

Inclusion Europe

The European Association of Societies of
Persons with Intellectual Disabilities and their Families



Equality and Non-Discrimination

Submission to the UN Committee on the Convention on the Rights of Persons with Disabilities:
Draft General Comment No. 6 on Article 5.

Easy to read summary

Inclusion Europe is an organisation that defends the rights of people with intellectual disabilities and their families in Europe.



In this easy to read summary

Inclusion Europe talks about

some of the main topics on **discrimination**.

Inclusion Europe wants you to think about these topics

in the **General Comment**:

A **General Comment** is when an organization

like the United Nations explains the different words

and ideas that they use.

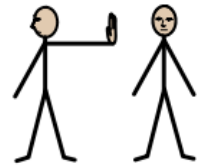


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Inclusion Europe wants you to think about **discrimination**
of people with intellectual disabilities.



Discrimination means that you are treated unfairly
or that you do not get the chances you deserve.

It is discrimination when it happens because of your disability.

It can also happen to other people.

For example, people who have a different skin colour.

Or older people.

Discrimination of people with intellectual disabilities

Legal Capacity

People with intellectual disabilities can also
be discriminated against because they are not allowed
full **legal capacity**.

Capacity is when you can make a decision or choice
at one moment.



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There are laws about how to decide if someone has capacity.

Then it is called legal capacity.

Legal capacity means that people with intellectual disabilities can do things on their own.

This is what they can do:

- Make choices about their lives.
- Get married, start a family and raise children.
- Sign contracts (also working contracts).
- Have a bank account.
- Controlling their money and property.
- Make decisions about their health.
- Take part in politics and have the right to vote.

People who are not allowed legal capacity

cannot do these things.

When someone does not have full legal capacity

they may be under **guardianship**.

Guardianship allows some people to make life choices for others.



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The person who makes choices for you is your guardian.

Your guardian can decide things for you, like where you live.

Sometimes, people under guardianship are not allowed to:

- vote,
- get married
- take care of their kids



Institutions

People with intellectual disabilities can be discriminated against
because they are forced to live in **institutions**.

Institutions are places where people
with intellectual disabilities live with other people
with intellectual disabilities.

They live apart from other people.

This is what we call “segregation”.

Sometimes this happens against their will.

The people who live in institutions

have to follow the rules of the institution

and cannot decide for themselves.



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People who are living in institutions
are more likely to be discriminated against.

It is important that children with disabilities are allowed
to grow up with families and not in institutions.

It is also important that they can go to school
with other children without disabilities.



People in institutions are often not thought about
in research and studies.

It is important that they are not forgotten.

People who do research and studies should know
about the people living in institutions.

It is also important that when people with intellectual disabilities
leave the institutions
they are still protected against discrimination.

Often when people with intellectual disabilities

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leave the institutions they are still discriminated against.

They are often told that they will be sent back to the institution if they act a certain way.

This type of discrimination lasts a long time.

Psychological violence

Often people with intellectual disabilities can be the victims of violence, especially when they are under guardianship and live in institutions.

They can be the victims of **psychological violence**.

Psychological violence is different from **physical violence**.

Physical violence is when someone hurts your body.

Psychological violence can affect

someone's thoughts and feelings.

It can make them very unhappy or scared.

Psychological violence can be hard to prove

and also to punish.



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Psychological violence can happen to
people with intellectual disabilities when someone
has more power than them.

For example: a guardian or people who work in the institutions.

Things to do when discrimination has happened

Often victims of the discrimination feel they are left alone
and are not supported.

It is important that discrimination is punished.

It is important to think how the victim
of the discrimination may be feeling.
They may feel very upset or scared.

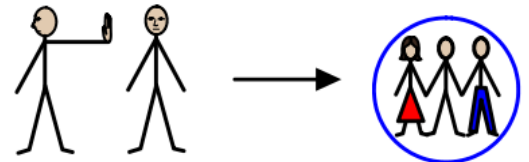


It is important to include different ways to help
victims of discrimination.

Discrimination by association

Often families of people with intellectual disabilities are
discriminated against because

they are related to someone with a disability.



For example a parent of a child with an intellectual disability
might get offered a job.

But the boss might find out that the parent has a child
with intellectual disabilities.

And then the boss may not give the parent the job
because he or she thinks that the parent will not
have enough time for the job.

This is an example of how family members of people
with intellectual disabilities are often discriminated against.

Access to information

Often people with intellectual disabilities cannot report
discrimination because they do not know their rights.

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The information about their rights and how to make a complaint
is not **accessible**.

Accessible is something that is easy to use for people with disabilities.

Such as:

- Information in easy-to-read.
- Information in sign language.



