (WHO) and World Bank published their *World Report on Disability* in 2011, which included a review of two global efforts to gather data on disability prevalence, the *World Health Survey* (WHS) and the *Global Burden of Disease*. Their review of the

*World Health Study* data showed that across 59 countries, persons with disabilities made up 15.6 per cent of the population, though the range varied from 11.8 per cent in higher-income countries to 18 per cent in lower-income countries.<sup>14</sup> According to the *Global Burden of Disease*, which looked at data from 17 sub-regions in 2004, 15.3 per cent of the population has moderate disabilities and 2.9 per cent of the population has severe disabilities.<sup>15</sup> Both data sets suggest that the number of persons with disabilities globally is well over 1 billion. Disability not only affects the individual, of course, but the whole household. Professor Nora Groce headed a UN-financed study on applying the Millennium Development Goals to persons with disabilities and noted that “one household in every four contains a disabled member—which means that an estimated 2 billion people live with disability on a daily basis.”<sup>16</sup> Other commonly cited statistics on disability are:

- Eighty per cent of the population of persons with disabilities live in ‘developing countries’.<sup>17</sup>
- Twenty per cent of the world’s poorest people

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are disabled and tend to be regarded in their own communities as the most disadvantaged.<sup>18</sup>

- Disabled people and their families account for 40 per cent of Asia's total population.<sup>19</sup>

In both lower- and higher-income countries, persons with disabilities are disproportionately represented among the world's poor and tend to be poorer than their counterparts without disabilities.<sup>20</sup> Some statistics on poverty suggest that two-thirds of extremely poor people live in households where the household head is an ethnic minority, and more than three-quarters of extremely poor people live in rural areas.<sup>21</sup>

With regard to the groups of persons with disabilities who may be more marginalized, there is little reliable data on their numbers or living conditions. It may be useful to think of nine separate but interrelated identity markers that reveal the extent to which one is restricted or prevented from exercising the right to adequate housing: (1) women; (2) children; (3) older people; (4) refugees and people who are internally displaced or stateless; (5) indigenous people; (6) migrants, ethnic/religious minorities, or other socially stigmatized groups, such as *dalits*/untouchables, sex workers or ex-convicts; (7) people in extreme poverty; (8) people with diverse sexual orientations and (9) people living with HIV-AIDS. Each group is defined in brief, noting the extent to which their right to adequate housing is covered under international law.

## 1. Women

Many studies, including the *World Report on Disability*, have shown that disability is more prevalent among women than men.<sup>22</sup> Women, regardless of where they live, experience discrimination with regard to exercising their right to housing. This has been well documented, inter alia, by the Office of the High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on Adequate Housing.<sup>23</sup> The Special Rapporteur on Adequate Housing noted a significant gap between women's rights before the law and their fulfillment of those rights<sup>24</sup> and has endorsed an intersectional approach when considering the right to adequate housing for women.<sup>25</sup> The Special Rapporteur on the Rights of Persons with Disabilities has noted that women and girls with disabilities face many difficulties in accessing adequate housing, healthcare, education, vocational training and employment, and are more likely to be institutionalized and experience poverty.<sup>26</sup> Women and girls, who are also members of other groups in vulnerable situations (listed below), are more vulnerable than men and boys are. A report from the OHCHR noted:

Numerous testimonies from the regional consultations highlight that intersectional discrimination represents a key obstacle to the realization of the right to adequate housing, as it often leads women to live in inadequate housing or in segregated communities without basic services such as safe drinking

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water, sanitation or electricity. Women living in extreme poverty or under occupation, indigenous and tribal women, widows, divorced or separated women, women heads of households, girls, elderly women, women with disabilities, migrant women, domestic workers, and lesbian, bisexual and transsexual women are particularly vulnerable.<sup>27</sup>

## 2. Children

Children with disabilities are covered in the non-discrimination clause of the Convention on the Rights of the Child.<sup>28</sup> Children with disabilities

have the right to care, and States Parties are, thus, obliged to provide assistance (subject to available resources) to the child and the people who are responsible for their care.<sup>29</sup> UNICEF's annual *State of the World's Children* report in 2013 focused on children with disabilities. They pointed out that the right to adequate housing is closely linked to other rights that children with disabilities have:

Under the Convention on the Rights of Persons with Disabilities, children with disabilities and their families have the right to an adequate standard of living, including



Social protection for children with disabilities and their families is important. © UN-Habitat

adequate food, clothing and housing. Children with disabilities and those responsible for their care are also entitled to such subsidized or free support services as day care, respite care and access to self-help groups. Social protection for children with disabilities and their families is especially important because these families often face a higher cost of living and lost opportunities to earn income.<sup>30</sup>

### 3. Older people

The Inter-American Convention on Protecting the Human Rights of Older Persons was adopted in June 2015.<sup>31</sup> This is the first convention that looks explicitly at the rights of older persons, with or without disabilities. Given the ageing population in North America, Western Europe and East Asia there has been, and will continue to be, an increase in the number of elderly persons with disabilities.<sup>32</sup>



It is estimated that 38 per cent of people over the age of 60 have a disability. © keantian / Shutterstock.com

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This will not only include persons with disabilities as they age but also persons previously non-disabled who acquire disabilities later in life. WHO, for example, estimated that 38 per cent of people over the age of 60 have a disability.<sup>33</sup> OHCHR has recognized that older persons with disabilities make up a large segment of the population and are vulnerable to exclusion.<sup>34</sup>

#### **4. Refugees and people who are internally displaced or stateless**

UNHCR has numerous guidelines, including on determining refugee status, preventing trafficking, and asylum procedures. UNHCR also has specific guidance on working with refugees with disabilities.<sup>35</sup> The most recent version of the *Sphere Handbook* (2011) is inclusive of persons with disabilities.<sup>36</sup> Persons with disabilities in situations of conflict, post-conflict or post-natural disasters or otherwise stateless persons also face challenges when it comes to access to adequate housing. War or natural disaster reduces the available accessible housing stock, affects the affordability of remaining housing stock, causes new impairments, and renders persons with preexisting impairments more vulnerable. Within their new environments (in refugee camps or as urban refugees), persons with disabilities should be afforded the right to choose where and with whom they live, and homes or apartments should be as accessible and habitable as possible. There are few to no studies on the number of persons who are refugees or internally displaced persons with disabilities. UNHCR has

noted that persons with disabilities are “largely invisible or forgotten” and thus are “deprived of the humanitarian aid to which they are entitled.”<sup>37</sup>

#### **5. Indigenous people**

UN-Habitat and others have written extensively about the discrimination and exclusion that indigenous persons have faced when trying to exercise their right to adequate housing, and the recent trend of increased migration of indigenous persons to the city.<sup>38</sup> The Declaration on the Rights of Indigenous Peoples (DRIP) recognizes that indigenous persons have the right to be free from any kind of discrimination,<sup>39</sup> that particular attention should be paid to the rights of those who are more vulnerable, including, inter alia, persons with disabilities, and that states have the obligation to “take effective measures...to ensure continuing improvement of their economic and social conditions.”<sup>40</sup> A recent study prepared for the UN Permanent Forum on Indigenous Issues noted, “The lack of reliable data is a problem both for indigenous peoples and for persons with disabilities, given that very few countries have statistics on indigenous persons with disabilities.”<sup>41</sup> Data has suggested that Aboriginals in Australia, for example, are 1.7 times more likely to be persons with disabilities than the non-indigenous population.<sup>42</sup>

Regardless of disability status, indigenous persons and ethnic minorities are more likely to live in poverty. For example, the caste system functions

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to restrict opportunities for those who are deemed untouchable in India and Nepal. Recent consultations found that “17 and 12 per cent of the population respectively are largely exiled from mainstream society through complex restrictions on work, housing, education, social interaction and movement.”<sup>43</sup> Likewise, they found that indigenous persons in Australia have lower rates of education, employment, health, standard of living, and life expectancy and higher incidence of family violence than the non-indigenous population.<sup>44</sup>

### **6. Migrants or ethnic/religious minorities**

Migrants are recognized as facing greater challenges and barriers to accessing housing than non-migrants. The Special Rapporteur on Adequate Housing identified migrants as one of the groups who have been marginalized, facing discrimination when it comes to accessing adequate housing and more vulnerable to homelessness.<sup>45</sup> Migrants often do not have the necessary documentation to pursue housing claims, and female migrants are particularly vulnerable to gender-based violence and abuse. Overall, there is limited information about migrants with disabilities, let alone their specific right to adequate housing. Some studies have looked at children migrants, who are particularly vulnerable to inadequate housing and institutionalization. Those studies are discussed in more detail below.

No studies on prevalence of disability amongst migrant workers could be located. Given that

migrants tend to be poorer than non-migrants, and given the correlation between poverty and disability, it may be assumed that a disproportionate number of migrants are persons with disabilities.

### **7. People in extreme poverty (urban and rural)**

Statistics show the extent and severity of the challenge of addressing extreme poverty:

- “Well over 1 billion people live in precarious conditions in slums and informal settlements,” and “some 100 million” are homeless on any given day.<sup>46</sup>
- Some 925 million people experienced chronic hunger in 2010, and two-thirds of those people were in just seven countries: India, China, the Democratic Republic of Congo, Bangladesh, Indonesia, Pakistan, and Ethiopia. The region with the most undernourished people (578 million) is Asia and the Pacific, while sub-Saharan Africa is the region with the highest proportion (30 per cent) of undernourished people (239 million).<sup>47</sup>
- Slightly over 1 billion people live on less than USD 1.25 a day.<sup>48</sup>

Numerous studies have explored the correlation of poverty and disability and have asserted that disability and poverty are interrelated.<sup>49</sup> A WHO report noted that households with persons with disabilities spend more on health care.<sup>50</sup> One consequence is that even if a household with a person with a disability has income above the

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poverty line, their standard of living may be equivalent to or lower than households below the poverty line. This is supported by studies in higher- and lower-income countries, as detailed below.

Studying conditions in Zambia, Fleming and colleagues found not only that expenses are raised but also earnings are reduced due to care family members provide to their relatives with disabilities.<sup>51</sup> Similar conclusions were reached in a study by Parish and colleagues in the United States.<sup>52</sup> That study referenced other studies that noted children with disabilities are more likely to live in homes headed by single mothers, and that households headed by single mothers compose half of all poor households in the United States.<sup>53</sup> In her study on conditions in Canada, Laura Track noted that persons with disabilities are twice as likely to be poor than the non-disabled population. She added that poverty leaves women with disabilities vulnerable to violence, exploitation and coercion.<sup>54</sup>

Despite the correlation between disability and poverty, no reports about persons with disabilities as slum residents could be identified.

### **8. People with diverse sexual orientations:**

No studies could be located on disability, sexual orientation or identity and the right to adequate housing. Some studies have looked at housing discrimination against persons with diverse sexual orientations (not disaggregated by disability

status). For example, consultations held in 2004 in the Pacific region on the right to adequate housing identified intersectional discrimination as a significant factor in making lesbians, indigenous women, and women with disabilities more vulnerable with regard to their right to adequate housing and land.<sup>55</sup>

Likewise, a report from the visit of the Special Rapporteur on Adequate Housing noted discrimination in the private sector, including forced evictions of lesbian, gay, bisexual, transgender, or queer (hereinafter: LGBTQ) tenants all across Indonesia.<sup>56</sup> She noted that LGBTQ individuals in Indonesia experience discrimination, including forced evictions, in the private housing sector. This implies that persons with disabilities who are LGBTQ are also vulnerable to discrimination in the housing sector. Global consultations on the post-2015 development agenda also found discrimination against LGBTQ individuals in housing.<sup>57</sup>

### **9. People living with HIV-AIDS**

The issue of persons with preexisting disabilities who contract HIV-AIDs has not received much attention or study. Given that inattention, one of the three case studies for this publication looks at the intersection of disability and HIV-AIDs status (see Case Study 2).

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## B. Where do persons with disabilities live?

Persons with disabilities have the following housing arrangements, listed in terms of most restrictive to least restrictive environments: 1) as persons who are homeless on the streets or in shelter; 2) in institutions and psychiatric hospitals and other congregate housing; 3) with their families; 4) living independently in their own homes alone, with family or with roommates, including the concept of supported living.

### 1. Persons who are homeless

By definition, everyone who is homeless lacks adequate housing. Numerous studies have shown that a disproportionate number of persons who are homeless are persons with disabilities. For example, in the United States, people with psychosocial disabilities constitute an estimated 30 per cent of the homeless population.<sup>58</sup> The sheltered homeless population is 2.5 times more likely to be persons with disabilities than the general population (38 per cent compared to 15 per cent).<sup>59</sup> People in families who are homeless experience twice the disability rate as the general population.<sup>60</sup> Deinstitutionalization without the necessary development of community-based services, combined with the lack of affordable housing in many communities in the United States and limited employment opportunities, has left many persons with disabilities living on the street.

In addition, homelessness has led to the acquisition of disabilities among formerly non-disabled persons. A new Australian study looking only at mental health concluded that people acquire impairments as a result of homelessness.<sup>61</sup> This is of paramount importance for changing misconceptions about homelessness.

Gender considerations are important: women have less security of tenure than men.<sup>62</sup> Women have a higher risk of being homeless or suffering from consequences of inadequate housing.<sup>63</sup>

Violence or the threat of violence and abuse can cause housing insecurity or homelessness, and being homeless makes one more vulnerable to violence and abuse.<sup>64</sup> Violence against women who are homeless is not just a problem in lower-income counties. One study focusing on the United States reported that more than 60 per cent of women who are homeless have experienced domestic violence.<sup>65</sup> Homeless shelters are inadequate and create additional risks for women with disabilities.<sup>66</sup> Many shelters do not meet the specific needs of women with disabilities.<sup>67</sup>

There is a greater risk of homelessness for children with disabilities due to economic and social factors. Groce, citing data from UNICEF, noted that 33 per cent of all street children are children with disabilities.<sup>68</sup> The CRC Committee has noted that children with disabilities are at risk of being

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exploited “for the purpose of begging in the streets or elsewhere; sometimes disabilities are inflicted on children for the purpose of begging.”<sup>69</sup>

The Special Rapporteur on Adequate Housing has called homelessness “perhaps the most visible and most severe symptom of the lack of respect for the right to adequate housing,”<sup>70</sup> and poverty and homelessness “a distinct ground of discrimination” that further stigmatizes those who are discriminated against in access to housing.<sup>71</sup> The Special Rapporteur on Adequate Housing has also noted that “homelessness” connotes a sense of “belonging nowhere” rather than the more narrow and insufficient definition of having nowhere to sleep.<sup>72</sup>

The former Special Rapporteur on Adequate Housing identified stigma and discrimination as two major factors leading to the homelessness of persons with disabilities, and especially for persons with psychosocial disabilities. Stigma and discrimination create a barrier for housing and for accessing other social services. A third factor is the lack of community-based care and/or lack of access to hospital-based care.<sup>73</sup> He further noted that persons with disabilities, especially persons with severe disabilities, including those with psychosocial disabilities, will continue to face discrimination in housing (as well as in securing resources for obtaining adequate housing) until and unless health and social services are available.<sup>74</sup>



Homelessness has led to the acquisition of disabilities among formerly nondisabled persons. © HitManSnr / Shutterstock.com

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## 2. Living in institutions, psychiatric hospitals and other congregate housing

While some countries have relied on institutions as the primary place to house persons with disabilities, they are a relatively recent development in the course of human history. In 2009 the Academic Network of European Disability Experts (ANED) sent surveys to government representatives and gathered data on institutionalization and opportunities for supported living in the community in 25 European countries to report on the extent to which persons with disabilities are transitioning from institutional arrangements to living independently. Their synthesis report noted that it is “impossible to know which impairment groups are represented and to what extent.”<sup>75</sup> Without data about where persons with disabilities live, and without information about the type of disabilities they have and their support needs, it is impossible for states to ensure that the rights of persons with disabilities are being protected.

Over the past four decades, the violation of rights of persons who live in institutional settings has garnered increased attention. There has been a strong movement for deinstitutionalization and the need for the development of services in the community as an alternative to institutions in order to support people living independently in the community. Compelling evidence on abuse in institutions (by Disability Rights International, Human Rights Watch and Mental Disability Advocacy Center)<sup>76</sup> supports the view that

institutions are inherently places where violations of rights occur. In other words, there is no such thing as a good institution.

The UK report for the ANED research project noted the lack of a concise definition of ‘institution’ and the challenge of disaggregating persons with disabilities.<sup>77</sup> Eric Rosenthal, the Executive Director of Disability Rights International, pointed out a larger reason for the lack of data is that governments do not regulate public or private facilities sufficiently; they do not monitor conditions inside facilities and in fact, they do not want to know what is happening in them.<sup>78</sup>

The percentage of the disability community within each housing arrangement will differ significantly from region to region and country to country. In many countries, services for persons with intellectual disabilities are available only in institutions. In her new book Professor Arlene Kanter referenced WHO’s 2007 *Atlas Survey*, noting, “Of the 147 countries that responded to its survey -institutional settings were the most prevalent type of available service for people with disabilities in at least half the countries.”<sup>79</sup>

Institutions are a common housing arrangement in most of Europe, parts of North America, and parts of Asia, including China and India. Persons with disabilities in Africa also may reside in less formal or established congregate housing or prayer camps. While there are significantly more beds

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in psychiatric hospitals in Europe than in other regions,<sup>80</sup> the problem is not limited to Europe. There are vastly more children in institutions in Africa and in Asia than in Europe.<sup>81</sup> Looking only at institutions that house children, Rosenthal noted that the number of children in orphanages in Indonesia, for instance, has “at least doubled in the past decade.”<sup>82</sup> Likewise, data shows that there are 600 residential facilities -- for more than 40,000 children (63 children per facility) in Kenya alone. A study in Malawi revealed another problem is insufficient training for staff.<sup>83</sup> Reports from treaty body committees noted increases in the number of institutions, number of residents, and funding for institutions.<sup>84</sup>

Disability Rights International has been an outspoken advocate for deinstitutionalization and has documented violations of human rights in institutions around the world. Eric Rosenthal and Laurie Ahern argued that official statistics are unreliable since they tend to count the number of people in orphanages but do not include persons in other kinds of institutions.<sup>85</sup> Based on their analysis of the data, Rosenthal and Ahern argued that the number of children in institutions is increasing in Africa and Asia and that the rate of institutionalization is on the rise in Central and Eastern Europe.<sup>86</sup>

### **3. Living with their families, relatives, or guardians**

Another living arrangement is to live with families or, in the case of children with disabilities, with other guardians in a house. As with the numbers of persons with disabilities living in institutions, there is not accurate data from most countries on the number of persons with disabilities who live with their families as children or adults. Ideally, this data could be disaggregated by type of disability and with information about the specific support needs of those individuals. Country estimates vary widely due to many factors which include different definitions of disability, stigma associated with being identified as disabled, and inadequately-trained census enumerators.

In many countries, persons with disabilities live with their families. Given stigma in many countries, though, they may be isolated or hidden, and thus denied access to services. Kanter noted, “Some children and adults with disabilities have been shown to live their lives, literally, tied up in a room or a yard all day, often for protection, while their parents go to work.”<sup>87</sup>

Other sources support this contention that persons with disabilities face discrimination within the home. The CRC Committee’s General Comment 9 noted that data collection on children with disabilities is made more difficult because children “are often hidden by their parents or others caring for the child.”<sup>88</sup> The failure to register and/or

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document children with disabilities “has profound consequences for the enjoyment of their human rights, including the lack of citizenship and access to social and health services and education.”<sup>89</sup> The CRC Committee noted, “Children with disabilities who are not registered at birth are at greater risk of neglect, institutionalization, and even death.”<sup>90</sup> One consequence of the lack of accurate data on children with disabilities is the difficulty in developing education policies and opportunities for children with disabilities.<sup>91</sup> Wils and Bonnet cited a study that estimated that 90 per cent of children with disabilities are out of school.<sup>92</sup>

#### **4. Living independently (with some or no support)**

With the push toward deinstitutionalization and the entry into force of the CRPD, countries in North America and Europe began the process of deinstitutionalization and the introduction of supports within the home and services in the community. The ANED report shows the mixed result with regard to the legal and policy environment in support of deinstitutionalization and the development of policies and practices to enable living independently in the community.

They noted, “Few countries matched their stated strategic commitment to what was happening ‘on the ground.’ The main reasons for this seemed to be: limitations of local resources and/or regional interpretation of strategic frameworks; the lack

of a policy lead; policy being under-developed; assessment procedures which focused on processes rather than meeting needs.”<sup>93</sup> Only three countries did not have any large-scale institutions for persons with disabilities, and even within those three countries there were some concerns about “regression.”<sup>94</sup> One of those countries, Sweden, is highlighted as a case study.

Many adults with disabilities can and do live independently and in the community (not just those who have left institutional settings), either with or without supports.<sup>95</sup> Chapter 3 describes common barriers to adequate housing and living independently and in the community in much more depth, and Chapter 4 presents prescriptions to address those barriers.

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### **C. Impact of urbanization on persons with disabilities**

#### **1. Housing at the centre of urban sustainable development**

The end of the Executive Summary notes that solving the issue of adequate housing for persons with disabilities is a first step to supporting their realization of other rights. This sentiment is fully aligned with UN-Habitat’s ‘Housing at the Centre’ approach, which looks at housing more holistically as the right to live with dignity and security. Such housing is important for persons with disabilities and non-disabled persons alike.

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The urbanization trends, which are discussed below, have led to shortages of adequate housing (in one aspect or another) for millions of families and individuals. Sustainable Development Goal 11 reflects a recognition of the importance of making all settlements “inclusive, safe, resilient, and sustainable.”

Next year UN-Habitat will host the Third UN Conference on Housing and Sustainable Urban Development (Habitat III), and present a strategy (the New Urban Agenda) that addresses the challenges of urbanization through finance, planning and design, the rule of law, and national policies, all of which will be looked at through

a lens of increasing equity, opportunity and sustainability.

## 2. What are the urbanization trends?

The world is rapidly urbanizing. In 1950, only 30 per cent of the global population lived in urban areas. Today, there are more people living in urban areas than in rural areas. By 2050, 66 per cent of world’s population is projected to be living in urban areas.<sup>96</sup> There are massive regional differences. Africa and Asia are still predominantly rural, with 40 per cent and 48 per cent of their respective populations living in urban areas but these two regions are also seeing the fastest rates of



Rapid urbanization poses a challenge for planners and policy makers within the context of respecting the right to adequate housing for all. © UN-Habitat

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urbanization among all major regions of the world. “Continuing population growth and urbanization are projected to add 2.5 billion people to the world’s urban population by 2050, with nearly 90 per cent of the increase concentrated in Asia and Africa.”<sup>97</sup>

About half of the world’s urban population lives in smaller cities and towns of population less than 500,000. Only one in eight people live in the 28 megacities with populations of more than 10 million. The fastest growing urban agglomerations are medium-size cities and cities with fewer than one million inhabitants located in Asia and Africa. While the urban population rises rapidly in Africa and Asia, the number of people living under conditions of poverty is also seeing a rapid rise.