People with disabilities need access to information
that they can understand.

Legal professionals should also be trained
on how to make it more accessible
for people with intellectual disabilities to get justice.



Participation and access to services

It is important that other professionals understand how people
with disabilities are discriminated against.

For example:

- People working in the government
- People working in healthcare services
- People working in social services

They should be trained about discrimination that people with

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disabilities face.



Employment

Often when people with intellectual disabilities have a job
they are not paid enough.



It is important that people with intellectual disabilities are paid
at least the country's **minimum wage**.

A **wage** is the money you get for your work.

Your boss cannot pay you less than the **minimum wage**.

For example, in some countries

you need to be paid at least 8 euros per hour.

Your boss cannot pay you 7 or 6 euros.

Also it is important that if people with intellectual disabilities
have a job

this does not make them lose the money

the government gives them for the support they need.

Often when people with intellectual disabilities have a job
it is a low-level and low-paid job.

It is important that people with intellectual disabilities
can have a good career with opportunities to get a better job.

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Introduction

1. Inclusion Europe is the association of people with intellectual disabilities and their families in Europe. We have **73 members in 38 countries**, and we represent more than 7 million people in Europe. Our members include organisations of people with intellectual disabilities and their families at national, regional and local level. **We fight for the recognition of equal rights and full inclusion of people with intellectual disabilities and their families in all aspects of life.** As a European association, we work in many different areas which our members have identified as important to them. Equality and non-discrimination is central in our work to promote the inclusion of people with intellectual disabilities and their families.
2. The **human rights model of disability** and the **notion of equality** are the **foundations of the UNCRPD**. Inclusion Europe would like to reaffirm through this model the universality of rights that must be applied to all people with disabilities regardless of age, gender, race, level of support required. The Convention in article 5 recognises each person as a subject of human rights and defies the presumption that an impairment may hinder human rights capacity.
3. As stressed in Inclusion Europe's first submission on key topics for drafting of a General Comment, **Equality and non-discrimination is a principle** that must be applied in all aspects of life through the rights enshrined in the CRPD. The respect of this principle will ensure the full enjoyment of all rights on an equal basis with others.
4. Inclusion Europe stresses the **underreporting of discrimination** faced by people with disabilities, especially those with an intellectual disability. They may not be aware of their rights or what constitute discrimination; they cannot access justice due to the lack of accessible procedure to lodge a complaint; they do not received the right support to recover from their experience of discrimination. As a consequence the authorities know very little about this type of discrimination and how it affects people with intellectual disabilities and their families.
5. Inclusion Europe wants to highlight the **particular discrimination faced by people with intellectual disabilities** who are affected by institutionalisation; by the denial of their rights to attend mainstream schools, to make decisions, to vote, to marry, to a family life, to access open employment, to access social, health and other services. These situations are the result of a lack a knowledge and wide-spread stereotypes on the intellectual impairments.
6. Inclusion Europe is seriously concerned about the **psychological violence** faced by people with disabilities. This type of discrimination - hard to prove, report and prosecute - is very likely to occur in situations of power imbalance that many people with intellectual disabilities experience through institutionalisation and guardianship. It takes many different forms: threats, insults, emotional abuse, bullying, exclusion, isolation.

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7. Inclusion Europe wants to highlight the **consequence of discrimination**. There is a need for a clear strategy to: prevent discrimination, punish discrimination and finally provide victims with the right social, psychological support. Too often, the last step is overlooked: there is no external support provided for victims, and their families remain the only support.
8. Inclusion Europe wants to underline the **continuous discrimination** faced by people with disabilities who moved out from institutions but are afraid to be sent back if their behaviour does not comply with what is expected from them: workplace, social interactions, report of violence experienced in institutions.
9. Inclusion Europe is seriously concerned about the **discrimination by association** faced by many families because the States do not respect their obligation to support them. Discrimination faced by families can take multiple forms including, without being limited to: social ostracization and exclusion; discrimination to access or remain on the labour market; lack of financial, social or psychological support; lack of access to services.