“The growth in informal settlements is not so much related to the rate of a city’s population growth (and the contribution of net in-migration to this) as to the competence, capacity and accountability of its government.”<sup>98</sup> According to UN-Habitat estimates from 2013, about 862 million people live in ‘slums’, as defined by the absence of any one or more of a set of five conditions: insecure residential status, inadequate access to safe water, inadequate access to sanitation and other infrastructure, poor structural quality of housing and overcrowding.<sup>99</sup>

In the absence of effective urban planning, the consequences of this rapid urbanization will be dramatic. In many places around the world, the

effects can already be felt: lack of proper housing and growth of slums, inadequate and out-dated infrastructure – be it roads, public transport, water, sanitation, or electricity – escalating poverty and unemployment, safety and crime problems, pollution and health issues, as well as poorly managed natural or man-made disasters and other catastrophes due to the effects of climate change.

Mindsets, policies and approaches towards urbanization need to change in order for the growth of cities and urban areas to be turned into opportunities that will leave nobody behind. UN-Habitat, the United Nations programme for human settlements, is at the helm of that change, assuming a natural leadership and catalytic role in urban matters. Mandated by the United Nations General Assembly in 1978 to address the issues of urban growth, it is a knowledgeable institution on urban development processes, and understands the aspirations of cities and their residents.

### **3. How do these trends affect persons with disabilities in urban and rural environments?**

The challenges faced by persons with disabilities in urban areas are made worse if they belong to the broad category of the urban underclass - the urban poor. Studies have shown that the share of the rural population who are impoverished in terms of health, education, and nutrition is higher than that for the urban population in low-income and lower-middle-income countries.<sup>100</sup>

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Conditions that qualify an individual as poor vary greatly between rural and urban settlements. In India, primary health care indicators in urban slums are significantly lower than those for non-slum urban areas and in some cases even lower than many rural settlements.<sup>101</sup> A 2013 report on the issue of inequality noted that “poor housing conditions, vastly inadequate sanitation, and the high costs of food and transport, as well as poor quality services in education and health, are contributing to entrenching poverty, while weak social networks reduce the capacity of poor urban families to invest in better livelihoods or to cope with shocks.”<sup>102</sup> The same report noted, “Indigenous migrants frequently become the slum dwellers of the cities. They are prone to disease, more at risk of HIV and AIDS and suffer as much from hunger and malnutrition as rural indigenous peoples.”<sup>103</sup>

Data on disability disaggregated by settlement type is limited. On one hand, India’s National Sample Survey (NSS) data of 2002 suggested that the number of persons with disability in rural areas is higher than that in urban areas due to environmental and socioeconomic factors.<sup>104</sup> On the other hand, a study in Nigeria found that older persons in rural areas had the lowest rates of disability, and semi-urban residents had intermediate rates, while those living in urban areas had the highest. That study concluded: “Social factors relating to urbanization and poverty may be associated with both the occurrence of disability and inability to access informal care.”<sup>105</sup>

In a study in South Africa’s Eastern and Western Capes, persons with disabilities who were surveyed from the urban area reported experiencing more barriers to obtain food and medicine, daily living, mobility, and accessing public and private buildings while those in rural areas encountered more attitudinal barriers.<sup>106</sup> Despite the more pronounced negative attitudes in rural areas, the authors concluded: “It would appear to be more challenging for a disabled person to live in an informal settlement within an urban area than in a rural area.”<sup>107</sup>

The city draws people from rural areas because of perceptions of opportunities in education or employment, possibility to receive medical care, and perceptions of less stigmatization. In a study of beggars with disabilities in Addis Ababa, Ethiopia, Nora Groce and Barbara Murray found that the vast majority (86 per cent) of the beggars interviewed came from areas more than 100 km away from Addis Ababa.<sup>108</sup> Most of their respondents reported social stigmatization, lack of availability of work, social isolation and a lack of educational or employment opportunities in rural areas as factors that led them to migrate to the city.

While rural settlements do not usually have the same constraints that dense urban settlements face, such as availability of habitable land or potable water, these studies seem to suggest that rural settlements also do not provide sufficient opportunities for independent living

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for persons with disabilities. Public transport for mobility, concentrated and diverse employment opportunities, better enforcement of regulations, less social prejudice and less rigid social hierarchies in urban areas all help urban residents with disabilities to live independently.

It is likely that better health care or other opportunities for independent living attract persons with disabilities to move to cities. It is equally likely, however, that those with more severe disabilities, as well as the elderly, are left to be cared for in rural communities while younger family members move to cities in search of jobs.

Different factors may play out differently in each country; it would, therefore, be hard to generalize whether the share of persons with disabilities within the larger population is higher in urban areas than in rural areas or the other way round. This again highlights the need for better data on urbanization (due to both rural-to-urban migration and in-situ urbanization) disaggregated by age, gender, and disability status to better understand how these trends impact persons with disabilities. Rapid urbanization poses a challenge for planners and policy makers in provision of adequate housing more generally. Tenure security, affordability, physical accessibility, habitability, location and access to services are more problematic in urban areas. Apart from shelter itself, urban living places a number of demands on its residents, including persons with disabilities.

The CRPD Committee's General Comment 2 cites evidence that "accessibility is usually better in bigger cities than in remote, less developed rural areas, although extensive urbanization can sometimes also create additional new barriers that prevent access for person with disabilities, in particular to the built environment, transport and services, as well as more sophisticated information and communication services in heavily populated, bustling urban areas."<sup>109</sup>

Urban environmental challenges are shifting too. Lower-income countries' cities are facing the effects of global climate change while they have not yet solved their more local and regional environmental issues of polluted water and air.<sup>110</sup> Rising sea levels and changing weather patterns due to climate change threaten many coastal cities, including some of the largest cities both in lower- and higher-income countries. These coastal cities are magnets for migrants from inland towns and rural hinterlands precisely because of their locational advantages within international trade and commerce. Persons with disabilities are often disproportionately affected when natural disasters strike,<sup>111</sup> as was evident during Hurricane Katrina along the Gulf Coast.<sup>112</sup> Natural disasters disproportionately affect persons with preexisting disabilities and also cause increases in the number of persons with disabilities.

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- <sup>14</sup> World Health Organization (2011). *World Report on Disability*, p. 27.
- <sup>15</sup> World Health Organization (2011), at supra note 14, p. 29.
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- <sup>17</sup> "Some Facts about Persons with Disabilities," accessed from [www.un.org/disabilities/convention/facts.shtml](http://www.un.org/disabilities/convention/facts.shtml) on 28 May 2015. The study referenced is from UNDP.
- <sup>18</sup> "Some Facts," at supra note 17. [www.un.org/disabilities/convention/facts.shtml](http://www.un.org/disabilities/convention/facts.shtml). See also United Nations Economic and Social Council (2008). *Mainstreaming Disability in the Development Agenda*, E/CN.5/2008/6.
- <sup>19</sup> Food and Agriculture Organization (2013). "Bangkok recommendations for disability-inclusive agribusiness adopted unanimously," accessed from [www.fao.org/asiapacific/news/detail-events/en/c/170605/](http://www.fao.org/asiapacific/news/detail-events/en/c/170605/) on 28 May 2015.
- <sup>20</sup> United Nations Economic and Social Council (2008), at supra note 18.
- <sup>21</sup> Human Rights Watch (2013). *Abuse-Free Development*, p. 50. Study cited: Sumner, Andy (2012). *The New Face of Poverty: How Has the Composition of Poverty in Low Income and Lower Middle-Income Countries (excluding China) Changed since the 1990s?* (Institute of Development Studies), accessed from <http://www.ids.ac.uk/files/dmfile/Wp408.pdf> on 28 May 2015. In the study, Sumner noted: "This finding should be viewed as tentative due to data constraints."
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- <sup>23</sup> See, for example: OHCHR (2012). *Women and the Right to Adequate Housing: An Introduction to Central Issues*, accessed from [www.ohchr.org/Documents/Publications/WomenHousing\\_HR.PUB.11.2.pdf](http://www.ohchr.org/Documents/Publications/WomenHousing_HR.PUB.11.2.pdf) on 28 May 2015; Kothari, M. (2003). *Special Rapporteur on the Right to Adequate Housing, Women and Adequate Housing*, E/CN.4/2003/55; Kothari, M. (2005), *Special Rapporteur on the Right to Adequate Housing, Women and Right to Adequate Housing*, E/CN.4/2005/43.
- <sup>24</sup> Kothari, M. (2005). at supra note 23, E/CN.4/2005/43.
- <sup>25</sup> Kothari, M. (2005), at supra note 23, p. 2
- <sup>26</sup> Report of the Special Rapporteur on the rights of persons with disabilities (2015), A/70/297, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/297](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/297)
- <sup>27</sup> OHCHR (2012), at supra note 23, p. 36. Reference is to reports of the Special Rapporteur on Adequate Housing that consider intersectional discrimination, including those on Mexico (E/CN.4/2003/5/Add.3), the Islamic Republic of Iran (E/CN.4/2006/41/Add.2), and Australia (A/HRC/4/18/Add.2).
- <sup>28</sup> Convention on the Rights of the Child (CRC), Article 2.1.
- <sup>29</sup> CRC, Article 23.2.
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- <sup>35</sup> UNHCR (2011). *Working with Persons with Disabilities in Forced Displacement*, accessed from <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4e6072b22> on 31 July 2015.
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- <sup>43</sup> Global Thematic Consultation on the Post-2015 Development Agenda (2013), Addressing Inequalities: Synthesis Report of Global Public Consultation, p.39, accessed from <https://www.worldwewant2015.org/node/299198>, on 25 May 2015.
- <sup>44</sup> Global Thematic Consultation on the Post-2015 Development Agenda (2013), at supra note 43, p. 40.
- <sup>45</sup> Farha (2014), at supra note 3, p.10, para 36.
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- <sup>51</sup> Kathryn Fleming (March 2010), et al., Vulnerability for Households With Persons With Disabilities and Hiv / Aids in Chongwe, Zambia, *American Institutes for Research*, p. 20.
- <sup>52</sup> Susan L. Parish, et al (2008); Material Hardship in U. S. Families Raising Children With Disabilities, *Exceptional Children*, vol 75 (1), pp. 72-92.
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- <sup>54</sup> Track, at supra note 5, p. 69.
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- <sup>69</sup> Committee on the Rights of the Child (2006), CRC/C/GC/9, The Rights of Children with Disabilities, p. 21, para 76.
- <sup>70</sup> Office of the United Nations High Commissioner on Human Rights and UN-Habitat (2014), *The Right to Adequate Housing: Factsheet 21/Rev.1*, p. 21.
- <sup>71</sup> Farha (2014), at supra note 3, A/69/274, p. 11-12, para 46.
- <sup>72</sup> Office of the United Nations High Commissioner on Human Rights and UN-Habitat (2014), at supra note 70, p.22.
- <sup>73</sup> Kothari, Miloon (2005), at supra note 23, p.17, para 58.
- <sup>74</sup> Kothari, Miloon (2005), at supra note 23, para. 61.
- <sup>75</sup> R. Townsley, et al (2010), "The Implementation of Policies Supporting Independent Living for Disabled People in Europe: Synthesis Report, Academic Network of European Disability Experts", page 18. Note, estimates of the population living in institutions are made more difficult due to several factors: (1) persons in institutions may be excluded from surveys or national censuses; (2) institutions may not be registered or monitored; (3) children with disabilities may not be registered at birth.
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- <sup>84</sup> See Chapter 2, Sections B and C for more information on institutions.
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- <sup>87</sup> Kanter (2015), at supra note 79, p.69.
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- <sup>89</sup> Committee on the Rights of the Child (2006), at supra note 69, para 35.
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- <sup>92</sup> Wils and Bonnet (2015), at supra note 91, p.37. The study they cite is from Balescut and Elkindeh (2006).
- <sup>93</sup> Townsley, et al (2010), at supra note 75, p.3.
- <sup>94</sup> Townsley, et al (2010), at supra note 75, p.4
- <sup>95</sup> This aspect is more developed in Chapter 3 and Chapter four of this study.
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The full and effective participation and inclusion in society of persons with disabilities is one of the eight general principles governing the CRPD. © UN-Habitat

## PART II

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# TRENDS IN POLICY AND LEGAL SOLUTIONS



The enjoyment of legal capacity includes both the capacity to hold rights as well as the capacity to act on those rights.. © UN-Habitat

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# Chapter 03 Principles and Elements of the Right to Adequate Housing for Persons with Disabilities

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## A. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The right to housing, as one component of the “right to a standard of living,” has its origins in Article 25 of the Universal Declaration of Human Rights.<sup>113</sup> The ICESCR, ratified by the General Assembly on 16 December 1966, brought the right into a treaty body.<sup>114</sup> Article 2 of the Covenant includes a non-discrimination clause and obliges States Parties to take “steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.”

<sup>115</sup> This right was further defined and clarified in several general comments of the Committee on Economic Social and Cultural Rights (CESCR). General Comment 4, issued in 1991, addressed the issue of male pronouns in the original text and clarified that “the concept of ‘family’ must be understood in a wide sense. This Committee has

called the right to adequate housing “the right to live somewhere in security, peace and dignity.”<sup>116</sup>

Table 1 presents the definitions of the aspects of the right to adequate housing per General Comment 4 of Covenant and links each aspect to different articles of the Convention on the Rights of Persons with Disabilities.

General Comment 4 linked the right to adequate housing to “the right to freedom of residence and the right to participate in public decision-making” and “the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence” (paragraph 9).

In its General Comment 5, the CESCR turned explicitly to the issue of the rights of persons with disabilities.<sup>117</sup> This included a general statement that living conditions for persons with disabilities “in large parts of the world are so desperate that the provision of...food, water, shelter, health, protection and education -- must form the

**Table 1:** Elements of Adequate Housing per General Comment 4 and Relevant Convention on the Rights of Persons with Disabilities (CRPD) Articles

Aspect	Definitions per General Comment 4	Considerations per CRPD
Legal security of tenure	All people should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats.	<p>Persons with psychosocial or intellectual disabilities who are denied legal capacity will have their rights to legal security of tenure denied. Women with disabilities face additional legal and cultural barriers when it comes to security of tenure.</p> <p>CRPD: equality and non-discrimination (Article 5); equal recognition before the law (Article 12); freedom from exploitation (Article 16). Recognition that the majority of persons with disabilities live in poverty (Preamble [t]) and thus may have difficulty sustaining housing.</p>
Availability of services, materials, facilities, and infrastructure	An adequate house must contain certain facilities essential for health, security, comfort, and nutrition (safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services).	<p>Services and access to resources may be not be fully accessible for persons with disabilities or may be denied to persons with disabilities on the basis of their disability. This applies to all persons, though the barriers may be different due to the different impairments.</p> <p>CRPD: living independently and being included in the community (Article 19); adequate standard and social protection (Article 28); access to information (Article 21).</p>
Affordability	Cost of housing should be at such a level that the attainment of other basic needs is not compromised. States Parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance that adequately reflect housing needs.	<p>Lack of affordability can be a driver of homelessness. Persons with disabilities are more likely to be unemployed or underemployed, thus reducing their ability to afford adequate housing. Persons with disabilities may also have higher health care or other costs connected to their impairment to enable them to stay in their home. Income earners may have reduced earnings due to the caregiving role for a family member with disability.</p> <p>CRPD: employment (Article 27), adequate standard and social protection (Article 28); equal recognition before the law (Article 12).</p>

Aspect	Definitions per General Comment 4	Considerations per CRPD
Habitability	Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind, or other threats to health, structural hazards and disease vectors.	<p>Persons with disabilities may require in-home support to ensure the housing is adequate from the standpoint of universal design, and usability of the space.</p> <p>CRPD: living independently and being included in the community (Article 19).</p>
Accessibility	Adequate housing must be accessible to all. Disadvantaged groups such as the elderly; children; those with physical, intellectual or psychosocial disability and others should get priority in the housing sphere.	<p>States Parties are obliged to develop and implement accessibility plans that encompass aspects of accessibility which are broadly understood. Persons have the right to request reasonable accommodation and support in the home and in community.</p> <p>CRPD: equality and non-discrimination (Article 5); definitions (Article 2); accessibility (Article 9); access to information (Article 21); situations of risk (Article 11).</p>
Location	Adequate housing must be in a location that allows access to employment, health care, education and other social facilities. Similarly, housing should not be built on sites that threaten the right to health and safety of the inhabitants.	<p>Persons with disabilities need to have access to mainstream and targeted services in the community per CRPD Article 19, and those services need to be accessible (transportation, the built environment, communication support services and so on), both in urban and rural environments.</p> <p>CRPD: accessibility (Article 9) living independently and being included in the community (Article 19); education (Article 24) health (Article 25); habilitation and rehabilitation (Article 26); employment (Article 27); adequate standard and social protection (Article 28).</p>
Cultural Adequacy	Housing must appropriately enable the expression of cultural identity and diversity of ways of life.	<p>Persons with disabilities are a diverse group, not just according to impairment but also due to other identity markers, which might include ethnicity, gender, religion, citizenship status, indigenous status, sexual orientation and HIV-AIDS status.</p> <p>CRPD: diversity of the community (Preamble [i]), participation in cultural life (Article 30).</p>

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cornerstone of national programmes.”<sup>118</sup> This was a concern not only in so-called developing countries but also for “countries which have a relatively high standard of living.”<sup>119</sup> The CESCR proposed an open-ended definition of disability-related discrimination, 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.”<sup>120</sup> They noted, further, that housing is one of the sectors where disability discrimination is felt most acutely.<sup>121</sup>

The requirement to provide appropriate personal assistance and support services was recognized as part of the inherent right to housing “to assist them to increase their level of independence in their daily living and to exercise their rights.”<sup>122</sup>

General Comment 5 reaffirmed that housing must be accessible (paragraph 33), and noted that physical barriers in transport, housing, and the work environment inhibit employment opportunities for persons with disabilities (paragraphs 22-23). Finally, the provided initial comments on three themes that were taken up in more detail in the CRPD Committee: institutionalization (paragraph 29), the right to live with the family (paragraph 30) and rights of children with disabilities (paragraph 32).

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## **B. The contribution of the CRPD with respect to understanding the right to adequate housing for persons with disabilities**

The CRPD puts forward a rights-based approach, treating persons with disabilities as rights holders on an equal basis with others. It is a significant contrast to previous models of disability, including those for charity, medical and individuals. Many reports comparing the different models and explaining the benefits of the rights-based one are available.<sup>123</sup>

While the rights themselves are of immediate obligation, it is understood that States Parties may not be able to avail immediately all the resources necessary to implement all aspects of them. With regard to some of the rights, including social protection and accessibility, it is understood that the State Party should develop plans to ensure progress is made in ensuring the rights are respected. The CRPD notes that States Parties are obliged to use “the maximum available resources” with a view to “achieving progressively” the full realization of “economic, social and cultural rights.”<sup>124</sup>

There are eight principles and interrelated rights that are components of the right to adequate housing as understood through the lens of the CRPD

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## 1. Social protection

Article 28 of the CRPD and Article 11 of the ICESCR recognize the right to adequate housing as a component of the right to an adequate standard of living.<sup>125</sup> They oblige States Parties (1) to take appropriate safeguards; (2) States Parties are obliged to promote the realization of the right without discrimination on the basis of disability and require (3) the linking of social protection to the right to adequate standard of living, including the obligation of States Parties to take measures to promote the realization of this right. In particular, this includes ensuring access by persons with disabilities to public housing programmes (Article 28 (2)[d]), access to clean water services, and appropriate and affordable services (Article 28(2)[a]), assistance from the state with disability related expenses (Article 28 (2)[c]), and access to social protection programs (Article 28(2)[b]).

In 2004 the Special Rapporteur on Adequate Housing noted that some women, including those with disabilities, are more vulnerable to forced eviction.<sup>126</sup> In 2012 the Special Rapporteur on Adequate Housing observed that a global tenure insecurity crisis is underway, manifesting itself in many forms such as “forced evictions, displacement resulting from development, natural disasters and conflicts and land grabbing - and evident in the millions of urban dwellers living under insecure tenure arrangements.”<sup>127</sup> In the same document, she recognized that many of those affected are from marginalized groups including

persons with disabilities. More recently, she has laid down a list of guiding principles on security of tenure for urban poor that includes, inter alia, recognizing and strengthening diverse tenure forms, improving security of tenure, prioritizing *in situ* solutions, promoting the social function of property, empowering the urban poor, holding States Parties accountable and ensuring access to justice.<sup>128</sup>

The Special Rapporteur on Adequate Housing has also raised a number of operational and policy challenges in key sectors bearing upon security of tenure. These are land governance, land management and administration, urban planning, policies, laws and regulations, the challenges of recognizing and recording diverse forms of tenure and property rights and exacerbating tenure insecurity due to conflicts and natural disasters.<sup>129</sup>

In a recent report to the General Assembly, the Special Rapporteur on the Rights of Persons with Disabilities elaborated on adequate housing as a key element of inclusive social protection systems.<sup>130</sup>

## 2. Principle of non-discrimination

Statements in the Preamble of the CRPD address the type of discrimination that persons with disabilities face, the importance of non-discrimination and the interrelatedness of all human rights.<sup>131</sup> Some of the main barriers to full participation are laws, policies, and systems that are

discriminatory in nature. The Convention defines discrimination and reasonable accommodation in Article 2:

***Discrimination on the basis of disability:*** 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:*** necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Non-discrimination is one of the eight general principles,<sup>132</sup> and States Parties have a clear obligation to ensure non-discrimination.<sup>133</sup> The ability to participate fully depends, for many persons with disabilities, on the provision of reasonable accommodation and adherence to the practice of universal design. Article 2 of the CRPD defines universal design:

***Universal design:*** 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.

While the denial of reasonable accommodation is a form of discrimination on the basis of disability, reasonable accommodation can be denied if the costs associated with the request constitute a “disproportionate or undue burden.” Article 5 (3) indicates that States Parties have to “take all appropriate steps to ensure that reasonable accommodation is provided.” The CRPD Committee’s General Comment 1 noted that reasonable accommodation requests could include access to essential buildings (banks, courts, voting venues), accessible information, or personal

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assistance.<sup>134</sup> This is further clarified by General Comment 2, which explains that reasonable accommodation is “enforceable from the moment an individual with an impairment needs it in a given situation.”<sup>135</sup> Finally, the CRPD notes that measures “to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination.”<sup>136</sup>

### 3. Equal recognition before the law

One of the main aims of the CRPD Committee’s General Comment 1 was to correct “a general misunderstanding of the exact scope of the obligations of States Parties under article 12 of the Convention.” The Committee emphasized “the human rights-based model of disability implies a shift from the substitute decision-making paradigm to one that is based on supported decision-making.”<sup>137</sup> The CRPD addressed equal recognition before the law in Article 5 (Equality and non-discrimination) and Article 12 (Equal recognition before the law).<sup>138</sup> Article 12 expands the statement on non-discrimination, first by establishing the legal personhood of persons with disabilities<sup>139</sup> and by obliging States Parties to recognize that “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.”<sup>140</sup> The enjoyment of legal capacity includes both the capacity to hold rights as well as the capacity to act on those rights. The first element - the capacity to hold rights - means that the person has legal standing and can, thus, inter alia, have a birth certificate, obtain a passport, and

seek assistance from the government. The CRPD Committee described the second element - the capacity to act - as follows:

[It] is legal agency to act on those rights and to have those actions recognized by the law. ...For example, laws may allow persons with disabilities to own property, but may not always respect the actions taken by them in terms of buying and selling property.<sup>141</sup>

#### *(a) Right to support in exercising legal capacity*

Article 12 also obliges States Parties “to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”<sup>142</sup> The term “support” is not concisely defined but is instead intended to be open-ended given the diversity of the disability community and their support needs.<sup>143</sup> The CRPD Committee made a distinction between reasonable accommodation (see above section on principle of non-discrimination) and the right to support to exercise legal capacity. While States Parties have the right to reject a request for reasonable accommodation if it “imposes a disproportionate or undue burden,”<sup>144</sup> States Parties have an obligation to provide access to support in the exercise of legal capacity.<sup>145</sup>

#### *(b) Appropriate safeguards*

Article 12 also covers the provision of appropriate safeguards.<sup>146</sup> Safeguards could include review of supported decision-making mechanisms,

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both in terms of the process by which decisions are taken as well as assessments of the extent to which outcomes reflect the will and preferences of the person. Another safeguard could be making available to persons with disabilities the national human rights institution or similar independent body for confidential feedback on the quality of support provided.