General Comments

10. Inclusion Europe applauds the extensive interpretation of the article 5 by the Committee who well defines the different types of discriminations and the different forms of actions to fight against it. No human rights body has undertaken such deep reflection on the multiple aspects of discrimination and models of equality. This knowledge is of paramount important for understanding the mechanisms that create discrimination and finding remedies to address it the most efficiently.
11. Inclusion Europe very much welcomes the emphasis put on the article 12 and 13 as cornerstones in the implementation of the article 5 (paragraph 56 to 61). The full recognition of legal capacity for all people will enable everybody to seek redress after a discrimination has been perpetrated against them.
12. **Paragraph 1**
“With this General Comment, the Committee on the Rights of Persons with Disabilities (the Committee) aims to guide State parties and other stakeholders and to clarify the obligations of States parties in relation to non-discrimination and equality as enshrined in article 5 of the Convention. The Committee considers that guidance in this regard is necessary as in carrying out its mandate, it continuously bears witness to discriminatory treatment of persons based only on actual or perceived disability that impairs or nullifies the enjoyment of the rights of persons with disabilities and those associated with them. Having completed more than 60 constructive dialogues with States parties to the Convention representing all regions of the world, the Committee is concerned that discrimination of persons with disabilities persists. The Committee routinely observes discrimination which includes: violations to the right to access the built environment, transportation, information and communications on an equal basis with others; negative portrayals of disability in the media and harmful stereotypes; deprivation of



the right to legal capacity; right to a family life, curtailments in access to justice, education, employment; and to the right to participate in political, cultural life, recreation, leisure and sport, to name but a few examples.”

13. **Paragraph 8**

“Equality and non-discrimination are at the heart of the Convention and run like a golden thread through all its substantive articles via the phrase “on an equal basis with others”. It links all substantive rights of the Convention to the non-discrimination principle. Throughout the ancient and contemporary history of the world, dignity, integrity and equality have been denied to persons with actual or perceived disabilities and discrimination has occurred – and still occurs for some of them- in all its brutal and less brutal forms, including non-consensual and/or forced mass sterilizations and medical or hormone-based interventions (e.g. lobotomy, Ashley-treatment), mass murder called “euthanasia”, denied access to healthcare, mutilation and trafficking in body parts, particularly of persons with albinism, and confinement. Despite progress in disability law and policy, persons with disabilities continue to be systematically excluded from many areas of life, often based on notions of dominance, power and devaluation such as racism, sexism and ableism. As stated in the thematic study of the Office of High Commissioner on Human Rights: “National laws and policies generally perpetuate exclusion, isolation, discrimination and violence against persons with disabilities, despite international human rights law standards. Factors such as deprivation of legal capacity, forced institutionalization, exclusion from general education, pervasive negative stereotypes, prejudices, and lack of access to employment prevent persons with disabilities from enjoying their rights fully, on an equal basis with others. In particular, women and girls with disabilities face considerable restrictions on the exercise of their rights relative to men and other women and girls, due to, for instance violence, abuse or neglect, and have fewer opportunities in terms of education and employment.”

14. **Paragraph 15**

“Several international human rights treaties include the term “equal before the law”, which is usually interpreted as meaning equal treatment by the judiciary or law enforcement officers. The recognition that all persons with disabilities are equal before the law thus means that the justice system, all law enforcement officers and the administration, do not discriminate against persons because of their actual, perceived or associated disability.”

15. **Paragraph 20.a**

“Direct discrimination”, which occurs when persons with disabilities are treated less favorably than another person in a similar situation for a reason related to a prohibited ground. It also includes detrimental acts or omissions based on prohibited grounds where there is no comparable similar situation. A public school that refuses to admit a child just because of his or her disability is an example of direct discrimination. Other examples include (disability-based) violence in all its appearances, such as rape, forced sterilisation, abuse and exploitation, institutionalisation and segregation, psychological violence, hate-crime, and beatings.”

16. **Paragraph 20.d**

“Harassment”, which shall be deemed a form of discrimination when unwanted conduct related to disability or other prohibited grounds, takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Making fun of a disability or abusive and threatening comments about someone’s disability are examples of harassment. A particular attention should be paid to people with disabilities living in segregated places such as institutions, special schools, psychiatric hospitals where this type of discrimination is more likely to occur and is by nature invisible, so not likely to be punished. “Bullying” and its online form, “cyber bullying and cyber hate”, also constitute particularly violent and harmful forms of harassment.”

17. Paragraph 34

Inclusion Europe wants to highlight that the lack of adequate training of the judicial and non-judicial entities results in the invisibility of most of the disability-related acts of discrimination.

“States parties also have institutional obligations relating to article 5 CRPD in that States parties must provide a system of entities, that are available, accessible and acceptable to persons with disabilities to guard and protect their rights to non-discrimination and equality. These institutions might include courts, National Human Rights Institutions, or Equality Bodies. Experiences with anti-discrimination laws have proven that all of these institutions have a role to play and their staff must be properly trained in disability-specific equality law. The lack of awareness and proper training of these entities results in an underreporting of the cases of discrimination faced by people with disabilities and beyond that a total lack of knowledge and understanding of this type of discrimination.”