***(c) Supported decision-making to replace substituted decision-making***

Prior to the CRPD, it was considered acceptable for non-disabled persons to take the responsibility to act in “the best interests” of the person with a disability. The CRPD Committee, however, explained, “The ‘will and preferences’ paradigm must replace the ‘best interests’ paradigm to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others.”<sup>147</sup> This signals replacing the practice of substitute decision-making with a new practice of supported decision-making. The CRPD Committee explained: “A supported decision-making regime comprises various support options which give primacy to a person’s will and preferences and respect human rights norms. It should provide protection for all rights, including those related to autonomy (including the right to legal capacity, right to equal recognition before the law, and the right to choose where to live) and rights related to freedom from abuse and ill-treatment (including the right to life, right to physical integrity, etc).”<sup>148</sup>

**4. Principle of participation**

The need to ensure meaningful participation is a recurring theme in the CRPD. In the Preamble, States Parties expressed the consideration that persons with disabilities should have the opportunity to be actively involved in decision-making processes regarding policies and programmes.<sup>149</sup> In addition, the full and effective participation and inclusion in society of persons with disabilities is one of the eight general principles governing the CRPD.<sup>150</sup> Further, States Parties have an obligation to “closely consult with and actively involve” persons with disabilities and their representative organizations in “the development and implementation of legislation and policies to implement the present Convention” and in other decision-making processes, including national implementation and monitoring.<sup>151</sup>

**5. Access to information**

To make choices about housing and other matters, one needs access to information. Persons with disabilities, especially persons with sensory disabilities, persons with intellectual disabilities, and persons with psychosocial disabilities have all experienced undue restrictions on their access to information. The CRPD has recognized the right of access to information in several of its articles. Article 2 provides open-ended definitions of the terms “communication” and “language,” emphasizing a wide range of means and formats of communication (tactile, augmentative, and alternative modes) and language (spoken, signed

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and “other forms of non-spoken languages.”<sup>152</sup> In addition, Article 21 establishes an obligation for States Parties 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.”<sup>153</sup> Finally, Article 21 provides an open-ended set of examples of measures States Parties can take.

### **6. Principle of equality of opportunity**

Equality of opportunity is one of the eight general principles of the CRPD.<sup>154</sup> It sits between access

to information and freedom to make choices. Access to information in appropriate formats is a prerequisite for ensuring one has access to the same opportunities as everyone else to allow one to make choices, as noted in the Preamble.<sup>155</sup>

### **7. Right to live independently and in the community**

The CRPD Committee emphasized that persons with disabilities must have “opportunities to develop and express their will and preferences, in order to exercise their legal capacity on an equal basis with others. This means that persons with disabilities must have the opportunity to live independently in the community and to make



Persons with disabilities must have opportunities to develop and express their will and preferences, on an equal basis with others.  
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choices and to have control over their everyday lives, on an equal basis with others, as provided for in article 19.<sup>156</sup> The CRPD Committee determined that the community-based approach provides the best solution for supporting the exercising of legal capacity, supported decision-making and raising awareness about the right to adequate housing, including the right to different support services.<sup>157</sup> There are three elements within the right to live independently and in the community: the right to choose, the right to support services specific to the needs of the individual and the right to access mainstream community services and programmes on an equal basis with others.

***(a) Right to choose their residence***

The CRPD has referred to this right in multiple articles.<sup>158</sup> The freedom to make one's choices is *de facto* taken away if services are not accessible, if accessible information is not available, if alternative communication methods are not provided, if persons live in extreme poverty or if other barriers limit or inhibit choice. A Training Guide on the CRPD published by the Office of the High Commissioner for Human Rights (OHCHR), explains the link between having the autonomy to make decisions and living independently in the community. Having autonomy means making decisions about what support one needs to live independently, and receiving support should not be understood as being dependent. The guide further explains:

Independent living constitutes a frame for the enjoyment of several human rights: the right to adequate housing, the right to participate in public and political affairs, the right to privacy, the right to free movement, the right to vote, etc.<sup>159</sup>

Article 19 explicitly states that persons are not obligated to live in “a particular living arrangement.”<sup>160</sup> Professor Kanter observed that “Article 19 also ensures that persons with disabilities will no longer be required to defer to a family member, doctor, service provider or anyone else to make the decision regarding where to live and which services and support should be received; such decisions should now be left to the person with a disability.”<sup>161</sup> She highlighted that choices about housing have been particularly compromised for persons with disabilities, including children. “Children and adults with disabilities are often forced to choose between remaining at home with their families or moving into institutions or other residential facilities in order to get the services, treatment or supports they need.”<sup>162</sup>

***(b) Right to support services to support living in the community***

The CRPD has provided that “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



Focus of assistance must be on the needs of the person rather than on the impairment. © UN-Habitat

community.”<sup>163</sup> OHCHR recently published a thematic study on the right to live independently and in the community and described the components of the right to support. This argued that Article 19 “implies a shift from ‘care’ to ‘rights.’” and noted that a wide range of options exist and that no “single option of support fits all contexts.”

It further asserted that regardless of the type of support, “in-home support must contribute to promoting inclusion and preventing segregation. It should not prevent a person from leaving the home when he or she desires and should be complemented, where needed, by other community-based services.”<sup>164</sup> With regard to

personal assistance, persons with disabilities “must have control over the support provided and be the ones who hire, employ, supervise, evaluate and dismiss their assistants.” Focus of assistance must be “on the needs of the person rather than on the impairment.”<sup>165</sup>

***(c) Right to community services on an equal basis with others***

Article 19 (c) states that services and facilities for the general population are to be available on an equal basis for persons with disabilities and need to be responsive to their needs. The obligation of the state to ensure accessibility of these various services is broad.<sup>166</sup> Three elements are needed to build an inclusive community: the removal of barriers;

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the transformation of mainstream services and a mechanism to ensure that persons with disabilities are involved in the process.<sup>167</sup>

### 8. Right to accessible housing

Accessibility is a precondition for the enjoyment of all human rights,<sup>168</sup> and is one of the eight general principles guiding the CRPD.<sup>169</sup> The OHCHR toolkit notes that accessibility is important “in all areas of life.”<sup>170</sup> Article 9 of the Convention sets forth binding obligations with respect to accessibility and explicitly links accessibility as a precondition to live independently and participate in all aspects of life. States Parties are thus obliged to take measures to ensure access to the physical environment, to transportation, to information and communications, and “to other facilities open to or provided to the public, both in urban and in rural areas.”<sup>171</sup> In addition, measures to ensure accessibility to financial services to exercise the right to adequate housing (and other rights) is guaranteed per Article 12:

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.**<sup>172</sup>

Requirements for accessibility, thus, go far beyond ensuring someone’s dwelling is accessible for “those who are entitled to it” and who are given “some degree of priority consideration in the housing sphere.”<sup>173</sup> The CRPD Committee’s General Comment 2 explains the expansion of the conceptualization of accessibility in the following terms: “As long as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise.”<sup>174</sup>

General Comment 2 draws the distinction between the obligation to remove existing barriers and the obligation to ensure access for new buildings and services.<sup>175</sup> The CRPD Committee has highlighted the need for adherence to strict accessibility standards, the removal of barriers in a systematic manner, and continuous monitoring of such efforts.<sup>176</sup> They noted, “The strict application of universal design to all new goods, products, facilities, technologies and services should... contribute to the creation of an unrestricted chain of movement for an individual from one space to another, including movement inside particular spaces, with no barriers.”<sup>177</sup>

The CRPD Committee has observed that the application of universal design benefits everyone, not just persons with disabilities.<sup>178</sup> Since a lack of accessibility is often the result of insufficient

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awareness and technical know-how, Article 9 requires that States Parties provide training to all stakeholders on accessibility for persons with disabilities.<sup>179</sup> Since accessibility is a precondition for persons with disabilities to live independently, per Article 19 of the CRPD, and to participate fully and equally in society, denial of access to the physical environment, transportation, information and communication technologies and facilities and services open to the public should be viewed in the context of discrimination.

The CRPD Committee has explained the distinction between reasonable accommodation and accessibility. While reasonable accommodation is to be afforded only if it does not constitute an “undue burden,” accessibility does not fall under the undue burden clause. As such, “States parties are not allowed to use austerity measures as an excuse to avoid ensuring gradual accessibility for persons with disabilities. The obligation to implement accessibility is unconditional, i.e. the entity obliged to provide accessibility may not excuse the omission to do so by referring to the burden of providing access for persons with disabilities.”<sup>180</sup>



The obligation to implement accessibility is unconditional. © UN-Habitat

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### C. Discrimination/barriers in realizing the right to adequate housing

Persons with disabilities face many barriers when trying to exercise their right to adequate housing. Barriers include:

1. Discrimination in legislation and policies that have the effect of limiting ability to exercise right to adequate housing
2. Denial of right to live independently and in community
3. Presence of environmental barriers
4. Lack of participation and access to resources and opportunities
5. Lack of monitoring and complaint mechanism

These barriers inhibit the ability of persons with disabilities to exercise other rights that are understood as part of the right to adequate housing, including the right to inheritance, security of tenure, the right to access to water and sanitation, the right to personal mobility (Article 20), the right to home (Article 23) and the right access to information (Article 21). In addition, interrelated rights include access to education, employment and health care. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities noted that the “violation of women’s rights to adequate housing results in the violation of other civil, cultural, economic, political and social rights such as the right to equality before the law and equal protection of the law, the right

to life, the right to security of the person, the right to work, the right to health and the right to education.”<sup>181</sup>

#### 1. Discrimination in legislation and policies

Discrimination in legislation and policies is foundational and is present in many countries across the globe. World Health Organization (WHO) has referred to numerous barriers in health care, education, service provision, and others and traced the problem back to de facto discriminatory legislation, policies and strategies.<sup>182</sup> The barriers, in turn, contribute to higher rates of poverty, lower rates of education and higher rates of unemployment, and restricted participation in community life.<sup>183</sup> The CRC Committee has written extensively on the issue of discrimination against children with disabilities (see Section E below). The barriers in legislation and policies can be broken down in the following seven categories:

- (a) Lack of information/data about specific populations
- (b) Failure to implement legislation or set mechanisms to prevent discrimination, including legislation that permits guardianship or substituted decision-making, and failure to provide a legal or policy framework for supported decision-making
- (c) Failure to address discrimination in practice, including the continuation of support for institutions, the involuntary admission to institutions, and violations of rights that occur

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- in institutions
- (d) Failure to address impacts of multiple discrimination
  - (e) Failure to provide reasonable accommodation
  - (f) Restrictions of other rights due to disability status
  - (g) Failure to promote living independently in the community

Each category is reviewed in brief.

***(a) Lack of information/data about specific populations***

In some cases, there is a lack of data about groups, so it is difficult to assess whether a group faces discrimination. The CRPD Committee has noted a lack of information on persons with disabilities who are national minorities<sup>184</sup>, the need to systematize data collection, the lack of disaggregated data (including on abuse and violence), inconsistent approaches to data collection, the need to make data publicly available and concerns about the lack of baseline data.<sup>185</sup>

***(b) Failure to implement legislation and set mechanisms to prevent discrimination***

The Committee has noted in its concluding observations many examples where non-discrimination legislation and mechanisms fall short.<sup>186</sup>

The CRPD affirmed that persons with disabilities have equal recognition before the law.

Guardianship, which is legally permissible in many countries, denies persons with disabilities equal recognition. Concerns regarding the practice of guardianship and violations in institutions include a lack of information about the number of people who are in the guardianship system and the number who have been declared legally incapacitated.<sup>187</sup> In other cases, there is a “lack of legal remedies and safeguards, such as independent review and right to appeal, that are in place in order to revoke those decisions.”<sup>188</sup> In some countries, the CRPD Committee has noted institutions are not registered or monitored.<sup>189</sup>

Guardianship permits substituted decision-making, and the Committee has expressed concerns about the continued use of substituted decision-making, and has urged the repeal of laws, policies and practices that permit guardianship.<sup>190</sup>

The Committee has proposed supported decision-making as the best alternative to substituted decision-making, but has noted the lack of a framework for supported decision-making.<sup>191</sup> Even in those countries such as New Zealand and Australia that have undertaken steps to develop supported decision-making, there is more work to be done.<sup>192</sup>

***(c) Failure to address discrimination in practice***

The failure to address discrimination in practice takes many forms. This can include a prohibition on acquiring citizenship,<sup>193</sup> discrimination against

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non-citizens with disabilities,<sup>194</sup> ineffective functioning of complaint mechanisms,<sup>195</sup> a lack of information on discrimination on the basis of disability and the lack of enforceability of legal protections against discrimination.<sup>196</sup> Four examples concerned with institutional living are presented to show the failure to address discrimination in practice.

### ***Involuntary admission and/or inability to leave institutions***

The CRPD Committee has expressed concern about high referral rates and the large number of persons in institutions and their isolation from the rest of the community.<sup>197</sup> One challenge is that persons with disabilities are often placed in institutions, which inherently constitute inadequate housing, against their will and find it is difficult or impossible to leave. In some cases, it is legally permissible to institutionalize persons with disabilities without their consent with their disability as basis for their institutionalization.<sup>198</sup> In other cases, persons classified as “serious and chronic”<sup>199</sup> or a threat to others or themselves remain institutionalized.<sup>200</sup>

### ***Violations of rights within institutional setting***

As mentioned in Chapter 2, Section B, a wide range of rights violations, including involuntary treatment, occur in institutions. For this reason, the right to adequate housing can never be enjoyed in an institutional setting. The CRPD Committee

noted the reported abuse of persons with disabilities who are institutionalized in residential centres or psychiatric hospitals in Spain.<sup>201</sup> The Committee on Prevention of Torture expressed concern about the poor conditions of homes for persons with “mental disabilities” and the lack of measures undertaken by authorities to address the situation or take steps to amend legislation allowing involuntary placement as well as “the lack of judicial appeal and review procedures.”<sup>202</sup>

The Special Rapporteur on Torture proclaimed that the intent to commit torture “can be implied where a person has been discriminated against on the basis of disability.”<sup>203</sup> He noted the heightened obligation for states to protect vulnerable groups from torture per the Convention Against Torture (CAT) and Inter-American Court of Human Rights.<sup>204</sup> He noted further that deprivation of legal capacity, combined with residence in an institution, creates a situation, similar to those in prisons, where persons become reliant on health workers who provide services for them, and this increases their vulnerability to torture.<sup>205</sup> For this reason, “the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the Article 1 of CAT, notwithstanding claims of “good intentions” by medical professionals.”<sup>206</sup> Finally, he explained that there is no justification for common “treatments” such as solitary confinement and

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prolonged restraint and that these “may constitute torture and ill-treatment.”<sup>207</sup>

The CRPD Committee has expressed concern that persons with disabilities are subjected to sterilization without their free and informed consent,<sup>208</sup> or to cruel, inhuman, or degrading treatment.<sup>209</sup> The CRPD Committee has noted the presence of only ex post facto safeguards in some cases.<sup>210</sup> The concluding observations of other international treaty bodies have noted inadequate provisions to ensure decent life for persons with disabilities,<sup>211</sup> a failure to amend legislation that allows for involuntary placement<sup>212</sup> and the need to ensure proper monitoring of institutions.<sup>213</sup>

### ***Continued support for institutions***

Despite the well-documented violations that occur in institutions, support for use of institutions has continued and, in some cases, there has been an increase in the number of institutions and in the number of residents.<sup>214</sup> In some cases state funds have been used for new construction or for reconstruction of large institutions.<sup>215</sup>

### ***Insufficient support for deinstitutionalization***

The CRPD Committee has expressed their view that denial of legal capacity and placement in institutions is “a pervasive and insidious problem” and that “deinstitutionalization must be achieved and legal capacity must be restored to all persons with disabilities.”<sup>216</sup> In some countries there are no



In some countries there is a lack of information on the promotion of independent living for persons with intellectual disabilities.  
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plans for deinstitutionalization<sup>217</sup> and no strategies for inclusion of persons with disabilities in the community.<sup>218</sup> In particular, in some countries there is a lack of information on the promotion of independent living for persons with intellectual disabilities and an assumption that they should reside in psychiatric institutions.<sup>219</sup>

***(d) The need to address impacts of multiple or aggravated discrimination***

A fourth barrier in legislation and policies is the failure to address the impact of multiple or aggravated discrimination. Intersectionality, as mentioned above, looks at the impact of discrimination along different identity markers. In some cases there is a lack of disaggregated data on discrimination and, in particular, on intersectional discrimination.<sup>220</sup> Not only is the lack of disaggregated data an issue for persons with different types of impairments, but also for persons who are, in other respects, minorities such as ethnic or religious or indigenous status or rural location.<sup>221</sup>

In some cases, programmes targeting other groups who have been marginalized are not inclusive of and accessible for persons with disabilities.<sup>222</sup>

Writing of conditions in the United States, Australia and the United Kingdom, the Special Rapporteur on Adequate Housing noted that vulnerable women are affected by “insufficient regulation over access, use and affordability of housing and land” since they lack “equal access to employment,

information and other resources necessary for participating effectively in the market.”<sup>223</sup>

The CRPD Committee has expressed deep concern “at the exclusion, poverty, lack of access to drinking water, sanitation and decent housing, and the overall conditions of poverty experienced by indigenous persons with disabilities and at the lack of information in this regard.”<sup>224</sup> Indigenous persons with disabilities face barriers with regard to legislation and housing policy due to the lack of availability of government-subsidized housing or housing of sufficient quality. Indigenous persons with disabilities also face discrimination in the private sphere, compounded by their indigenous status.<sup>225</sup> UN-Habitat and the Special Rapporteur Adequate Housing expressed similar sentiments during a series of consultations in 2004, where testimonies they heard described the multiple layers of discrimination that indigenous women with disabilities faced, including “forced separation of women from their children on the grounds of inadequate living conditions.”<sup>226</sup>

***(e) The need to provide reasonable accommodation***

A fifth barrier in legislation and policies is the failure to prohibit discrimination on the grounds of disability and to recognize denial of reasonable accommodation as a form of disability-based discrimination. In some cases, the CRPD Committee has noted a “failure to understand” the concept of reasonable accommodation.<sup>227</sup>

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In other cases, a definition of reasonable accommodation is lacking,<sup>228</sup> denial of reasonable accommodation does not constitute disability-based discrimination<sup>229</sup> or there are exemptions with regard to reasonable accommodation.<sup>230</sup>

***(f) Concern about restrictions of other rights based on disability status***

A sixth barrier in legislation and policies is the restriction of other rights based on disability status. In some cases, persons with disabilities in rural areas or in long-term institutional settings do not have identity cards and, sometimes, have no name.<sup>231</sup> In other cases disability status leads to a restriction of other rights, including the right to vote or the right to have a home and family.<sup>232</sup>

***(g) Failure to promote living independently in the community***

A final barrier in legislation and policies is the lack of a legal or policy framework on the right to live independently and in the community. In some cases the lack of progress on mental health policies has hindered facilitation of deinstitutionalization.<sup>233</sup> In others there are restrictions that prevent persons with disabilities from hiring personal assistants depending either on the category of disability or the type of support requested.<sup>234</sup>

In addition, the Committee has noted a lack of measures, policies, and supports for inclusion or that measures were limited to certain sectors, such as health care.<sup>235</sup> In some cases only modest funds

were earmarked for community-based support services.<sup>236</sup> The Committee noted a lack of policies for inclusion in the community with all necessary support services, including personal assistance services.<sup>237</sup>

**2. Denial of right to live independently and in community**

There are two sub-themes within this category of barriers: the denial of choice and support (per Article 19 [1] and [2]) and the denial of access to services in the community (per Article 19 [3]). Children and adults with disabilities who are homeless or who reside in institutions clearly lack choice and support in exercising their right to adequate housing. Other persons with disabilities, who are not homeless or do not live in institutions, also may have a lack of choice and a lack of support. Due to economic reasons, they may not be able to choose where or with whom they live, and due to scarcity of assistive devices or other support, they may have very limited choice. The CRPD Committee has expressed concerns about restrictions to choice, support and services.

***(a) Lack of choice and gaps in support***

In some cases laws or policies have not been translated into indigenous languages or into accessible formats.<sup>238</sup> The CRPD Committee has noted that insufficient information on housing options and inadequate personal assistance are barriers to living independently and in the community.<sup>239</sup> Surveys have shown that persons

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with disabilities have limited possibilities to choose freely where they live and they experience forced relocation.<sup>240</sup> In some countries persons with disabilities are obliged to live in certain facilities to receive support.<sup>241</sup>

In some countries there is insufficient range of support to ensure persons with disabilities can choose where to live.<sup>242</sup> The Committee has noted persons with disabilities have difficulty in finding accessible housing. Building standards don't apply retroactively and are not applicable to buildings under the management of the government or housing authority.<sup>243</sup> In other countries the Committee has noted a gap in benefits, resources, or services between rural and urban persons with disabilities.<sup>244</sup>

The Committee has also noted that social security assistance is inconsistent, in terms of the application of different standards and that support is based on family assessments rather than the individual in question.<sup>245</sup> Related concerns include on use of vouchers include their provision to caregivers, not persons with disabilities themselves<sup>246</sup> and their insufficient support to bring about an adequate standard of living.<sup>247</sup>

The Committee further has noted that benefits don't take into account the socioeconomic dimension of disability. In some countries, fees for service or eligibility to receive social services are based on the "degree of impairment" rather

than on the characteristics, circumstances and needs of that person and on the income of the family rather than on the income of the person concerned, resulting in the exclusion of some persons with disabilities from receiving personal assistant services."<sup>248</sup> Some persons with disabilities have been excluded from housing allowance and medicine subsidies since those subsidies do not take into account the socioeconomic dimension of disability.<sup>249</sup>

The Committee has noted a gap in socioeconomic status between persons with disabilities and non-disabled persons. They noted that children with disabilities are more likely to be living in poverty and are more likely to be living in one-parent households. In addition, "the support and income/pension provided to persons with disabilities differs according to the cause of their disability, which results in an unjustified and unreasonable difference in their standard of living and social protection."<sup>250</sup>

Aside from financial assistance, there are also challenges with the provision of material support, including mobility aids and especially for those with low incomes.<sup>251</sup> The Committee has noted, in some cases, "measures ensuring personal mobility are either insufficient or non-existent."<sup>252</sup> The CESCR noted a lack of universal coverage for social security schemes<sup>253</sup> and expressed concern that many individuals, including persons with disabilities and older persons, have been excluded

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from programmes or services “due to their inability to make sufficient voluntary contributions.”<sup>254</sup>

The CRPD Committee has noted in some countries a lack of residential homes and support centres to facilitate living independently and to the enjoyment of rights per article 23.<sup>255</sup> In other countries support services were not of sufficient quality or quantity.<sup>256</sup> In some cases terms have been reinterpreted, leading “to reductions in the number of persons who receive state-funded personal assistance.”<sup>257</sup>

***(b) Inaccessible or unusable services, including transportation***

Community services and facilities must be “available and responsive” to the needs of persons with disabilities per Article 19(3). Persons with disabilities are often limited by a lack of accessible services, including a lack of accessible transportation, lack of accessible infrastructure such as pavements without curb cuts or no pavements at all; lack of accessible banking services; health services; schools and so on. The CESCR has noted that physical barriers and the lack of appropriate facilities create an environment that denies persons with disabilities equal opportunity.<sup>258</sup>



Persons with disabilities are often limited by a lack of accessible transportation. © UN-Habitat

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The CRPD Committee has noted that health services, especially in rural areas, may not be accessible<sup>259</sup> and that some countries lack a legal framework for instituting accessible transportation.<sup>260</sup> In other cases, there is a lack of accessible public and private transportation and/or in public buildings<sup>261</sup> or gaps that limited accessibility for persons with disabilities to communication, transportation and access to information.<sup>262</sup>

### **3. Presence of environmental barriers**

Environmental barriers comprise a third type of barrier. This refers to facilities essential for health, security, comfort, and nutrition, per General Comment 4 of the CESCR, and to the lack of accessible housing. For persons with disabilities, this includes access to safe drinking water, sanitation and washing facilities and energy for cooking, heating and lighting. While it can be presumed that persons with disabilities in extreme rural and urban poverty may lack access to these services and facilities, it has proven difficult to locate studies that look specifically at these issues.

Four types of barriers can be categorized:

#### ***Barriers in housing for persons with disabilities***

Given the extreme poverty of many persons with disabilities and the need for support through social protection mechanisms, poverty may be considered an environmental barrier (that is manifested, inter alia, through inadequate housing). The

CESCR expressed concern specifically about the “inadequate supply of water and irregular provision of electricity and heating” that affects persons with disabilities.<sup>263</sup> They have also noted the need to provide adequate housing for persons with disabilities.<sup>264</sup>

#### ***Housing does not adhere to principles of universal design***

One study showed that persons with disabilities were less likely to live in homes that have level paths to entrances or wide doorways than persons without disabilities.<sup>265</sup> The authors speculated that there were two reasons for this discrepancy: first, that persons with disabilities have lower economic status (less ability to choose their place of residency); second, that affordable housing, including social housing, tends to have less accessibility features. They noted evidence from their pilot study showing that visitability features can be incorporated into new construction with minimal additional cost (about \$100).<sup>266</sup> This finding was in line with the CRPD Committee’s assertion that “making a building accessible from the outset might not increase the total cost of construction at all in many cases, or only minimally in some cases.”<sup>267</sup>

States Parties have an obligation to provide housing that adheres to universal design standards. The CRPD Committee has expressed concern that planners responsible for social housing may not take universal design components into account.<sup>268</sup>

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### ***Information and communication inaccessibility***

CRPD has made it clear that information and communication should be accessible for persons with disabilities, but States Parties could do more to ensure accessibility. In some cases States Parties have restrictive definitions of accessibility that do not include communications<sup>269</sup> or have delayed implementation of website guidelines for persons with disabilities.<sup>270</sup>

### ***Lack of strategy or funding to address inaccessibility***

The CRPD Committee has noted that States Parties lack strategies and funding to make the environment more accessible for persons with disabilities. In one set of concluding observations the Committee has expressed concern “at the absence of comprehensive measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, and to other facilities and services open to or provided to the public, both in urban and rural areas.”<sup>271</sup> In other reports the Committee has noted restrictions on and a lack of implementation of accessibility standards.<sup>272</sup>

In some countries the CRPD Committee has noted a primary focus on accessibility for persons with disabilities (and not much for persons with other disabilities). They have also noted a lack of accessibility features and a lack of a national plan on accessibility.<sup>273</sup> In some cases there is a lack

of information about whether an accessibility plan exists.<sup>274</sup> The CRPD Committee has noted the lack of systemic compliance with building regulations, limited access to transportation, and failure to publish information systematically in accessible formats.<sup>275</sup>

### **4. Lack of participation and access to resources and opportunities**

A fourth barrier, as discussed earlier, is lack of participation. In some cases, communities may not want persons with disabilities as neighbors and may not create space for persons with disabilities to participate on an equal basis with others in decisions that affect them. The European Disability Forum has documented the limited participation of persons with disabilities in educational, economic, social, and cultural life. They note that half of all persons with disabilities “have **never participated in leisure, cultural or sport activities**, and has never had access to theatres, to cinemas, to concerts, to libraries.”<sup>276</sup>

### **5. Lack of monitoring and complaint mechanisms**

A final barrier is the lack of monitoring and complaint mechanisms. The CRPD Committee has noted that implementation of accessibility standards and relevant legislation has been hurt by the lack of adequate monitoring mechanisms.<sup>277</sup> The Committee has also noted in several concluding observations that monitoring, generally, has been insufficient due to a variety of

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reasons. In one concluding observation, it noted “the absence of protocols to register, monitor and track the conditions in institutions that care for persons with disabilities, particularly those that care for older persons with disabilities.”<sup>278</sup> The Committee also has noted the lack of mechanisms to monitor compliance with accessibility standards,<sup>279</sup> the failure to fund sufficiently the monitoring implementation of accessibility legislation,<sup>280</sup> the lack of action to ensure accessibility of public facilities or to require implementation by the private sector<sup>281</sup> and ineffective mechanisms to monitor housing.<sup>282</sup> The Committee also noted a lack of information about the implementation of some accessibility plans<sup>283</sup> and the lack of availability of information in accessible formats.<sup>284</sup>

The Committee has noted concern in nine of their concluding observations regarding the lack of effective complaint mechanisms.<sup>285</sup>

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#### **D. Discrimination against women with disabilities, especially violence as barrier to adequate housing**

Many resources look at gender discrimination as a phenomenon that limits the right to adequate housing and land for women.<sup>286</sup> All of those insights hold true for women and girls with disabilities. In their General Comment 9, the Convention on the Rights of the Child Committee noted that girls with disabilities are more vulnerable to discrimination. Therefore, States Parties should

take “necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.”<sup>287</sup>

The CRPD Committee has addressed gender and disability in its reports. In some cases women and girls with disabilities are not mentioned in laws aimed at promoting equality or laws on prevention of violence.<sup>288</sup> In some countries data on women and girls with disabilities is not collected<sup>289</sup> while, in others, the Committee has noted a lack of initiatives to support inclusion of women and girls with disabilities in the educational system or with finding and maintaining employment.<sup>290</sup> The Committee also has noted with concern cases where women with disabilities were separated from their children.<sup>291</sup>

#### ***Violence as a barrier to adequate housing***

One crucial aspect that impedes the ability of women with disabilities to exercise their right to adequate housing on an equal basis with others is violence and the threat of violence against them. Writing of the risk of violence against women and girls and, in particular, of indigenous women and girls with disabilities, Cunningham and Kayinke noted: “Available evidence shows that girls and women with disabilities are at higher risk of violence than girls and women without disabilities (see A/HRC/20/5) and that indigenous women are disproportionately victims of sexual

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violence. Violence against girls and women with disabilities happens at home, but also in schools, residential institutions and in disability services. The definition of ‘violence’ is broad and includes specific forms of violence against women with disabilities. Articles 14 to 17 and 25 of the Convention mandate States to have policies in place to tackle this problem.”<sup>292</sup>

Women and girls who are marginalized due to other status markers, such as citizenship, are also vulnerable to violence. For example, it has been shown that migrant women are extremely vulnerable to violence, abuse and harassment that is inextricably connected to their right to adequate housing. “Domestic migrant workers are forced to accept violence or risk homelessness, sexual exploitation and/or trafficking.”<sup>293</sup> The vulnerability of migrant women to violence is further compounded if they are also persons with disabilities.

When violence occurs, women with disabilities have additional challenges. Emergency shelters, for example, may not be accessible to them. One report, referring to conditions in the United States and Australia, noted the shortage of government-funded shelters as emergency accommodation for women with disabilities escaping domestic violence.<sup>294</sup> In Orissa, India, it has been reported, “Virtually all women and girls with disabilities were beaten in their homes; and 25 per cent of

women with intellectual disabilities had been raped.”<sup>295</sup> Groce cited a study that found women with disabilities are three times more likely to be raped than non-disabled women.<sup>296</sup> It has also been shown that women and girls with disabilities are vulnerable to trafficking.<sup>297</sup>

The CRPD Committee has expressed concerns about different aspects of violence against women. These have included a lack of legal protection,<sup>298</sup> a lack of information regarding “risks of violence against women with disabilities, including sterilization, sexual and economic exploitation, and abuse and trafficking”<sup>299</sup> and efforts to conceal women and girls with disabilities and a tendency to prevent them from obtaining documentation.<sup>300</sup> Such actions have the effect of inhibiting their ability to participate in any activities in society. Other concerns include the failure to include women and girls with disabilities in national violence prevention strategies, which leads to the absence of measures to help them access protection, shelter and legal aid.<sup>301</sup>

The Committee has expressed concern about the high incidence of violence and sexual abuse against women and girls with disabilities who reside in institutions in several countries,<sup>302</sup> and has expressed concern regarding the absence of effective mechanisms to detect and deter violence against women and girls with disabilities. In some countries this is a concern within families, live-in support situations and in institutions.<sup>303</sup>

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A report on one European Union–funded project on support services for women with disabilities who experienced violence noted, “[A] particular problem was that there was often nowhere to go for women experiencing institutional abuse at the hands of care providers. Often the only recourse was through the complaint systems of care providers themselves and this route was clearly unsatisfactory. Women recommended that the provision of support services be separated from provision of housing services as a way to allay this problem.”<sup>304</sup>

Violence, abuse, and exploitation infringe on the right to adequate housing in other ways. The CRPD Committee has noted the need for alternative housing for those persons with disabilities who have been victims of trafficking and/or are making a living by begging.<sup>305</sup> Likewise, the Committee has noted that indigenous women and girls with disabilities were vulnerable and without access to effective protection or repatriation measures.<sup>306</sup>

The Committee has noted violence against women with disabilities and the lack of accessible shelters.<sup>307</sup> Woodin and Shah noted that women with disabilities were denied services and access to shelters because providers understood they would not be able to identify accessible housing options or support services for them.<sup>308</sup>

Many women with disabilities are confronted

with a terrible choice: to remain in a household where there is violence or to have their children taken away from them. One woman interviewed as part of the European Union research project noted: “It’s very likely the parent with the learning disability would have their children removed from their care instantly. And I was put in that situation where that did happen but when they did ask him to leave the family home, they didn’t put that support in for me so they moved him back in anyway because he was my support to look after the children.”<sup>309</sup>

The study found that women who had unstable housing arrangements, such as migrant women with disabilities, were less likely to seek help and that the cultural stigma associated with reporting violence meant one would be ostracized for doing so. This was seen to be a risk for deaf women since that particular community is small and the perpetrator may also be deaf.<sup>310</sup>

The CRPD Committee has noted the lack of training of “police and other interlocutors.”<sup>311</sup> Finally, the Special Rapporteur on Adequate Housing has noted women with disabilities are less likely to receive access to vocational training and employment opportunities so it is harder for them to transition to independent living.<sup>312</sup>

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## E. Children with disabilities (and respect for home and family)

Children with disabilities face many challenges with regard to their right to adequate housing. This section summarizes six main challenges: (1) right to life, (2) right to non-discrimination, (3) lack of data on children with disabilities, (4) institutionalization along with interrelated issues of lack of services and support to families, (5) lack of physical access to buildings and services and (6) lack of participation in decisions that affect them.

### 1. Right to life and vulnerability to abuse

In some countries and communities, children's very right to life, survival, and development is threatened. In their study of children with disabilities, the CRC Committee has noted that in the "overwhelming majority" of countries it had identified problems that needed to be addressed, "[T]he problems...have varied from exclusion from decision-making processes to severe discrimination and actual killing of children with disabilities."<sup>313</sup> They noted that "disability can be seen as an omen or curse," and that can lead to killing of children with disabilities and lack of punishment for those who kill children with disabilities.<sup>314</sup>

The CRC Committee has written that children with disabilities are vulnerable to all forms of abuse "in all settings, including the family, schools, private and public institutions, inter alia alternative care, work environment and community at large."<sup>315</sup>

They continued, "children with disabilities are five times more likely to be victims of abuse. In the home and in institutions, children with disabilities are often subjected to mental and physical violence and sexual abuse, and they are also particularly vulnerable to neglect and negligent treatment since they often present an extra physical and financial burden on the family."<sup>316</sup> Further, the Committee has pointed out the absence of monitoring and/or functional complaint mechanisms as conducive to allowing abuse to continue.<sup>317</sup> The Committee has noted concern due to "cases of the killing of newborn children who have physical disabilities."<sup>318</sup> Likewise, the Department for International Development (DFID) noted the significantly higher mortality rates for children with disabilities and wrote that it is as if "children with disabilities are being weeded out."<sup>319</sup>

### 2. Discrimination in law (de jure) and in practice (de facto)

Discrimination against persons with disabilities in law or in practice is not prohibited in some countries.<sup>320</sup> In some countries the law does not mandate measures to ensure accessibility.<sup>321</sup>

Children with disabilities in rural areas have less access to services and, in some cases, there are no policies to protect or provide support for children with disabilities and a lack of data on children with disabilities.<sup>322</sup>

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Even in countries where it is illegal to discriminate, there are significant disparities between non-disabled children and children with disabilities.<sup>323</sup> In some cases States Parties have acknowledged discrimination against children with disabilities.<sup>324</sup> Often, there is a gendered component to discrimination, which has prompted the CRC Committee to draw a clear link between discriminatory attitudes and risk of abuse and exploitation.<sup>325</sup> In some cases, parents do even allow their children to leave home.<sup>326</sup>

### ***Indigenous children with disabilities***

The Committee expressed concern that children with disabilities, indigenous children and girls are prone to discrimination.<sup>327</sup> Indigenous children, including children with disabilities, face multiple forms of discrimination and are at risk of commodification, which is most pronounced during times of urban expansion.<sup>328</sup>

### ***Migrant children with disabilities***

Migrant children are more likely to live in overcrowded housing.<sup>329</sup> In many cases, they have more difficulty in accessing services.<sup>330</sup> The Special Rapporteur on Adequate Housing has noted that undocumented migrant children are in a particularly difficult situation. They can be excluded from child protection services and often live in the streets or in parks. If caught, they can be detained and sent to 'prison-like conditions' in

institutions or deported.<sup>331</sup> The Special Rapporteur on Migrants noted that children with disabilities and/or medical conditions can be kept in detention due to their disability. He noted that such children receive inadequate medical services and treatment and "inadequate access to counselling and other assistance."<sup>332</sup>

### **3. Lack of data**

In many countries, a lack of data on children with disabilities and/or a lack of information about what States Parties are doing to counter discrimination against children with disabilities and other groups who have been marginalized. The CRPD Committee and CRC Committee have made these observations regarding conditions in numerous countries.<sup>333</sup>

### **4. Living in institutions**

The CRPD Committee has noted that poverty leads to the abandonment and separation of children with disabilities from their families. As a result, children with disabilities remain subject to institutional placement.<sup>334</sup> The CRC Committee and the CRPD Committee have identified three main issues pertaining to the institutionalization of children with disabilities: the poor conditions of congregate housing, the lack of monitoring and the lack of support services (including family support) in the community.<sup>335</sup>

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***Poor conditions of institutional housing  
(including forced treatment)***

The CRC Committee has noted concern with regard to the large number of children with disabilities who are institutionalized, the general lack of resources and specialized staff for those children, and the absence of support for their families.<sup>336</sup> The Convention on the Rights of Persons with Disabilities' Committee expressed concern regarding forced treatment of children in psychiatric hospitals.<sup>337</sup>

***Lack of monitoring***

The CRPD Committee has noted that protocols for the registration of shelters and other residential centres for children with disabilities are lacking, and there is a lack of oversight of conditions in those settings.<sup>338</sup> A lack of monitoring in institutions has also been a source of concern.<sup>339</sup>

***Poverty, a lack of support services in the community, and lack of support to families***

High levels of poverty and poor living conditions for children with disabilities are a concern, and prevent children with disabilities, inter alia, from full enjoyment of their rights.<sup>340</sup> The CRC Committee has noted the need to improve health services, access to specialized services, family support, education and reductions in allocations to residential homes for children with disabilities.<sup>341</sup> Services in rural areas were considered worse

than those in urban areas.<sup>342</sup> The committees of both Conventions have noted a lack of support for parents of children with disabilities and insufficient efforts to include children to the community.<sup>343</sup> There are particular difficulties for single mothers.<sup>344</sup> The CRC Committee has noted concern that assistance to families is provided only until the child reaches 16.<sup>345</sup> In some cases it was noted that the state provides insufficient resources for support services and assistance or there is no national system for detection or intervention.<sup>346</sup>

**5. Lack of physical access to buildings and services**

The two CRC Committee has noted that access for persons with disabilities, including children, remains poor in many places,<sup>347</sup> and that legislation is not sufficiently enforced.<sup>348</sup>

**6. Lack of participation of children with disabilities in decisions that affect them**

With respect to children with disabilities, the Special Rapporteur on Torture noted children with disabilities are less likely to have their views taken into consideration when determining their best interests and are less likely to have access to supported decision-making models.<sup>349</sup> The CRPD Committee also has noted that children with disabilities are not involved in decisions that affect them.<sup>350</sup>

## ENDNOTES

- <sup>113</sup> UDHR, Article 25 (1), "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."
- <sup>114</sup> ICESCR, Article 11, (1): "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."
- <sup>115</sup> ICESCR, Article 2.
- <sup>116</sup> CESCR (1991), at supra note 7, para 7.
- <sup>117</sup> CESCR (1994), General Comment 5 (Eleventh session), Persons with Disabilities, E/1995/22 (1994).
- <sup>118</sup> CESCR (1994), at supra note 117, para 1.
- <sup>119</sup> CESCR (1994), at supra note 117, para 1.
- <sup>120</sup> CESCR (1994), at supra note 117, para 15.
- <sup>121</sup> CESCR (1994), at supra note 117, para 15.
- <sup>122</sup> CESCR (1994), at supra note 117, para 33 (quote taken from Standard Rule 4, 1993).
- <sup>123</sup> See, for example, OHCHR (2014), CRPD Training Guide, Professional Training Series 19. Also, websites of CBM (human rights based approach to disability), Handicap International (making PRSP inclusive) and Albert, Bill and Rachel Hurst, Disability and the Human Rights Approach to Development, accessed from <http://hpod.org/pdf/human-rights-approach.pdf> on 23 June 2015.
- <sup>124</sup> CRPD, Article 4 (2).
- <sup>125</sup> Compare ICESCR, Article 11 and CRPD: Article 28
- <sup>126</sup> <http://www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkitIssues.aspx>
- <sup>127</sup> A/HRC/22/46, page 1.
- <sup>128</sup> A/HRC/25/54, page 4
- <sup>129</sup> Raquel Rolnik (2013) "Statement by Raquel Rolnik - Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context" 22nd session of the Human Rights Council, Geneva, pp 5.
- <sup>130</sup> Report of the Special Rapporteur on the rights of persons with disabilities (2015), at supra note 26.
- <sup>131</sup> CRPD, Preamble (c), (h) and (p).
- <sup>132</sup> CRPD, Article 3 (b).
- <sup>133</sup> CRPD, Article 5 (2). Note the similarities between CRPD and ICESCR definitions of disability related discrimination.
- <sup>134</sup> CRPD/C/GC/1, para 34.
- <sup>135</sup> CRPD/C/GC/2, page 8, para 26.
- <sup>136</sup> CRPD, Article 5(4).
- <sup>137</sup> CRPD/C/GC/1, 19 May 2014, para 3
- <sup>138</sup> CRPD, Article 5 (1) and Article 12.
- <sup>139</sup> CRPD, Article 12 (1).
- <sup>140</sup> CRPD, Article 12 (2).
- <sup>141</sup> CRPD/C/GC/1, paragraph 14. Note, the examples used by the Committee refer to the right to adequate housing.
- <sup>142</sup> CRPD, Article 12 (3).
- <sup>143</sup> CRPD/C/GC/1, para 17.
- <sup>144</sup> CRPD, Article 2
- <sup>145</sup> CRPD/C/GC/1, para 34.
- <sup>146</sup> CRPD, Article 12 (4)

## ENDNOTES

- <sup>147</sup> CRPD/C/GC/1, para 21.
- <sup>148</sup> CRPD/C/GC/1, para 29.
- <sup>149</sup> CRPD. Preamble (o).
- <sup>150</sup> CRPD, Article 3 (c).
- <sup>151</sup> CRPD, Article 4 (3), Article 19(c), Article 29, Article 30, Article 32, and Article 33(3).
- <sup>152</sup> CRPD, Article 2.
- <sup>153</sup> CRPD, Article 21
- <sup>154</sup> CRPD, Article 3 (e)
- <sup>155</sup> CRPD, Preamble (o)
- <sup>156</sup> CRPD/C/GC/1, para 44.
- <sup>157</sup> CRPD/C/GC/1, para 45.
- <sup>158</sup> CRPD, Preamble (n) and 3(a)
- <sup>159</sup> OHCHR (2014), at supra note 123, p.12.
- <sup>160</sup> CRPD, Article 19 (a).
- <sup>161</sup> Kanter (2015), at supra note 79, p.64
- <sup>162</sup> Kanter (2015), at supra note 79, p.65
- <sup>163</sup> CRPD, Article 19 (b).
- <sup>164</sup> OHCHR (2014), at supra note 34, page 10, paras 29-30
- <sup>165</sup> OHCHR (2014), at supra note 34, page 12, paras 38 and 40.
- <sup>166</sup> OHCHR (2014), at supra note 34, page 13, para 43
- <sup>167</sup> OHCHR (2014), at supra note 34, page 13, para 44
- <sup>168</sup> CRPD, Preamble (v)
- <sup>169</sup> CRPD, Article 3 (f).
- <sup>170</sup> Office of the United Nations High Commissioner on Human Rights and UN-Habitat (2014), at supra note 70. Note: it explicitly states that accessibility features are essential in order to “live independently” and to “participate fully.”
- <sup>171</sup> CRPD, Article 9 (1)
- <sup>172</sup> CRPD, Article 12 (5) [emphasis added]
- <sup>173</sup> CESC, General Comment 4, paragraph 8 (e).
- <sup>174</sup> CRPD/C/GC/2, page 4, para 13.
- <sup>175</sup> CRPD/C/GC/2, para 24.
- <sup>176</sup> CRPD/C/GC/2, page 5, para 14.
- <sup>177</sup> CRPD/C/GC/2, page 5, para 15.
- <sup>178</sup> CRPD/C/GC/2, page 5, para 16.
- <sup>179</sup> CRPD Article 9 (2) (c). See also CRPD/C/GC/2, page 6, para 19
- <sup>180</sup> CRPD/C/GC/2, page 7-8, para 25
- <sup>181</sup> UN High Commissioner for Human Rights, Doc. E/CN.4/Sub.2/RES/1997/19; and Ireland, CEDAW, A/60/38 part II (2005) 151 at para. 392
- <sup>182</sup> World Health Organization (2014), Draft WHO global disability action plan 2014–2021: Better health for all people with disability, p. 5.
- <sup>183</sup> Office of the United Nations High Commissioner on Human Rights and UN-Habitat (2014), at supra note 70, p 5.
- <sup>184</sup> CRPD/C/AZE/CO/1, 12 May 2014, para 14. The Committee notes that the CESC report (E/C.12/AZE/CO/3) details widespread discrimination against these communities, in particular with regard to housing, health, education and employment.
- <sup>185</sup> See, inter alia, CRPD/C/DNK/CO/1, 30 October 2014, para 16; CRPD/C/ARG/CO/1, para 50; CRPD/C/AUS/CO/1, para 54 and para 56; CRPD/C/CHN/CO/1, para 48; CRPD/C/PRY/CO/1, para 72-73; and CRPD/C/TUN/CO/1, para 38.
- <sup>186</sup> See Ecuador (CRPD/C/ECU/CO/1, 27 October 2014, para 14), Paraguay (CRPD/C/PRY/CO/1, 15 May 2013, para 13); Denmark (CRPD/C/DNK/CO/1, 30 October 2014, para 14) and Korea (CRPD/C/KOR/CO/1, 29 October 2014, para 11).
- <sup>187</sup> Se, for example, CRPD/C/SLV/CO/1, 8 October 2013,

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- para 27 and para 47; and CRPD/C/PRY/CO/1, 15 May 2013, para 30, and para 33.
- <sup>188</sup> CRPD/C/PER/CO/1, 16 May 2012, para 24.
- <sup>189</sup> CRPD/C/BEL/CO/1, 28 October 2014, para 32
- <sup>190</sup> CRPD/C/CHN/CO/1, 15 October 2012, para 21.
- <sup>191</sup> Examples are from Azerbaijan (CRPD/C/AZE/CO/1, 12 May 2014, para 26-27), Denmark (CRPD/C/DNK/CO/1, 30 October 2014, para 32-33); Mexico (CRPD/C/MEX/CO/1, 27 October 2014, para 23-24); Spain (CRPD/C/ESP/CO/1, 19 October 2011, para 33), Tunisia (CRPD/C/TUN/CO/1, 13 May 2011, para 22.), Korea (CRPD/C/KOR/CO/1, 29 October 2014, para 21); Ecuador (CRPD/C/ECU/CO/1, 27 October 2014, para 24), Belgium (CRPD/C/BEL/CO/1, 28 October 2014, para 23), and Argentina (CRPD/C/ARG/CO/1, 8 October 2012, para 19); and CRPD/C/HUN/CO/1, 22 October 2012, para 25 and para 27.
- <sup>192</sup> CRPD/C/NZL/CO/1, 31 October 2014, para: 21-22; and CRPD/C/AUS/CO/1, 21 October 2013, para 24.
- <sup>193</sup> CRPD/C/PER/CO/1, 16 May 2012, Para 6 (c).
- <sup>194</sup> CRPD/C/BEL/CO/1, 28 October 2014, para 11.
- <sup>195</sup> CRPD/C/NZL/CO/1, 31 October 2014, para 9.
- <sup>196</sup> CRPD/C/ESP/CO/1, 19 October 2011, para 19.
- <sup>197</sup> CRPD/C/BEL/CO/1, 28 October 2014, para 32; CRPD/C/AZE/CO/1, 12 May 2014), para 32; CRPD/C/CHN/CO/1, 15 October 2012, page 3-4, paras 31-32, and CRPD/C/KOR/CO/1, 29 October 2014, para 25.
- <sup>198</sup> CRPD/C/ESP/CO/1, 19 October 2011, para 35; CRPD/C/BEL/CO/1, 28 October 2014, para 25-26; CRPD/C/PER/CO/1, 16 May 2012, Para 28; CRPD/C/TUN/CO/1, 13 May 2011, para 24-25; CRPD/C/AZE/CO/1, 12 May 2014, para 28; CRPD/C/PRY/CO/1, 15 May 2013, para 35; and CRPD/C/MEX/CO/1, 27 October 2014, para 29.
- <sup>199</sup> CRPD/C/ECU/CO/1, 27 October 2014, para 28.
- <sup>200</sup> CRPD/C/SWE/CO/1, 12 May 2014, para 35; and CRPD/C/DNK/CO/1, 30 October 2014, para 36.
- <sup>201</sup> CRPD/C/ESP/CO/1, 19 October 2011, para 35.
- <sup>202</sup> Bulgaria, CAT, A/59/44 (2004) 19 at para. 32.
- <sup>203</sup> Mendez, Juan (2013), Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, p. 5, para 20. Note: The four elements of torture are summed as: "an act inflicting severe pain or suffering, whether physical or mental; the element of intent; the specific purpose; and the involvement of a State official, at least by acquiescence" (para 17).
- <sup>204</sup> Mendez (2013), at supra note 203 page 6, para 26.
- <sup>205</sup> Mendez (2013), at supra note 203 page 7, para 31. [Also references A/63/175, para. 50].
- <sup>206</sup> Mendez (2013), at supra note 203 page 7, para 32. [Also references A/63/175, para 47-48].
- <sup>207</sup> Mendez (2013), at supra note 203 page 14-15, para 63.
- <sup>208</sup> CRPD/C/ESP/CO/1, 19 October 2011, para 37.
- <sup>209</sup> CRPD/C/KOR/CO/1, para 29.
- <sup>210</sup> CRPD/C/ESP/CO/1, 19 October 2011, para 35.
- <sup>211</sup> Czech Republic, ICESCR, E/2003/22 (2002) 25 at para. 87.
- <sup>212</sup> Bulgaria, CAT, A/59/44 (2004) 19 at para. 32.
- <sup>213</sup> Bulgaria, CAT, A/59/44 (2004) 19 at para 33.
- <sup>214</sup> CRPD/C/KOR/CO/1, 29 October 2014, para 37.
- <sup>215</sup> CRPD/C/DNK/CO/1, 30 October 2014, para 42; and CRPD/C/HUN/CO/1, 22 October 2012, para 33-35.
- <sup>216</sup> CRPD/C/GC/1, para 46 and also para 40.
- <sup>217</sup> CRPD/C/BEL/CO/1, 28 October 2014, para 32. In some cases, such as in Hungary the timeline for deinstitution-

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- alization was seen as too long. CRPD/C/HUN/CO/1, 22 October 2012, paras 33-35
- <sup>218</sup> CRPD/C/MEX/CO/1, 27 October 2014, para 43; CRPD/C/KOR/CO/1, 29 October 2014, para 37; CRPD/C/CRI/CO/1, 12 May 2014, page 5-6, para 39-40; CRPD/C/CHN/CO/1, 15 October 2012, page 3-4, paras 92-93
- <sup>219</sup> CRPD/C/AZE/CO/1, 12 May 2014), para 32.
- <sup>220</sup> CRPD/C/DNK/CO/1, 30 October 2014, para 16.
- <sup>221</sup> CRPD/C/PER/CO/1, 16 May 2012, Para 12: CRPD/C/MEX/CO/1, 27 October 2014, para 9
- <sup>222</sup> CRPD/C/MEX/CO/1, 27 October 2014, para 53.
- <sup>223</sup> Kothari (2005) at supra note 23.
- <sup>224</sup> CRPD/C/MEX/CO/1, 27 October 2014, para 53.
- <sup>225</sup> McKay, Celeste and Leilani Farha (2011), *Securing Land Rights for Indigenous Peoples in Cities: Policy Guide to Secure Land Rights*, Global Land Tool Network, UN-Habitat, p.32
- <sup>226</sup> Special Rapporteur on Adequate Housing (2006), Report "Women and Adequate Housing", Commission on Human Rights, 62nd session, E/CN.4/2006/118, 27 February 2006, page 14, para 47.
- <sup>227</sup> CRPD/C/TUN/CO/1, 13 May 2011, para 12; CRPD/C/NZL/CO/1, 31 October 2014, para 13.
- <sup>228</sup> CRPD/C/ECU/CO/1, 27 October 2014, para 14
- <sup>229</sup> CRPD/C/AZE/CO/1, 12 May 2014, para 12-13; CRPD/C/MEX/CO/1, 27 October 2014, para 9; and CRPD/C/PER/CO/1, 16 May 2012, Para 6 (b).
- <sup>230</sup> CRPD/C/SWE/CO/1, 12 May 2014, para 9
- <sup>231</sup> CRPD/C/PER/CO/1, 16 May 2012, para 22.
- <sup>232</sup> CRPD/C/CRI/CO/1, 12 May 2014, para 21-24
- <sup>233</sup> CRPD/C/PRY/CO/1, 15 May 2013, para 47
- <sup>234</sup> CRPD/C/ESP/CO/1, 19 October 2011, para 41
- <sup>235</sup> CRPD/C/PRY/CO/1, 15 May 2013, para 49 and para 61; and CRPD/C/KOR/CO/1, 29 October 2014, para 37
- <sup>236</sup> CRPD/C/HUN/CO/1, 22 October 2012, para 33-35
- <sup>237</sup> CRPD/C/KOR/CO/1, 29 October 2014, para 37
- <sup>238</sup> CRPD/C/MEX/CO/1, para 12.
- <sup>239</sup> CRPD/C/BEL/CO/1, 28 October 2014, para 32
- <sup>240</sup> CRPD/C/DNK/CO/1, 30 October 2014, para 42
- <sup>241</sup> CRPD/C/AUS/CO/1, 21 October 2013, page 6, paras 41-42; and CRPD/C/ESP/CO/1, 19 October 2011), para 39.
- <sup>242</sup> CRPD/C/NZL/CO/1, 31 October 2014, para 39. See also, <http://www.odi.govt.nz/what-we-do/improving-disability-supports/enabling-good-lives/what-is-enabling-good-lives.html>
- <sup>243</sup> CRPD/C/CHN/CO/1, 15 October 2012, paras 61-62.
- <sup>244</sup> CRPD/C/CHN/CO/1, 15 October 2012, paras 13-14, and para 43; CRPD/C/PER/CO/1, 16 May 2012, Paras: 32-33; and CRPD/C/ESP/CO/1, 19 October 2011), para 39.
- <sup>245</sup> CRPD/C/CHN/CO/1, 15 October 2012, para 79.
- <sup>246</sup> CRPD/C/ECU/CO/1, 27 October 2014, para 34.
- <sup>247</sup> CRPD/C/PRY/CO/1, 15 May 2013, para: 67.
- <sup>248</sup> CRPD/C/KOR/CO/1, 29 October 2014, para 39 and para 53. Korean legislation also excludes persons with disabilities whose family members "have a certain amount of income or property" from receiving some benefits. See also, CRPD/C/ESP/CO/1, 19 October 2011), para 39.
- <sup>249</sup> CRPD/C/CRI/CO/1, 12 May 2014, para 57.
- <sup>250</sup> CRPD/C/NZL/CO/1, 31 October 2014, para 59.
- <sup>251</sup> CRPD/C/SLV/CO/1, 8 October 2013, paras 23-24
- <sup>252</sup> CRPD/C/SLV/CO/1, 8 October 2013, paras 43-44.
- <sup>253</sup> Jamaica, ICESCR, E/2002/22 (2001) 130 at para. 933
- <sup>254</sup> China (Hong Kong Special Administrative Region), ICESCR, E/2006/22 (2005) 34 at para. 207
- <sup>255</sup> CRPD/C/CHN/CO/1, 15 October 2012, page 3-4, paras

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- 69-70; CRPD/C/HUN/CO/1, 22 October 2012, para 36.
- <sup>256</sup> CRPD/C/ARG/CO/1, 8 October 2012, page 5, para 33.
- <sup>257</sup> CRPD/C/SWE/CO/1, 12 May 2014, paras 43-44.
- <sup>258</sup> Brazil, ICESCR, E/2004/22 (2003) 28 at para. 128.
- <sup>259</sup> CRPD/C/ECU/CO/1, 27 October 2014, para 38; CRPD/C/D/C/PRY/CO/1, 15 May 2013, paras 23-26; CRPD/C/SLV/CO/1, 8 October 2013, paras 23-24.
- <sup>260</sup> CRPD/C/PRY/CO/1, 15 May 2013, paras 23-26.
- <sup>261</sup> CRPD/C/KOR/CO/1, 29 October 2014, para 17; CRPD/C/D/C/ECU/CO/1, 27 October 2014, para 22 (b); CRPD/C/AZE/CO/1, 12 May 2014, para 22.
- <sup>262</sup> CRPD/C/TUN/CO/1, 13 May 2011, paras 20-21
- <sup>263</sup> Georgia, ICESCR, E/2003/22 (2002) 59 at para. 422
- <sup>264</sup> CESCR, General Comment 4 (1991), para 8; Italy, ICESCR, E/2005/22 (2004) 54 at para. 458.
- <sup>265</sup> Bouldin, Andresen, et al. (2014) Visitability surveillance, prevalence, and correlates in Florida, *Disability and Health Journal*, Volume 8, p. 4. Note, the authors define "visitability" as follows: "designing homes in a way that enables people to visit others' homes regardless of physical limitations or use of mobility assistive devices."
- <sup>266</sup> Bouldin, Andresen, et al. (2014), at supra note 330 p. 4. See also, Maisel J, E. Smith, and E. Steinfeld (2008), *Increasing Home Access: Designing for Visitability*. Washington, D.C. [http://assets.aarp.org/rgcenter/ij/2008\\_14\\_access.pdf](http://assets.aarp.org/rgcenter/ij/2008_14_access.pdf) (accessed 1 June 2015).
- <sup>267</sup> CRPD/C/GC/2, page 5, para 15. See also Imrie, Rob (2006), *Accessible Housing: Quality, Disability and Design*, Routledge, p52-67 for a review of costs and misconceptions about the added costs of accessibility features.
- <sup>268</sup> CRPD/C/ECU/CO/1, 27 October 2014, para 44.
- <sup>269</sup> CRPD/C/PRY/CO/1, 15 May 2013, para 23-26; CRPD/C/ECU/CO/1, 27 October 2014, para 22 (a).
- <sup>270</sup> CRPD/C/ECU/CO/1, 27 October 2014, para 22 (c); CRPD/C/KOR/CO/1, 29 October 2014, para 17.
- <sup>271</sup> CRPD/C/DNK/CO/1, 30 October 2014, para 26.
- <sup>272</sup> CRPD/C/KOR/CO/1, 29 October 2014, para 17.
- <sup>273</sup> CRPD/C/BEL/CO/1, 28 October 2014, para 21.
- <sup>274</sup> CRPD/C/AZE/CO/1, 12 May 2014, para 22.
- <sup>275</sup> CRPD/C/DNK/CO/1, 30 October 2014, para 26;
- <sup>276</sup> European Disability Forum, "facts and figures about disability", [http://www.edf-feph.org/Page\\_Generale.asp?DocID=12534](http://www.edf-feph.org/Page_Generale.asp?DocID=12534) (accessed 19 June 2015). Emphasis in original.
- <sup>277</sup> CRPD/C/GC/2, page 3, para 10.
- <sup>278</sup> CRPD/C/BEL/CO/1, 28 October 2014, para 30.
- <sup>279</sup> CRPD/C/SLV/CO/1, 8 October 2013, para 23-24; CRPD/C/CRI/CO/1, 12 May 2014, page 5-6, paras 39-40.
- <sup>280</sup> CRPD/C/HUN/CO/1, 22 October 2012, paras 23-24.
- <sup>281</sup> CRPD/C/PRY/CO/1, 15 May 2013, paras 23-26.
- <sup>282</sup> CRPD/C/CHN/CO/1, 15 October 2012, paras 61-62.
- <sup>283</sup> CRPD/C/PER/CO/1, 16 May 2012, para 20.
- <sup>284</sup> CRPD/C/SWE/CO/1, 12 May 2014, paras 25 and 27.
- <sup>285</sup> See Concluding Observations for Belgium (para 29), China (paras 56,91), Denmark (paras 14-17), Ecuador (paras 14-15), Korea (paras 11-12), Mexico (paras 11-12), New Zealand (para 9-10), Paraguay (paras 39-40) and Tunisia (para 17).
- <sup>286</sup> Aggarwal (2006), at supra note 55; and Office of the High Commissioner for Human Rights. (2012), at supra note 23.
- <sup>287</sup> Committee on the Rights of the Child (2006), at supra note 69, para 10.
- <sup>288</sup> CRPD/C/AZE/CO/1, 12 May 2014, para 16.
- <sup>289</sup> CRPD/C/MEX/CO/1, 27 October 2014, para 14(b).

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- <sup>290</sup> CRPD/C/DNK/CO/1, 30 October 2014, para 18
- <sup>291</sup> CRPD/C/CRI/CO/1, 12 May 2014, page 6, paras 43-44; CRPD/C/DNK/CO/1, 30 October 2014, para 18
- <sup>292</sup> Cunningham, and Sena (2013), at supra note 41, page 14, para 49. A footnote in the quoted text cites Amnesty International, *Maze of Injustice* (New York, 2007).
- <sup>293</sup> SR on migrants: Report by the Special Rapporteur on the human rights of migrants - A/HRC/14/30, para 55
- <sup>294</sup> Kothari (2005) at supra note 23. Refers to USA and Australia.
- <sup>295</sup> <http://www.un.org/disabilities/convention/facts.shtml>
- <sup>296</sup> Groce (2005), at supra note 68.
- <sup>297</sup> DRI and Collectivo Chuhcan (2015),, page iii (forward). See also, Disability Rights International (2015), *No Way Home: the Exploitation and Abuse of Children in Ukraine's Orphanages*, <http://www.driadvocacy.org/media-gallery/our-reports-publications/> (accessed 7 July 2015). And Disability Rights International (2012), *Guatemala: Precautionary Measures Petition to the Inter-American Commission on Human Rights*, p.7-8, <http://www.driadvocacy.org/media-gallery/our-reports-publications/> (accessed 7 July 2015).
- <sup>298</sup> CRPD/C/NZL/CO/1, 31 October 2014, para 35.
- <sup>299</sup> CRPD/C/PRY/CO/1, 15 May 2013, para 17.
- <sup>300</sup> CRPD/C/TUN/CO/1, 13 May 2011, para 14.
- <sup>301</sup> CRPD/C/TUN/CO/1, 13 May 2011, paras 26-27.
- <sup>302</sup> CRPD/C/ECU/CO/1, para 30 (a); CRPD/C/AUS/CO/1, 21 October 2013, page 5, paras 37-38.
- <sup>303</sup> CRPD/C/AUS/CO/1, 21 October 2013, para 30 (b); CRPD/C/KOR/CO/1, 29 October 2014, para 13; CRPD/C/NZL/CO/1, 31 October 2014, para 35.
- <sup>304</sup> Woodin, Sarah, and Sonali Shah (undated), *Report on Research with Women with Disabilities and Providers of Specialised Services for Women who have Experienced Violence*, [http://women-disabilities-violence.human-rights.at/sites/default/files/reports/comparative\\_empirical\\_report.pdf](http://women-disabilities-violence.human-rights.at/sites/default/files/reports/comparative_empirical_report.pdf) (accessed 7 July 2015), p 33.
- <sup>305</sup> CRPD/C/PRY/CO/1, 15 May 2013, para 42
- <sup>306</sup> CRPD/C/MEX/CO/1, 27 October 2014, para 33.
- <sup>307</sup> CRPD/C/SWE/CO/1, 12 May 2014, para 41; CRPD/C/KOR/CO/1, 29 October 2014, para 31; CRPD/C/DNK/CO/1, 30 October 2014, para 40.
- <sup>308</sup> Woodin and Shah (undated), at supra note 304, page 51.
- <sup>309</sup> Ludwig Boltzmann Institute of Human Rights et al, (2014), *Access to Specialised Victim Support Services for Women with Disabilities who have experienced Violence: Final Short Report*, page 22. Example from the UK.
- <sup>310</sup> Ludwig Boltzmann Institute of Human Rights et al, (2014), at supra note 309, page 22.
- <sup>311</sup> CRPD/C/DNK/CO/1, 30 October 2014, para 40
- <sup>312</sup> Kothari (2005) at supra note 23.
- <sup>313</sup> Committee on the Rights of the Child (2006), at supra note 69, page 2, para 3.
- <sup>314</sup> Committee on the Rights of the Child (2006), at supra note 69, para 31.
- <sup>315</sup> Committee on the Rights of the Child (2006), at supra note 69, para 42.
- <sup>316</sup> Committee on the Rights of the Child (2006), at supra note 69, para 42.
- <sup>317</sup> Committee on the Rights of the Child (2006), at supra note 69, para 42.
- <sup>318</sup> Guinea-Bissau, CRC, CRC/C/118 (2002) 12 at para. 66
- <sup>319</sup> DFID, *Disability, Poverty and Development*, February 2000, page 5.

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- <sup>320</sup> Jamaica, CRC, CRC/C/132 (2003) 86 at para. 417; Saint Vincent and the Grenadines, CRC, CRC/C/118 (2002) 101 at paras. 430; Saint Lucia, CRC, CRC/C/150 (2005) 10 at para. 78; and The Netherlands (Netherlands and Aruba), CRC, CRC/C/137 (2004) 63 at para. 345.
- <sup>321</sup> Guinea-Bissau, CRC, CRC/C/118 (2002) 12 at para. 66
- <sup>322</sup> Solomon Islands, CRC, CRC/C/132 (2003) 58 at para. 321; Antigua and Barbuda, CRC, CRC/C/143 (2004) 93 at paras. 501; Kazakhstan, CRC, CRC/C/132 (2003) 129 at para. 635; Belize, CRC, CRC/C/146 (2005) 59 at para. 342.
- <sup>323</sup> Bolivia, CRC, CRC/C/146 (2005) 121 at para. 618; Philippines, CRC, CRC/C/150 (2005) 24 at para. 123; Mongolia, CRC, CRC/C/150 (2005) 113 at para. 556.
- <sup>324</sup> Greece, CRC, CRC/C/114 (2002) 25 at paras. 150.
- <sup>325</sup> Nepal, CRC, CRC/C/150 (2005) 66 at para. 316; Mozambique, CRC, CRC/C/114 (2002) 65 at paras. 274 and 297.
- <sup>326</sup> Mozambique, CRC, CRC/C/114 (2002) 65 at para. 297.
- <sup>327</sup> El Salvador, CRC, CRC/C/140 (2004) 8 at para. 47.
- <sup>328</sup> Mckay, Celeste and Leilani (2011), at supra note 225, p.6.
- <sup>329</sup> Bustamante, Jorge (2010), Report of the Special Rapporteur on the human rights of migrants A/HRC/14/30, para 58. Note, housing is considered inadequate if it does not provide adequate space (per the habitability aspect of the definition).
- <sup>330</sup> The Netherlands (Netherlands and Aruba), CRC, CRC/C/137 (2004) 63 at para. 345.
- <sup>331</sup> Rolnik, Raquel (2010), Report of the Special Rapporteur on the Right to Adequate Housing, A/65/261, p.19, para 68.
- <sup>332</sup> Bustamante (2010), at supra note 351, see footnotes 40-41 of text.
- <sup>333</sup> Greece, CRC, CRC/C/114 (2002) 25 at paras. 150; Switzerland, CRC, CRC/C/118 (2002) 78 at paras. 346; Saint Vincent and the Grenadines, CRC, CRC/C/118 (2002) 101 at paras. 447; Romania, CRC, CRC/124 (2003) 49 at paras. 246; Jamaica, CRC, CRC/C/132 (2003) 86 at para. 432; Kazakhstan, CRC, CRC/C/132 (2003) 129 at para. 634; Bahamas, CRC, CRC/C/146 (2005) 77 at para. 415; Bolivia, CRC, CRC/C/146 (2005) 121 at para. 638; Mongolia, CRC, CRC/C/150 (2005) 113 at para. 556; and Albania, CRC, CRC/C/146 (2005) 19 at paras. 98; CRPD/AZE/CO/1, 12 May 2014), para 18-19. See also, CRC/AZE/CO/3-4), para. 34; CRPD/AUS/CO/1, 21 October 2013, page 8, paragraphs 55-56. In particular regarding indigenous children, alternative care for children with disabilities, and children with disabilities in remote/rural areas; and CRPD/C/PRY/CO/1, 15 May 2013, para 19-20. In particular indigenous children with disabilities (and children with disabilities in rural areas.
- <sup>334</sup> CRPD/C/SLV/CO/1, 8 October 2013, paras 41-42.
- <sup>335</sup> The number of children institutionalized and the lack of effort to deinstitutionalize are covered in Chapter 2 Section B and Chapter 3 Section C respectively.
- <sup>336</sup> Mauritania, CRC, CRC/C/111 (2001) 8 at para. 66.
- <sup>337</sup> CRPD/C/DNK/CO/1, 30 October 2014, para 20
- <sup>338</sup> CRPD/C/MEX/CO/1, 27 October 2014, para 35
- <sup>339</sup> CRPD/C/TUN/CO/1, 13 May 2011), para 17(b).
- <sup>340</sup> Nicaragua, CRC, CRC/C/150 (2005) 132 at para. 617; Brazil, CRC, CRC/C/143 (2004) 10 at para. 75.
- <sup>341</sup> Sudan, CRC, CRC/C/121 (2002) 53 at para. 265; Lebanon, CRC, CRC/C/114 (2002) 11 at paras. 69; Kazakhstan, CRC, CRC/C/132 (2003) 129 at para. 635; Ukraine, CRC, CRC/C/121 (2002) 70 at para. 344. Mon-

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- golia, CRC, CRC/C/150 (2005) 113 at para. 556.
- <sup>342</sup> Mongolia, CRC, CRC/C/150 (2005) 113 at para. 556.
- <sup>343</sup> CRPD/C/BEL/CO/1, 28 October 2014, para 34; Republic of Moldova, CRC, CRC/C/121 (2002) 89 at para. 408
- <sup>344</sup> CRPD/C/KOR/CO/1, 29 October 2014, para 43.
- <sup>345</sup> Kyrgyzstan, CRC, CRC/C/143 (2004) 50 at para. 265; Georgia, CRC, CRC/C/133 (2003) 111 at para. 566.
- <sup>346</sup> Mozambique, CRC, CRC/C/114 (2002) 65 at para. 297; Jamaica, CRC, CRC/C/132 (2003) 86 at para. 432.
- <sup>347</sup> Mozambique, CRC, CRC/C/114 (2002) 65 at para. 297; Romania, CRC, CRC/124 (2003) 49 at para. 246;
- Bahamas, CRC, CRC/C/146 (2005) 77 at para. 415; and Guinea-Bissau, CRC, CRC/C/118 (2002) 12 at para. 66; Saint Vincent and the Grenadines, CRC, CRC/C/118 (2002) 101 at paras. 447; Seychelles, CRC, CRC/C/121 (2002) 41 at para. 203.
- <sup>348</sup> Greece, CRC, CRC/C/114 (2002) 25 at para. 150.
- <sup>349</sup> Mendez (2013), at supra note 203, pages 19-20, para 80.
- <sup>350</sup> CRPD/C/MEX/CO/1, 27 October 2014, para 15-16:



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# Chapter 04 Addressing the barriers to adequate housing

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This chapter presents recommendations given by key stakeholders to address the barriers described above in Chapter 3.

## A. Discrimination in legislation and policies

The Special Rapporteur on Adequate Housing has recognized the correlation between discrimination in housing and discrimination in other realms, including for persons with disabilities, who “are often subject to further stigmatization, discrimination and criminalization because of their socioeconomic and housing status, such as living on the streets, in informal settlements or in substandard housing.”<sup>351</sup>

### 1. Adopt and enforce non-discrimination legislation and policies

National legislation and policies need to be in accordance with the Convention on the Rights of Persons with Disabilities (CRPD) provisions on non-discrimination, including the provision that the denial of reasonable accommodation constitutes disability-based discrimination.<sup>352</sup>

In addition to reviews of existing legislation, educational campaigns will be needed.<sup>353</sup> Laws, policies and practices that permit guardianship and involuntary hospitalization of persons (including children) with disabilities must be repealed.<sup>354</sup> Laws, policies and practices that allow for deprivation of liberty on the basis of disability need to be repealed.<sup>355</sup>

A review of social security legislation is needed to “reformulate the provisions that prevent persons with disabilities, including migrant workers and disabled children of migrant workers, from having equal access to social protection.”<sup>356</sup>

A policy on children with disabilities is needed<sup>357</sup> to ensure protection for children with disabilities<sup>358</sup> and to ensure access to services and facilities for children in need of support.<sup>359</sup>

A support mechanism to prevent the practice of abandonment or institutionalization should be in place and<sup>360</sup> disparities due to intersectional discrimination need to be recognized and

addressed. The CRC Committee has emphasized that measures “must include and pay special attention to the particular vulnerability and needs of children [with disabilities] belonging to minorities and indigenous children who are more likely to be already marginalized within their communities. Programmes and policies must always be culturally and ethnically sensitive.”<sup>361</sup>

*The attainment of housing quality requires, therefore, not only the rectification of the physical dimensions and performance of dwellings, but also the provision of the means for disabled people to be able to consume them.*

*- Rob Imrie (2006), Accessible Housing: Quality, Disability and Design, p.41*

## **2. Ensure access to economic resources and opportunities**

General Comment 5 of the Committee on Economic Social and Cultural Rights (CESCR) and Article 28 of the CRPD have recognized the importance of “income maintenance schemes”, poverty assistance, and support to families of persons with disabilities.

There is a need for the development and implementation of CRPD-compliant national plans to promote poverty reduction, access to

social protection and noncontributory pension schemes, and access to economic resources for persons with disabilities.<sup>362</sup> Reviews of disability-related costs are recommended, with the aim to ensure that sufficient allocations are provided to cover those expenses.<sup>363</sup> The CRPD Committee has highlighted the need for such plans to have a gender lens, and to ensure social protection and economic assistance measures take into account disadvantages faced by indigenous persons, persons in rural areas and others living in extreme poverty.<sup>364</sup> Measures need to be taken to ensure that persons with disabilities - regardless of impairment or where they live - are able to have immediate access to certification and benefits, and that benefits are on the basis of “the personal characteristics, circumstances and needs of persons with disabilities.”<sup>365</sup>

## **3. Develop plans for deinstitutionalization and recognize legal capacity**

With regard to children in institutions, the CESCR has recommended that States Parties strengthen efforts to reduce the number of children living in institutions, including by strengthening family support measures and by developing alternative forms of family care to ensure children experience “an atmosphere of emotional and material security.”<sup>366</sup> The CRC Committee has specified the need to ensure children “are protected from all forms of neglect, abuse or inhuman or degrading treatments<sup>367</sup> and to develop alternatives to

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institutionalization, including community-based programmes, and to provide training for persons who work with children with disabilities.<sup>368</sup> The CRPD Committee has recommended that foster care should be provided for all children with disabilities who are abandoned and that foster families need to receive “the requisite support for their care.”<sup>369</sup>

Effective deinstitutionalization strategies, with clear time frames, assessments and adequate funding, need to be in place to enable children and adults with disabilities to enjoy the right to adequate housing.<sup>370</sup> Financial and human resources are needed to establish supported decision-making models and to give support to those who have had their legal capacity revoked.<sup>371</sup> In addition, models for independent living should be studied for replication and scaling up.<sup>372</sup>

#### **4. Take measures to eliminate violence against women and children with disabilities**

The CRPD Committee has urged measures to prevent and eliminate all forms of domestic or institutional violence against women, children, and girls with disabilities.<sup>373</sup> As part of that process, conditions for women and children who are trafficked need to be reviewed and alternative housing arrangements made for those who were trafficked, neglected or living by begging. Finally, access to psychosocial care and legal assistance for them needs to be ensured.

<sup>374</sup>

#### **5. Prevent demolitions and improve security of tenure**

The CRPD recognized that persons with disabilities have been arbitrarily deprived of property and suffered other violations of their security of tenure.<sup>375</sup> As noted above in the section on women with disabilities, they are more vulnerable to forced eviction.



Measures should be taken to ensure that persons with disabilities have access to certification and benefits. © UN-Habitat

The Special Rapporteur on Adequate Housing has noted that the demolition of informal settlements affects persons with disabilities.<sup>376</sup> During a visit to Kazakhstan, the Special Rapporteur on Adequate Housing noted several ways in which the right to adequate housing for persons with disabilities was compromised. These included the high rate of demolitions of informal settlements, the use of force during such demolitions and the resulting homelessness of vulnerable persons including persons with disabilities.<sup>377</sup>

## 6. Provide training and education

The CRPD Committee has recommended several specific types of training to improve legislation and policies that are discriminatory. Training for police and justice sectors are needed to facilitate institutional reform.<sup>378</sup> National training courses are needed for personnel working in health and medical care, schools, the police force and judiciary on violence and abuse against all persons with disabilities, including a review of reporting mechanisms.<sup>379</sup> Training is needed on the recognition of the legal capacity of persons with disabilities and on the mechanisms of supported decision-making at all levels and for all relevant actors in consultation with disabled persons organizations.<sup>380</sup> Finally, programmes on sexual and reproductive rights need to be launched which target women with intellectual disabilities, women with psychosocial disabilities, their families and health professionals.<sup>381</sup>

## B. Denial of right to live independently and in the community

### 1. Take measures to provide choice and support

The first Special Rapporteur on Adequate Housing noted that previous comments by the CESCR had references to include persons with disabilities, noting that support services - including assistive devices - needed to be understood as part of the right to adequate housing.<sup>382</sup> The CRC Committee has recommended providing more professional and financial support to families of children with disabilities,<sup>383</sup> especially at the local level<sup>384</sup> and especially to those families who are economically disadvantaged.<sup>385</sup> This Committee has advised extending benefits to all children with disabilities,



Support services need to be understood as part of the right to adequate housing. © UN-Habitat

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including those between 16 and 18 years old.<sup>386</sup> It also advised reviewing access to health care and educational services to determine adequate allocation of resources to strengthen services and provide support to families.<sup>387</sup>

*At the root of many testimonies lies the threat to a hard-won right to live independently. For persons with physical and mental disabilities, as well as for the chronically ill, adequate housing means living in homes that are adapted to specific needs; close to services, care and facilities allowing them to carry out their daily routines; and in the vicinity of friends, relatives or a community essential to leading lives in dignity and freedom. Often, the compounded impact of an acute shortage of adapted and affordable accommodation, combined with other changes to the welfare system, has left them “between a rock and a hard place”: downsizing or facing rent arrears and eviction. Many testimonies refer to anxiety, stress and suicidal thoughts as a result, precisely the type of situations that should be avoided at all costs.*

*- Special Rapporteur on Adequate Housing, report from her visit to the UK, AI HRC/25/54/add 2, p.16-17*

The CRPD Committee has noted the need to provide personal assistance services and to amend legislation so persons with disabilities can choose where and with whom to live.<sup>388</sup> **It also** recommended introducing comprehensive programmes to enable persons with disabilities to access a range of in-home, residential and community support services.<sup>389</sup> Social assistance programmes should provide fair and sufficient financial assistance, which should be based on specific characteristics and needs and not on the ‘degree of impairment’. It should also be based on that person’s income rather than on the income of his or her family.<sup>390</sup> Reviews of disability-related costs should be undertaken to ensure sufficient allocation of income or pension is provided, in particular for children with disabilities and their families.<sup>391</sup> Criteria for issuing vouchers should be reviewed to ensure that persons with disabilities are the ones who receive the support they need - not other family members.<sup>392</sup>

The synthesis report from the Academic Network of European Disability Experts provided substantial guidance on what considerations are needed to facilitate living independently and in the community.<sup>393</sup> Finally, the National Disability Authority in Ireland led a study to identify quality-of-life indicators that can be used to design and measure services to support independent living for persons with intellectual disabilities.<sup>394</sup>

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## 2. Develop and provide services in the community

The CRC Committee has recommended addressing several barriers in the community. The proposed measures included legislation and administrative provisions to ensure children with disabilities have access to public transportation and public buildings, including all schools and hospitals,<sup>395</sup> especially in rural areas or islands;<sup>396</sup> (2) ensuring access to primary health care;<sup>397</sup> (3) assessments to determine which services and facilities are accessible currently;<sup>398</sup> (4) assessments of the capacity of staff and professionals working for and with children to include children with disabilities in their programmes;<sup>399</sup> (5) allocation of resources, especially in rural areas, to enable children to stay at home with their families and access community-based programmes and facilities;<sup>400</sup> (6) recruitment of qualified personnel to provide services and support to children with disabilities;<sup>401</sup> (7) support leading to full integration of children with disabilities into everyday life;<sup>402</sup> (8) support of accessible transportation, the removal of physical barriers, and the provision of wheelchairs and other mobility devices<sup>403</sup> and (9) the expansion of community-based rehabilitation programmes, including parent support groups.<sup>404</sup>

The Convention on the Rights of Persons with Disabilities' Committee highlighted the need to gain commitment from authorities at all levels, but especially at the local level, to facilitate development and provision of accessible services

in the community.<sup>405</sup> The Special Rapporteur on Adequate Housing has also recognized the important role of local implementation that sub-national and local governments play to ensure the provision of adequate housing.<sup>406</sup> Action plans need to be developed to guarantee access to services and support to live independently and in the community. Accessibility audits need to be carried out at all health care facilities and support centres to ensure accessibility, especially in rural areas. Finally, sign language and information in alternative formats need to be available to ensure access to public services.

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### C. Presence of environmental barriers

Five of the seven aspects of adequate housing refer to physical or environmental conditions: habitability, availability of services, accessibility, affordability and location.<sup>407</sup>

#### 1. Ensure housing is habitable and services are available

The Special Rapporteur on Adequate Housing noted that public housing can become “centres of extreme poverty” and that persons with disabilities should be a priority when it comes to housing policy.<sup>408</sup> Measures are needed to ensure more appropriate living conditions, including “guarantees of decent housing on an equal footing with others” for persons with disabilities.<sup>409</sup> This should include efforts to ensure that infrastructure

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for water and energy provision and heating are improved, especially for persons with disabilities and other marginalized groups.<sup>410</sup>

The CRPD Committee has recommended the application of accessibility standards for all public buildings - regardless of size, date of construction, or capacity - for communications and transportation, and for rural as well as urban areas.<sup>411</sup> States Parties should ensure private entities understand and apply new accessibility standards<sup>412</sup> and sufficient financial and human resources need to be allocated to implement, promote and monitor compliance with accessibility legislation.<sup>413</sup> Measures need to be in place for the elimination of barriers to basic services, drinking water and sanitation in rural and remote areas and they need to include organizations of persons with disabilities in monitoring their implementation.<sup>414</sup> Finally, States Parties to the CRPD should conduct training on universal design and accessibility standards on an ongoing basis, and dissuasive penalties for noncompliance should be incorporated in the legal framework and be applied to those who do not implement accessibility standards.<sup>415</sup>

## **2. Ensure accessible housing stock is available and affordable**

Two additional aspects of adequate housing considered by the CESCR are affordability and accessibility. It urged States Parties “to provide more housing units to cater for the needs of the disadvantaged and marginalized groups,

including older persons, people with disabilities and immigrants.”<sup>416</sup> Quotas reserved for the social house funding for persons with disabilities need to be brought in line with actual percentage.<sup>417</sup>

The CRPD Committee has called for identifying specific accessibility requirements relating to information, to communication and technology, and to simplified language tools,<sup>418</sup> and for establishing a legal framework and accessibility action plans with specific and binding benchmarks for accessibility, including for buildings, roads and transportation, services and e-accessibility. Provisions for monitoring and penalties for noncompliance need to be part of that legal framework. Policies to promote the development of accessible housing need to be strengthened



Quotas reserved for the social house funding for persons with disabilities need to be brought in line with actual percentage.  
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to ensure persons with disabilities have de facto choice of accommodation. Finally, training on accessibility and universal design should be incorporated into the process for issuing building permits.<sup>419</sup>

### **3. Ensure adequate location and accessible transportation**

Location is another aspect of adequate housing considered by the CDESCR. A good location for persons with disabilities has the same meaning as for non-disabled persons. Persons with disabilities want to be near schools, employment opportunities, social services, and healthcare services. The CRPD Committee has recommended launching a comprehensive programme with timelines to adapt public transportation, including in rural areas, so that all modes are accessible.<sup>420</sup>

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## **D. Lack of participation**

### **1. Involve persons with disabilities in decisions that affect them**

The Special Rapporteur on Adequate Housing noted that persons with disabilities, inter alia, are not consulted, and the failure to consult them can lead to decisions that “disregard their opinions, choices and particular interests...In the worst cases, threats, intimidation or violence are used to coerce people into accepting resettlement terms.”<sup>421</sup> The CRPD’ Committee has urged the involvement of persons with disabilities and their representative organizations in international

cooperation programmes and in development of disability action plans.<sup>422</sup> Persons with disabilities and their representative organizations also need to be included in the review of the implementation of laws on accessibility.<sup>423</sup> Women and girls with disabilities need to be included in the national strategy to prevent violence in the family and in the community.<sup>424</sup> Furthermore, this Committee advised convening a working group of persons with disabilities to review civil legislation and introduce supported decision-making mechanisms.<sup>425</sup>

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## **E. Lack of monitoring and complaint mechanisms**

### **1. Gather, analyze and use data for planning and monitoring**

While there are approximately 70 references to the right to adequate housing through the UPR mechanism, only one refers to adequate housing for persons with disabilities (Barbados, Session 15). That recommendation advises the government to conduct a census of the population of persons with disabilities in order to “identify the types of disabilities involved, causes, potential levels of intervention including medical care and rehabilitation, education requirements, food and adequate housing appropriate to disabilities, technical aids and prosthesis, among others.” The government of Barbados accepted this recommendation.<sup>426</sup>

The treaty bodies have all made recommendations on the need for better data and monitoring. The CRC Committee has recommended measures to ensure that conditions for children with disabilities are monitored and their needs are assessed,<sup>427</sup> and that data is collected as a precondition for defining a disability policy.<sup>428</sup> The Committee on the Convention on the Elimination of Discrimination Against Women's Committee has recommended monitoring the exclusion of women in conditions of vulnerability and to identify measures to facilitate their participation in state programmes.<sup>429</sup>

The CRPD Committee has recommended measures to ensure data can be disaggregated by age, gender and disability.<sup>430</sup> This is needed so that measures can be adopted to prevent such discrimination<sup>431</sup> as well as to ensure participation of persons with disabilities at all levels.<sup>432</sup> Appropriate measures should be in place to ensure that all actors are familiar with the established standards for using augmentative and alternative modes of communication.

The Washington Group has a short set and extended set of questions that can be used by governments to gather information on persons with disabilities. Data, though, is not only needed about persons with disabilities but also about the barriers they encounter.<sup>433</sup> While consistent use of Washington Group questions would help tremendously, there are three aspects that this does not cover:<sup>434</sup>

**Table 2:** Additional data needs

Aspect not covered by Washington Group questions	Why it matters
1. Cause of disability	Useful for the development of prevention strategies
2. Date of onset	Useful for looking at which barriers have affected them and what support they need
3. Environmental barriers	Important to gather this information to design policies to facilitate participation

Monitoring procedures should be in place to prevent acts of substituted information and communication, especially in decision-making mechanisms regarding people with intellectual and mental disabilities.<sup>435</sup> Likewise, mechanisms are needed to monitor leveling-up measures, including the achievement of the public sector quota of persons with disabilities or other similar affirmative action measures in the private sector as well as efforts to gather data on and monitor programmes for other doubly marginalized groups, such as Roma with disabilities or indigenous persons with disabilities.<sup>436</sup>

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Advisory councils of persons with disabilities could be established and provided with adequate resources to be involved in the development, implementation, and monitoring of legislation and policies.<sup>437</sup> There also needs to be a mechanism for facilitating and coordinating matters related to the implementation of the CRPD and independent national human rights institutions.<sup>438</sup> Such mechanisms need to function at the subnational level as well.<sup>439</sup>

## **2. Develop effective complaint mechanisms**

Independent complaint mechanisms need to be in place. States Parties should draft and introduce protocols to register, monitor, and track the conditions in all remaining institutions and ensure that an independent mechanism is empowered to detect and respond to cases of abuse.<sup>440</sup> Such bodies should have sufficient powers to carry out investigations and impose sanctions on public or private bodies that commit acts of discrimination, including forms of intersectional discrimination.<sup>441</sup>

Legal remedies need to be in place to enable persons with disabilities to submit complaints related to discrimination on the basis of disability.<sup>442</sup> Complaints of discrimination on more than one ground should be permissible, with higher levels of compensation established for victims of such discrimination as well as the imposition of higher penalties for perpetrators.<sup>443</sup> The cost of lawsuits should be waived or reduced for victims of disability discrimination in order to ensure

access to the courts.<sup>444</sup> In addition to persons with disabilities, family members who are caregivers should be entitled to make complaints of unlawful discrimination in respect to family care policies.<sup>445</sup>

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## **F. Intersectional lens**

In a report from 2002 the Special Rapporteur on Adequate Housing noted that women with disabilities face double discrimination with regard to owning land and other property and the right to adequate housing.<sup>446</sup> He also mentioned the need for an intersectional lens and a need to focus on vulnerable groups, including women with disabilities.<sup>447</sup> The current Special Rapporteur on Adequate Housing released a preliminary report outlining “some central opportunities and priorities.”<sup>448</sup> She noted the previous two office holders had paid attention to vulnerable groups, including persons with disabilities and identified, *inter alia*, persons with disabilities as one of the groups who experience the most inequity and discrimination when it comes to housing.<sup>449</sup> An intersectional lens must look at persons with different types of impairments and their experience of restrictions, as well as other identity markers not related to their impairment, such as citizenship status, gender and sexual orientation.

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## G. Inclusion in the Post 2015 Development Agenda

The UN System Task Team on the Post-2015 Development Agenda, formed in September 2011, observed that “transformative change” is needed to address the structural causes of inequalities, “including discrimination and exclusion” that face “women and girls, persons with disabilities, older people and members of indigenous and minority groups.”<sup>450</sup>

Extensive global public consultations, organized by United Nations Children’s Fund (UNICEF) and UN Women, were held from September 2012 to January 2013. The report from those consultations highlighted that marginalized groups lag behind in the enjoyment of rights due to a lack of access to other rights, including the right to housing.<sup>451</sup> These findings informed recommendations to consider disability as a cross-cutting theme and ensure the participation of persons with disabilities in the post-2015 development framework.<sup>452</sup>



Cities and human settlements should be made inclusive, safe, resilient and sustainable. © UN-Habitat



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While the recap of the most common themes does not include a mention of housing as an area of inequality, themes connected to housing do appear notably access to water and sanitation, access to health care services, education and exclusion from participation and community life.<sup>453</sup> A report of the Secretary General on the Millennium Development Goals for persons with disabilities referenced “the need for development policies that support inclusive housing and social services, as well as a safe and healthy living environment for all, particularly persons with disabilities.”<sup>454</sup>

The attendees of the High Level Meeting in 2013 recommended strengthening social protection for persons with disabilities based on social protection floors, “including income support, and access to appropriate and affordable services, devices and other assistance.”<sup>455</sup> They recognized the need to remove barriers to the physical environment in accordance with the principles and approach of universal design, including for transportation, em-

ployment, information and communications technologies in remote areas and in the city.<sup>456</sup>

### ***Open Working Group for Sustainable Development Goals***

The Open Working Group developed goals, indicators and targets based on the outcome document from the United Nations Conference on Sustainable Development.<sup>457</sup> The Sustainable Development Goals recognize that persons with disabilities have unmet needs.<sup>458</sup> With regard to housing, Goal 11 is to ‘Make cities and human settlements inclusive, safe, resilient and sustainable’. The first target is to “ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums.”<sup>459</sup> In addition, target 11.2 refers to provision of affordable accessible and sustainable transportation systems for all (including persons with disabilities), and target 11.7 refers to the provision of universal access to green and public spaces. Support for implementation of these Goals is discussed in Part III.

There is a need to remove barriers to the physical environment in accordance with the principles and approach of universal design.  
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## ENDNOTES

- <sup>351</sup> Farha (2014), at *supra* note 3 p 12, para 46.
- <sup>352</sup> CRPD/C/SLV/CO/1, 8 October 2013, para 15; United Kingdom of Great Britain and Northern Ireland, ICESCR, E/2003/22 (2002) 39 at para 217.
- <sup>353</sup> Yemen, CRC, CRC/C/150 (2005) 161 at para. 784; and Albania, CRC, CRC/C/146 (2005) 19 at paras 99; and Antigua and Barbuda, CRC, CRC/C/143 (2004) 93 at para.502.
- <sup>354</sup> CRPD/C/BEL/CO/1, para 26.
- <sup>355</sup> CRPD/C/SLV/CO/1, paras 32, 38.
- <sup>356</sup> CRPD/C/ARG/CO/1, para 46.
- <sup>357</sup> Saint Lucia, CRC, CRC/C/150 (2005) 10 at para. 79; The Netherlands (Netherlands and Aruba), CRC, CRC/C/137 (2004) 63 at para. 346; and Sri Lanka, CRC, CRC/C/132 (2003) 48 at para. 253; and The Netherlands (Antilles), CRC, CRC/C/118 (2002) 129 at para 549; and Mozambique, CRC, CRC/C/114 (2002) 65 at para. 275.
- <sup>358</sup> The Netherlands (Netherlands and Aruba), CRC, CRC/C/137 (2004) 63 at para. 349.
- <sup>359</sup> Saint Vincent and the Grenadines, CRC, CRC/C/118 (2002) 101 at para. 431.
- <sup>360</sup> CRPD/C/BEL/CO/1, 28 October 2014, para 35.
- <sup>361</sup> Committee on the Rights of the Child (2006), at *supra* note 69, para 80.
- <sup>362</sup> CRPD/C/SLV/CO/1, para 58.
- <sup>363</sup> CRPD/C/NZL/CO/1, para 60.
- <sup>364</sup> CRPD/C/MEX/CO/1, para 54(a) and 54(c); and CRPD/C/CRI/CO/1, para 58.
- <sup>365</sup> CRPD/C/CHN/CO/1, para 44; and CRPD/C/KOR/CO/1, para 54.
- <sup>366</sup> Republic of Moldova, ICESCR, E/2004/22 (2003) 49 at para. 333; Poland, CRC, CRC/C/121 (2002) 120 at para. 534; CRPD/C/DNK/CO/1, 30 October 2014, para 21.
- <sup>367</sup> Greece, CRC, CRC/C/114 (2002) 25 at paras. 151.
- <sup>368</sup> Armenia, CRC, CRC/C/137 (2004) 36 at paras. 221; and Czech Republic, CRC, CRC/C/124 (2003) 78 at para. 370; and Estonia, CRC, CRC/C/124 (2003) 9 at para. 61.
- <sup>369</sup> CRPD/C/MEX/CO/1, 27 October 2014, para 46 (d).
- <sup>370</sup> CRPD/C/KOR/CO/1, para 38.
- <sup>371</sup> CRPD/C/BEL/CO/1, para 24.
- <sup>372</sup> CRPD/C/NZL/CO/1, para 40.
- <sup>373</sup> CRPD/C/BEL/CO/1, para 31.
- <sup>374</sup> CRPD/C/PRY/CO/1, para 42.
- <sup>375</sup> CRPD Article 12(5). Relevant section quoted on page 44 of this study.
- <sup>376</sup> A/HRC/16/42/Add.1, pages 19-20, para 35.
- <sup>377</sup> A/HRC/16/42/Add.3, page 15, para 74.
- <sup>378</sup> CRPD/C/ECU/CO/1, para 31(b).
- <sup>379</sup> CRPD/C/SLV/CO/1, para 30 (c).
- <sup>380</sup> CRPD/C/AUT/CO/1, para 28.
- <sup>381</sup> CRPD/C/ECU/CO/1, para 31 (a).
- <sup>382</sup> E/CN.4/2001/51, page 8, para 27.
- <sup>383</sup> Mauritania, CRC, CRC/C/111 (2001) 8 at para 67; and Saint Vincent and the Grenadines, CRC, CRC/C/118 (2002) 101 at para. 448; Sudan, CRC, CRC/C/121 (2002) 53 at para. 265; Republic of Moldova, CRC, CRC/C/121 (2002) 89 at para. 409; and Brazil, CRC, CRC/C/143 (2004) 10 at para. 76.
- <sup>384</sup> Romania, CRC, CRC/124 (2003) 49 at para. 247.
- <sup>385</sup> Viet Nam, CRC, CRC/C/124 (2003) 67 at para. 309.
- <sup>386</sup> Georgia, CRC, CRC/C/133 (2003) 111 at para. 567.
- <sup>387</sup> Antigua and Barbuda, CRC, CRC/C/143 (2004) 93 at para.502.
- <sup>388</sup> CRPD/C/ESP/CO/1, 19 October 2011, para 40.
- <sup>389</sup> CRPD/C/PER/CO/1, para 33.

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## ENDNOTES

- <sup>390</sup> CRPD/C/KOR/CO/1, para 40.
- <sup>391</sup> CRPD/C/NZL/CO/1, para 60.
- <sup>392</sup> CRPD/C/ECU/CO/1, para 35.
- <sup>393</sup> Townsley, et al (2010), at supra note 75. This includes sections on personal assistants, availability of different assistance services, eligibility requirements, financial assistance, portability of personal assistance, support to family caregivers, and assistive equipment and adaptations.
- <sup>394</sup> Walsh, Patricia Noonan, et al (2007), Supported Accommodation Services for People with Intellectual Disabilities: A review of models and instruments used to measure quality of life in various settings, National Disability Authority, accessed from <http://nda.ie/nda-files/Supported-Accommodation-Services-for-People-with-Intellectual-Disabilities.pdf> on 4 Jul 2015, pp 68-69. They selected three main domains (independence, social inclusion/civic participation, and well-being), and each domain has three “exemplary indicators” that can be used to assess the adequacy of their living arrangements.
- <sup>395</sup> Guinea-Bissau, CRC, CRC/C/118 (2002) 12 at para 67; Saint Lucia, CRC, CRC/C/150 (2005) 10 at para. 79; Republic of Korea, CRC, CRC/124 (2003) 24 at paras. 129; Sudan, CRC, CRC/C/121 (2002) 53 at para. 265; Saint Vincent and the Grenadines, CRC, CRC/C/118 (2002) 101 at paras. 448; Greece, CRC, CRC/C/114 (2002) 25 at paras. 151; Mozambique, CRC, CRC/C/114 (2002) 65 at paras. 298; Estonia, CRC, CRC/C/124 (2003) 9 at para. 61; Viet Nam, CRC, CRC/C/124 (2003) 67 at para. 309; and Yemen, CRC, CRC/C/150 (2005) 161 at para. 784; Guinea-Bissau, CRC, CRC/C/118 (2002) 12 at para 67; and Yemen, CRC, CRC/C/150 (2005) 161 at para. 784.
- <sup>396</sup> Bahamas, CRC, CRC/C/146 (2005) 77 at para. 416.
- <sup>397</sup> Ukraine, CRC, CRC/C/121 (2002) 70 at para. 345; and Sudan, CRC, CRC/C/121 (2002) 53 at para. 265.
- <sup>398</sup> Seychelles, CRC, CRC/C/121 (2002) 41 at para 204.
- <sup>399</sup> Seychelles, CRC, CRC/C/121 (2002) 41 at para 204.
- <sup>400</sup> Republic of Moldova, CRC, CRC/C/121 (2002) 89 at paras. 409; and Mauritania, CRC, CRC/C/111 (2001) 8 at para 67; and Turkey, CRC, CRC/C/108 (2001) 18 at para 130; and Czech Republic, CRC, CRC/C/124 (2003) 78 at para. 370.
- <sup>401</sup> Greece, CRC, CRC/C/114 (2002) 25 at para. 151.
- <sup>402</sup> Mozambique, CRC, CRC/C/114 (2002) 65 at para. 298; and Sri Lanka, CRC, CRC/C/132 (2003) 48 at para.264.
- <sup>403</sup> Mozambique, CRC, CRC/C/114 (2002) 65 at para. 298; Brazil, CRC, CRC/C/143 (2004) 10 at para. 76; and Antigua and Barbuda, CRC, CRC/C/143 (2004) 93 at para.502.
- <sup>404</sup> Romania, CRC, CRC/124 (2003) 49 at para. 247.
- <sup>405</sup> CRPD/C/PRY/CO/1, para 50.
- <sup>406</sup> A/HRC/28/62 (2014).
- <sup>407</sup> The other two aspects are security of tenure and cultural adequacy. Security of tenure is covered in above section on laws and policies, while cultural adequacy is covered in the section on intersectionality.
- <sup>408</sup> A/HRC/13/20/ Add.4, page 16, para 9 and paras 62-63.
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- <sup>410</sup> Georgia, ICESCR, E/2003/22 (2002) 59 at para. 439.
- <sup>411</sup> CRPD/C/KOR/CO/1, para 18.
- <sup>412</sup> CRPD/C/PER/CO/1, para 21.
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- <sup>415</sup> CRPD/C/DNK/CO/1, para 27 and CRPD/C/BEL/CO/1, para 22.
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- <sup>417</sup> A/HRC/19/53/Add.1, page 12, para 36.
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- <sup>428</sup> Brazil, CRC, CRC/C/143 (2004) 10 at para. 76.
- <sup>429</sup> Ireland, CEDAW, A/60/38 part II (2005) 151 at para. 393.
- <sup>430</sup> CRPD/C/AUT/CO/1, para 51 and CRPD/C/BEL/CO/1 para 14.
- <sup>431</sup> CRPD/C/DNK/CO/1, para 17.
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- <sup>433</sup> UNICEF Pacific and Vanuatu National Statistics Office (2014), *Children, Women, and Men with Disabilities in Vanuatu: What do the data say?*, UNICEF, Suva 2014, page 12.
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In Sweden, persons with disabilities are able to choose where they live and the manner in which they receive support.  
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## Chapter

# 05

# Case Studies on the Right to Adequate Housing for Persons with Disabilities in Cities

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### Case Study 1: Deinstitutionalization in Sweden

In Sweden, all institutions for people with intellectual disabilities have been closed. Persons with disabilities are able to choose where they live and the manner in which they receive support. The process of deinstitutionalization occurred gradually over 50 years and the transition was done in three major stages.

The first stage provided community-based services only for those people who needed minimal support. Those with more severe disabilities remained in institutions. The second stage saw support provided to all persons with disabilities outside of an institution. People who had grown up living with their family, and thus did not want to move into institutions as adults, were a major inspiration during this stage. Advocacy for higher living standards within residential facilities began, which meant less space was available for people to live there and a corresponding greater need for more community services.<sup>460</sup> Today, we see the third stage. Persons with disabilities live in a place of their choosing and can hire support staff based

on the number of hours of assistance required.<sup>461</sup> Initially, even families of persons with disabilities were resistant to the closure of institutions and the inauguration of community-based services. They changed their attitude after seeing the success of the new services and policies.<sup>462</sup>

In reality, community living takes many shapes. Group homes, in which five small apartments house five individuals supported by various staff, are common. Daily activities, both in traditional day activity centres and in the local community, are central to community living. Persons with disabilities do their own shopping, are involved in their own leisure and cultural experiences and use the same local social services and health centres as the general public. On the most practical level, community participation is still limited but people are able to enjoy having their own space and making their own decisions.<sup>463</sup>

Other legislation has supported the process of deinstitutionalization and community integration. The Swedish Building Code of 1977 required all

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units in residential buildings of three levels or more to have wheelchair access, large lifts and kitchen and bathrooms of certain dimensions. This type of accommodation allows persons with disabilities a broader choice in the housing market and enables them to visit others more easily. In addition, people face less pressure to move if they become disabled. The additional cost of including these features is less than one per cent of the total building costs.<sup>464</sup>

The Swedish Personal Allowance Act of 1994 further contributed to the success of Sweden's deinstitutionalization process. Persons with disabilities are now entitled to a personal assistance budget or cash payments from the Swedish National Social Insurance Fund. Personal needs are expressed in the number of hours of assistance one requires per week. The fund pays for all direct and indirect labour and administrative costs associated with the specific time requested. The individual can then purchase services from whomever they choose.<sup>465</sup> In 1994, Sweden also enacted the Act Concerning Support and Service for Persons with Certain Functional Impairments (LSS), which promotes equality in living conditions and full participation in community life. It sets out ten measures for to improve the welfare of persons with disabilities through support and services. The LSS guarantees that they can influence the support and services they receive to the greatest possible extent.

However, the Committee wrote in its concluding observations on the initial report of Sweden that it is concerned that State-funded personal assistance has been withdrawn for a number of people since 2010. They cite reasons such as a revised interpretation of "basic needs" and "other personal needs". Persons who still receive assistance have experienced sharp cutbacks, the reasons for which are 'unknown or only seemingly justified.'<sup>466</sup>

The CRPD states that persons with disabilities cannot be deprived of their legal capacity simply because of their disability. Thus, States Parties must take measures to ensure that people have the support they need to exercise their legal capacities.

One example of such a supported decision-making programme is Sweden's Personal Ombud (or 'representative'. After a series of pilot programmes that ran from 1995 to 1998, this system was established nationwide in 2000. It supports people with psychosocial disabilities in their efforts to assert their legal rights and to make major life decisions and employs individuals who do not have any alliance with any social or psychiatric authority or with the client's family.

The Ombuds are hired by a verbal agreement from the client and establish a long-term, trusting relationship with the person in need of support.<sup>467</sup> Together, they establish a plan of action. The Ombud can only act on specific tasks as requested by the client, such as obtaining

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government benefits or helping to improve familial relationships. A 2005 study reported that the scheme is profitable in socioeconomic terms since individuals with such support require less care and their psychosocial situation improves.<sup>468</sup> In 2013, the Swedish government established permanent funding for the programme.<sup>469</sup> In 2014, 310 Personal Ombuds provided support for more than 6,000 individuals through the programme.<sup>470</sup>

The most commonly cited barrier to deinstitutionalization is that of cost. There is no evidence that community-based models of care are inherently more costly than institutions, once the comparison is made on the basis of comparable needs of residents and comparable quality of

care.<sup>471</sup> In reality, care in communities is less expensive in the long term than the cost of running institutions. The transitional period, during which funding is required for both community-based care and institutions, can be costly. An efficient, ambitious plan for closing institutions helps negate much of the cost in the short term.<sup>472</sup>

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### Case Study 2: An intersectional look at persons living with HIV-AIDS

HIV-AIDS positive persons with disabilities face numerous barriers in obtaining secure and adequate housing. The intersection of disability



While persons with disabilities are more likely to have HIV-AIDS, the inverse is also true. © Joseph Sohm / Shutterstock.com

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and HIV-AIDS status shows how the barriers and challenges compound and converge for this segment of the population.

Many of the established risk factors for HIV-AIDS including poverty, illiteracy, stigma, and marginalization are identical to those for disability. Furthermore, all risk factors associated with HIV are increased for persons with disabilities.<sup>473</sup> According to a 2004 study by the World Bank and Yale University, persons with disabilities have HIV infection rates of up to three times higher than people without disabilities. Groce reported on a small study in the United States which found that HIV rates among deaf individuals were double those of hearing populations. Another study published in 2001 revealed that AIDS-related illness was the leading cause of mortality among women with psychiatric illness in New York.<sup>474</sup> This is not just an issue in the United States but also in lower-income countries. One significant barrier is the lack of data on HIV-AIDS rates amongst persons with disabilities in lower-income countries. Groce mentions one study from Uganda that used sexually transmitted infections (STI) as a proxy for HIV exposure, and learned that 38 per cent of women and 35 per cent of men with disabilities reported having an STI.<sup>475</sup> She also posits there may be significant under-reporting of HIV-AIDS infection and death.

Persons with disabilities tend to be more vulnerable to infection because of the risks of

physical abuse, isolation, general poverty, and lack of access to services and information. They also lack access to treatment and health care facilities for similar reasons. Additionally, there is a growing understanding that persons living with HIV-AIDS are also at risk of becoming disabled as a result of their condition.<sup>476</sup> All of these risk factors and consequences also correlate to risk factors for becoming homeless, or having unstable or inadequate housing.

Greater incidences of sexual violence and victimization against persons with disabilities place them at higher risk of HIV infection as persons with disabilities are up to three times more likely to be victims of sexual abuse and rape.<sup>477</sup> They also have less access to police, the legal system and to medical interventions in the case of abuse.<sup>478</sup> A dependency on others for daily needs, especially in institutionalized settings, leaves many persons with disabilities vulnerable to abuse. Millions of individuals worldwide live in institutions where physical, psychological and sexual abuse from staff, visitors and fellow patients is known to be common.<sup>479</sup>

Children who have been orphaned by the virus are especially vulnerable. Exposure to HIV while in utero can cause significant developmental delays, while also putting the child at risk of contracting the virus.<sup>480</sup> If children with disabilities are not born with HIV, their disability status puts them at risk of being institutionalized and contracting



Persons with disabilities are often excluded from instruction on the assumption that they do not need it.  
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the virus later. Caregivers in orphanages do not have the time or capacity to manage the needs of children. Once children are in institutions, they are more likely to be abused.<sup>481</sup> The same holds true for older children or adults who are dependent on caregivers for assistance with dressing, eating and using the toilet as well as for social, psychological and economic support. When caregivers die from AIDS, the person with the disability is at greater risk of being institutionalized and abused.<sup>482</sup>

Children with disabilities who do not end up in institutions remain extremely vulnerable and may still experience unstable housing. Once on the streets, these children can be lured into crime, sex work and drugs — frequently at the behest of

others, who see them as easy prey.<sup>483</sup> Studies have shown that children who do not have consistent housing report a higher rate of unsafe sexual practices and a higher number of sexual partners, thus increasing the likelihood that they will contract the virus.<sup>484</sup>

When children with disabilities reach adolescence, the risks related to HIV transmission are further compounded. For example, disabled adolescents are frequently excluded from social activities, limiting their opportunities to learn to set boundaries and, ultimately, lowering their sense of self worth. This often compromises their ability to refuse when pressured to have sex or try drugs. Physically-impaired French adolescents,

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for example, are reported to have higher rates of sexual intercourse than non-disabled peers as well as more sexual partners.<sup>485</sup>

The common belief that persons with disabilities are asexual puts them at further risk for infection, especially in regions where the traditional remedy of virgin cleansing is widespread. This myth promotes engaging in sexual intercourse with a virgin to cure a sexually transmitted infection. Since persons with disabilities are viewed as asexual, and thus as virgins, they are often victims of this practice.<sup>486</sup> Reports from Africa and Asia indicate that females and males with disabilities are raped by non-disabled individuals desperate to rid themselves of the virus.<sup>487</sup>

Women with disabilities are up to three times more likely to be raped than non-disabled women.<sup>488</sup> Women with disabilities may also have greater difficulty than other women in refusing sex, negotiating safe sex or insisting that partners wear condoms. Homeless women are five times more likely to report high-risk drug use and sexual behaviours that put them at a greater risk to contracting the virus - in part due to victimization by physical abuse.<sup>489</sup>

The lack of HIV-AIDS education and services provided specifically for persons with disabilities also increases the likelihood that they will contact the virus. Even where such education is widely available, persons with disabilities are often

excluded from instruction on the assumption that they do not need it. When sex education is taught in the home, persons with disabilities often receive little information for similar reasons. Because of the belief that persons with disabilities are not sexually active, and therefore not at risk, many health professionals do not offer to test them or provide services.<sup>490</sup> For those who are HIV positive and identify as having a disability, many HIV testing centres and clinics are physically inaccessible, lack sign language interpretation and do not address the needs of the individuals with intellectual or mental health impairments. Many persons with disabilities are unable to afford transportation to testing sites, let alone the cost of testing or medical care. The lack of education, testing and services means that many individuals with disability are not reached with HIV-AIDS messages, and are unaware of the symptoms.<sup>491</sup>

While persons with disabilities are more likely to have HIV-AIDs, the inverse is also true. HIV can also cause impairments, including sensory, cognitive and physical impairments.<sup>492</sup>

The CRPD does not explicitly refer to HIV or AIDS. However, the definition of disability in Article 1 is open-ended and the Preamble (e) underscores that disability is “an evolving concept.” Thus, persons living with HIV-AIDS can consider themselves part of the disability community. Some countries have accorded protection to people living with HIV under national disability legislation.



For people living with HIV, research shows that lack of stable housing is strongly linked to inadequate health care, high viral load.  
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Other countries have adopted anti-discrimination laws that either explicitly include discrimination on the basis of HIV status or could be interpreted as doing so.<sup>493</sup>

Studies have shown that people coping with homelessness or unstable housing face challenges that affect their ability to reduce their risk of contracting HIV.<sup>494</sup> As this report has demonstrated, persons with disabilities confront many barriers when accessing adequate housing, thus again increasing the likelihood that they will contract the virus. According to several recent

US-based studies, people with HIV who are without adequate housing are two to six times more likely to have recently engaged in high risk drug and sexual behaviors than those who have stable housing.<sup>495</sup> Further research shows that counselling, needle exchange and other proven HIV prevention methods are less effective among homeless populations.<sup>496</sup> For people living with HIV, research shows that lack of stable housing is strongly linked to inadequate health care, high viral load, poor health status, avoidable hospitalizations and emergency room visits and early death.<sup>497</sup>

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### Case Study 3: Data on disability as part of a Regional Equity Atlas

The Portland metropolitan area in the United States offers an example of how a coalition of local actors came together to address the data needs of local agencies and advocacy groups. The Coalition for a Liveable Future (CLF), a non-profit organization based in Portland, created the Regional Equity Atlas to understand “the geographic distribution of people and regional assets and the relationship between the two.”<sup>498</sup> In 2013, the CLF developed an online mapping tool that combined data from numerous federal, state and local sources to gain a better understanding of disparities for different populations and communities, including persons with disabilities. The online mapping tool visualizes spatial inequities and can be used by non-profit organizations, public agencies and citizens groups for policy-making and advocacy.

Building data infrastructure on disability using consistent definitions that are comparable across geographic units and over time remains one of the most pressing needs for metropolitan decision-making. Data on the share of persons with disabilities within a population - disaggregated by type and severity of impairment, support needs, settlement types, geographic units, racial and ethnic groups, age groups, income groups and gender - are quite often unavailable or are collected by different governmental and non-governmental agencies and at different levels of aggregation with inconsistent definitions. The same is true for data

on monitoring state resources and policy interventions targeting persons with disabilities.

#### *Data for local policy making and advocacy*

Most countries conduct periodic censuses that cover their entire population. There has been a significant increase in the number of lower and middle-income countries that have added questions on disability to their census questionnaires.<sup>499</sup> In the United States, the first disability questions were asked in the Census of 1970. After the Census of 2000, the American Community Survey (ACS) and the Survey of Income and Program Participation (SIPP) have replaced the decennial sample survey as the primary source for subnational estimates of disability in the US. But given the relatively small sample sizes of both of these sources, disability data cannot be disaggregated meaningfully at the census tract level. While data from ACS and SIPP allow federal entities to monitor progress on the goals and objectives of federal laws such as the Americans with Disabilities Act or the Older Americans Act, they cannot be as useful for more local and regional disability policies or advocacy such as the better targeting of job training and employment programmes, public transport services and housing accessibility.

Local policy-making and advocacy therefore demands more fine-grained data on disability than the US Census Bureau currently provides. The Coalition for a Liveable Future tried to fill this gap by complementing data from the American

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Community Survey with data from local healthcare providers and other sources aggregated at the census tract level to avoid privacy concerns.

The Coalition's Equity Atlas focuses on a local metropolitan region, including cities and counties in four counties from two states. Most metropolitan regions provide services and infrastructure across jurisdictional boundaries - school districts, cities, and counties. The Coalition, as an NGO independent of the nested hierarchies of jurisdictions, was able to take the lead in collating the data from various sources in a way that is comparable with different administrative procedures of record keeping. Its non-profit status and independence from a particular government also helps it to build trust among the agencies contributing data for the Regional Equity Atlas and it is seen as a neutral repository of data.

***Data on disability as part of the larger body of data for local public policy***

While disability can in itself result in significant inequity, the interaction of disability with other social, economic, political and cultural factors needs more urgent attention. It is therefore important that data on disability is not collected and read in isolation from these other factors.

The Coalition does not focus only on issues around disability. This allows the users of their tools to better understand the complex linkages between different determinants of inequities in

the community. For instance, access to affordable housing for persons with disabilities can be evaluated - among other ways - by overlaying spatial patterns of public transport amenities over maps showing income levels of neighbourhoods. Because not all inequalities manifest themselves spatially, The Coalition uses an Equity Stories Project to tell the stories of individuals and families living in the region. These stories help build understanding among residents and reduce stigmatization of specific groups or communities such as the homeless or those with psychosocial disabilities.

The Equity Atlas and the Equity Stories Project are available at no cost for the general public. The Coalition received grants from the Robert Wood Johnson Foundation and other charities for its work. All software tools for mapping and web publishing of the Atlas are open-sourced and shared publicly<sup>500</sup> so that other metropolitan regions can build on these tools using their own data. Such sharing of tools and experience will eventually make it cheaper to develop similar data products for city regions in medium- and lower-income countries.

***Disability data within the Regional Equity Atlas***

To show the utility of the equity atlas as well as to guide policy makers, the Coalition invited relevant public bodies and civil society organizations to draft White papers on key equity issues in the region. The Portland Commission on Disability, a

platform created by the City of Portland to advocate for the interests of persons with disabilities in local decision-making, used the Equity Atlas as a primary source and drafted a report that looked at spatial disparities that affect persons with disabilities.<sup>501</sup> It covered inequities in terms of housing, transit, infrastructure, education, employment and health and also identified gaps in the data on disability.

The Equity Atlas also provided data on the differences in the incidence of disability among specific groups such as women and some minority groups. Therefore, in the context of the United States, it makes sense to disaggregate all data on

disabilities by gender and race to be better able to inform policies to address inequities.

Building on the Coalition's example, Denver, Los Angeles and Atlanta have completed their own equity atlases. However, none so far has looked as deeply at persons with disabilities and their access to community resources. To support the next phase of the Equity Atlas's development, the Coalition is transferring the project to a coalition of nonprofit organizations with greater research capacity: 1000 Friends of Oregon, Futurewise and Ecotrust.

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## PART III

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# CONCLUSIONS AND AREAS FOR UN-HABITAT ENGAGEMENT



It is important to showcase local and national good practices/ principles for replication elsewhere. © a katz / Shutterstock.com

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# Conclusions

The opening quote from Winston Churchill emphasized that we have agency in determining what our buildings (and by association, our cities) look like, and that the decisions we make reveal who we are and show our values. It suggests we have the capacity to re-define ourselves through the choices we make. Likewise, the way communities perceive persons with disabilities can and needs to change.

Sustainable Development Goal 11 guides us that housing must be inclusive, safe, resilient and sustainable. For persons with disabilities this means not only that the housing is adequate and accessible (General Comment 4 of the Committee on Economic Social and Cultural Rights and Article 9 and Article 28 of the CRPD, but also that sufficient social protection must be provided (CRPD Article 28), and the right to live independently and in the community (CPRD Article 19), is respected, protected and fulfilled. In addition, for those individuals who have been subjected to multiple or aggravated discrimination, it is of particular importance to ensure guarantees of non-discrimination (CRPD Article 5), and equal recognition before the law (CRPD Article 12) and to ensure freedom from violence, abuse and exploitation (CRPD Article 16). Given the legacy of discrimination and conditions of poverty and vulnerability experienced persons with disabilities, it is important to ensure meaningful participation of persons with disabilities and for States Parties to take measures to accelerate equality (CRPD Article 5).

States Parties need to be supported in efforts to fulfil the obligation to provide adequate housing for persons with disabilities. They need to take a wide set of actions:

- (1) The development, implementation, and enforcement of provisions that are subject to immediate realization (non-discrimination and equal recognition before the law);
- (2) The development and implementation of measures that fall under the progressive realization clause (including equal access to social protection guarantees including basic income security, accessibility plans, deinstitutionalization, and developing support and services in the community);
- (3) The development, implementation, and enforcement of universal design standards per the broader definition of accessibility (CRPD Article 2 and CRPD Article 9);
- (4) The creation of mechanisms that enable persons with disabilities and their representative organizations to take part in national implementation and monitoring (CRPD Article 33[3]) and international cooperation (CRPD Article 32[1]).

Service providers use the term ‘co-construction’ to refer to collaboration between providers and persons with disabilities with regard to the design and range of in-home, residential and other community support services. This concept should be extended to ensure persons with disabilities are

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involved in the design of their housing so that they are able to use their space fully.

States Parties need to be cognizant of the enormous diversity within the community of persons with disabilities and their representative organizations, in terms of type and severity of impairment, as well as the different identity markers that inform their experience of housing and other interrelated rights and access to opportunities and resources.

The chapter on prescriptions shows a large degree of consensus regarding the understanding of barriers and the actions to be undertaken to address them. What is preventing, then, the implementation of the recommendations? Some basic misconceptions about persons with disabilities appear to prevent stakeholders from taking action that would

remove barriers, facilitate inclusion of persons with disabilities and ensure persons with disabilities can exercise their rights on an equal basis with others.

Imrie notes three main misconceptions that developers, builders and architects hold about universal design, that have been proven untrue: (1) the provision of accessible dwellings will add significantly to development costs; (2) regulation relating to access is disproportionate as there is little demand for accessible housing and (3) the implementation of accessible design will lead to a reduction in housing quality.<sup>502</sup> Research by Ward and Franz has shown that builders and developers will not voluntarily comply with universal design standards.<sup>503</sup> Builders and developers perceive that buyers do not prioritize accessibility features but they would comply if it were required.<sup>504</sup>



Relevant stakeholders should include persons with disabilities in their review of the rights of each of those populations.  
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Thus, it is important for accessibility standards to be mandatory and it is important to improve enforcement of those standards.<sup>505</sup>

### **Areas for Engagement by UN-Habitat**

Last year UN-Habitat published a complementary study that focused on more technical aspects of housing accessibility.<sup>506</sup> That study noted the lack of attention to the specific needs of persons with disabilities in vulnerable conditions, and the need to work on awareness raising and capacity building of decision-makers. That study recommended prioritizing legislation, public consultations, identifying priorities and designing strategies to improve accessibility.<sup>507</sup>

This study offers the following observations for UN-Habitat's consideration:

First, significant change will require an adaptation in the behaviour of non-disabled persons toward persons with disabilities. While there are technical dimensions with regard to the construction of adequate housing, the barrier is adaptive in nature, not technical, meaning that the view of the problem needs to shift from the specific circumstances of the individual to the societal barriers that marginalize persons with disabilities. Persons with disabilities need to be given a central role in educating others about their rights and needs.

Second, awareness needs to be raised within the United Nations system, international cooperation actors and States Parties that persons with disabilities are also members of other constituencies, as women, indigenous people, migrants, people living in extreme poverty, and people experiencing homelessness. While many reports call for applying an intersectional lens, few studies actually do it. It is essential that relevant stakeholders include persons with disabilities in their review of the rights of each of those populations. In other words, this should not be the responsibility only of the Special Rapporteur.

Third, there is a need to recognize that violence against women and children with disabilities is a cause and consequence of housing instability. UN-Habitat and the Special Rapporteur on Adequate Housing have highlighted, correctly, the need to eliminate violence, and concerted efforts now need to be taken to ensure women and children with disabilities have full access to, and are able to use, all support services and facilities to facilitate their right to live free from exploitation, violence and abuse.

Fourth, better data is absolutely essential and needs to be approached from a human rights not medical perspective. This means data on the different kinds of barriers that prevent enjoyment of the right to adequate housing need to be collected, analyzed and used to develop and implement plans to address those barriers. At a bare minimum this

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means States Parties should adopt the Washington Group's data tools to gather data, and should seek technical support to assist in analyzing and using the data to inform policy. As part of this study, 19 of the Concluding Observations of the CRPD Committee were reviewed. In each report the CRPD Committee has observed the need to improve in some aspect what data is collected and how it is collected. The Committee has advised, for example, that assessments to determine the minimum living support benefit need to look at the "personal characteristics, circumstances and needs...rather than on the basis of the disability grading system."<sup>508</sup> Similar guidance needs to inform other data collection efforts.

UN-Habitat can engage in awareness raising, technical support, partnerships, good practice dissemination and further research to ensure persons with disabilities can exercise their right to adequate housing.

**Awareness raising:** UN-Habitat plays an important awareness raising role through a variety of programs and by hosting conferences such as Habitat III and World Urban Forums. One of the themes of Habitat III is to 'integrate equity to the development agenda'. But the 22 individual issue papers that have been drafted in preparation for Habitat III are not sufficiently inclusive of persons with disabilities. This highlights the need for collaboration between the housing and disability worlds. If housing experts do not require national

and sub-national governments to budget, plan for and include persons with disabilities, then persons with disabilities will continue to be ignored and marginalized.<sup>509</sup>

It is very important for UN-Habitat to make space for persons with disabilities at Habitat III, especially given the prominence of the equity theme. Key messages include: the discrimination experienced by persons with disabilities; the link between poverty, disability and inadequate housing for persons with disabilities, and the need to ensure equal access to social protection floors for persons with disabilities and, lastly, the inextricable link between the right to adequate housing and the rights described in Chapter 3 section B. UN-Habitat can play a role in advising country level implementation through the UNPRPD and other mechanisms, and can use this study and its publication *Accessibility in Housing*.

**Technical support:** UN-Habitat plays an important role in providing technical support to States Parties at the national and sub-national level, and can encourage the utilization of mechanisms that enable meaningful consultation with and active involvement of persons with disabilities. States Parties will need support in the development and implementation of the CRPD Article 33 mechanisms. UN-Habitat can assist national census bureaus and other agencies that collect data, including building frameworks for data collection that allow for disaggregation based

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on disability and socioeconomic status and also allows international comparison of such data. While universal design standards are needed and should be made mandatory, they are insufficient unless they are accompanied by awareness raising, advocacy, effective monitoring, and legal solutions to ensure the right to adequate housing is fulfilled.

**Partnerships:** UN-Habitat is well positioned to partner with other bodies within the United Nations system to support work on ensuring persons with disabilities enjoy the right to adequate housing, and can work at the national level with States Parties and international cooperation actors to facilitate national implementation of the CRPD.

**Sharing good practices:** It is important to showcase local and national good practices/principles for replication elsewhere. For example, in the design of governance institutions that provide political space to persons with disabilities, in mechanisms of providing subsidies or other support to persons with disabilities, in ways of financing new home construction based on universal design or retrofitting existing housing to comply with universal design, and in mechanisms for legal redress for violation of the right to housing.

Some potentially good practices have been identified in lower- and middle-income countries. Human Rights Watch has showcased the work of



Significant change will require an adaptation in the behaviour of non-disabled persons toward persons with disabilities.  
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Bapu Trust in Pune and the Banyan in Chennai and surrounding rural areas in India.<sup>510</sup> Both organizations work with persons with psychosocial disabilities and appear to have developed appropriate and viable alternatives to institutional living arrangements. Such interventions can serve as good practice cases. Likewise, the Zero Project has shared some examples of good practices in Israel, Japan, Moldova, Australia and several European countries.<sup>511</sup> They are worthy of more study and dissemination.

**Research:** While it may seem unusual to call for more research at the end of a global study, research on the implementation of the right to adequate housing is needed at the national and sub-national level (as the UNICEF study on data in Vanuatu provides a strong example of the importance

of such research) as an integral part of work to raise awareness, provide technical support, and support national advocacy efforts. This could include supporting local and national researchers to evaluate legal or policy interventions, to collect data, and to identify, assess and disseminate information about good practices that have helped to achieve de facto equality in the housing realm for persons with disabilities. Given the geography of poverty and hunger (*see p.14 of this study*), it may be valuable to support the study of housing conditions for persons with disabilities in some of the lowest-income and food poor countries, and to devise technical and economic assistance to support local affirmative action measures to facilitate the right to adequate housing for persons with disabilities.

## ENDNOTES

<sup>502</sup> Imrie (2006), at *supra* note 267, pages 52-67.

<sup>503</sup> Ward, Margaret, and Jill Franz (2015), *The Provision of Visitable Housing in Australia: Down to the Detail*, Social Inclusion, volume 3, issue 2, pages 31-43.

<sup>504</sup> Ward (2015), at *supra* note 503, pages 37-39.

<sup>505</sup> Imrie, at *supra* note 267, page 82.

<sup>506</sup> Edelman, M (2014), *Accessibility in Housing: A Handbook of Inclusive Affordable Housing Solutions for Persons with Disabilities and Older Persons*, UN-Habitat.

<sup>507</sup> Edelman, M (2014), at *supra* note 506, pages 80-82.

<sup>508</sup> CRPD/C/KOR/CO/1, para 54.

<sup>509</sup> As one example, the Kenyan National Slum Upgrading

and Prevention Policy (May 2013), which was developed with support from various housing experts, universities, and civil society organizations, does not mention persons with disabilities.

<sup>510</sup> Human Rights Watch (2014), *Treated worse than Animals: Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India* (2014), pages 80-81.

<sup>511</sup> Zero Project (2015), Zero Project Report 2015: Focus on Independent Living and Political Participation, accessed from <http://zeroproject.org/policy-type/2015/> on 5 July 2015.

Persons with disabilities need to be given a central role in educating others about their rights and needs © LifelnCaption / Shutterstock.com



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The Right to Adequate  
**Housing for Persons  
with Disabilities**  
Living in Cities

Towards Inclusive Cities

As established in international law and recognized in the post-2015 Agenda discussions at the global level, including in the development of the New Urban Agenda, it is necessary to pay attention to the rights and needs of persons with disabilities. Persons with disabilities are disproportionately represented in the poorest quintile of the population, and face additional challenges due to discriminatory laws and policies, environmental barriers, and lack of support services that would enable the enjoyment of the right to adequate housing on an equal basis with others.

This study reviews the literature on the meaning and impact of the right to adequate housing for persons with disabilities in cities. It uses the foundational framework of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and demonstrates how the Convention on the Rights of Persons with Disabilities (CRPD) provides a new understanding of this complex right. The authors link the right to adequate housing not only to other international treaties, but also to the diverse groups of individuals who are persons with disabilities and the complexity of the identities involved.

They outline major types of barriers that persons with disabilities encounter (physical inaccessibility, lack of access to transportation services, insecurity of tenure, among others), and identify trends in relation to policy and legal framework and national and sub-national solutions to the realization of the rights of persons with disabilities. The report takes a human rights-based approach to development of human settlements that offer equal opportunities to persons with disabilities. The report offers three case studies that highlight some good practices and topics worthy of further inquiry. The study points to many actions States Parties can pursue, and makes some recommendations specifically for UN-Habitat.

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