18. Paragraph 36

Inclusion Europe wants to highlight the need for a global strategy that enables the effective enjoyment of the rights to equality and non-discrimination. In this regard, the effective access to justice can only be ensured by a preliminary knowledge of what constitutes discrimination, rights and how to lodge a complaint. It is crucial to reach everybody with this information, regardless of their living place, to guarantee all people the opportunity to see redress for the violation of their rights.

1. *“The effective enjoyment of the rights to equality and non-discrimination calls for the adoption of a set of enforcement measures, such as:*
 - a. Measures to raise the awareness of all people about their rights, the meaning of discrimination and the existing judicial remedies.
 - b. *Measures to ensure access to justice for all persons who have experienced discrimination, including effective access to judicial and/or administrative procedures and appropriate legal aid;*
 - c. *Protection from victimisation or retaliation through adverse treatment or adverse consequences as a reaction to a complaint or to proceedings aimed at enforcing compliance with equality provisions;*
 - d. *The legal right to bring a lawsuit to court for associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality;*

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- e. *Specific rules relating to evidence and proof to ensure that victims of discrimination are not unduly inhibited in obtaining redress;*

Effective, proportionate and dissuasive sanctions for breach of the right to equality and provide for adequate remedies;"

19. Paragraph 43

Inclusion Europe wants to highlight the direct impact of institutionalisation on preventing child's development in a family environment.

"The principle of the best interests of the child is rarely applied to children with disabilities. Many children with disabilities do not have access, on an equal basis with others, to education, housing, or goods and services. General laws concerning childhood rarely consider children with disabilities. When designing and implementing anti-discrimination and equality measures under article 5, States parties should consider the situation of children with disabilities into account. In particular, States parties should address violence and institutionalization of children with disabilities who are denied the right to grow up in their families as a matter of discrimination. States parties should also adopt age-appropriate support measures to enable all children with disabilities to exercise their right to be heard, in all procedures that affect them, including in parliament, committees and bodies of political decision-making.¹ States parties should, in the appropriate cases, foster the provision of or promotion of accessible means, modes and formats of communication to facilitate non-discrimination and equality rights of children with disabilities."

20. Paragraph 46

Inclusion Europe wishes to further insist on the need to raise the awareness among all relevant professionals in society and not only focus on members of the legal profession. It greatly impacts on the access to services (and their quality) for people with disabilities and beyond that, the full enjoyment of their rights in different aspects of life.

"To have a real impact on the life of people with disabilities and their access to services, awareness-raising sessions and trainings should be provided to all professionals. It includes - without being limited to- policy and law makers, teachers, health professionals, civil servants working in city halls, social services, polling stations, statistics centres, professionals involved in cultural and recreative life. In particular, States parties should raise awareness of non-discrimination among members of the legal profession, including the judiciary, clearly highlighting the duty to provide reasonable accommodation as an obligation to ensure equality."

21. Paragraph 73

People with disabilities very often do not benefit from the same protection standards as other employees, impacting on their wage, social entitlement, career evolution. In this way, the

¹ Committee on the rights of the child, General Comment No. 9 (2006), The rights of children with disabilities, Article 12 - Respect for the views of the child,

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minority of people with intellectual disabilities working on the labour market often work in low-level and low-paid jobs without any perspective of evolution.

“To achieve true equality in terms of the Convention and attain full economic and social participation, State parties need to ensure that there is no discrimination on the grounds of disability in connection to work and employment. In order to ensure reasonable accommodation under Article 5(3) and to achieve or accelerate de facto equality in the work environment under Article 5(4), States parties should:

- a. *Facilitate the transition away from segregated work environments for persons with disabilities and support their engagement in the open labour market;*
- b. *Ensure the availability of supported employment and protection of the rights of workers with disabilities and ensure the right to freely chosen employment;*
- c. *Ensure that people are paid according to the minimum wage and do not lose the benefit of disability allowances (cf: Social benefit trap) when they start to work;*
- d. *Recognise multiple discrimination of women with disabilities and take measures to ensure gender equality in the workplace;*
- e. *Ensure proper transition into and out of employment for persons with disabilities in a non-discriminatory manner;*
- f. *Promote work in inclusive and accessible, safe and healthy working environments in both the public and private sectors;*
- g. *Ensure equal opportunities for people with disabilities regarding career advancement opportunities through regular assessment meetings with their managers and the definition of objectives to be achieved as a part of a comprehensive strategy;*
- h. *Ensure reasonable accommodation regarding access to training and education including vocational training and capacity building with special emphasis on trainings on reasonable accommodation for employers and representative organisations of employees;*
- i. *State parties should work towards universally applicable occupational health and safety measures for persons with disabilities;*
- j. *Recognise the right of persons with disabilities to access trade and labour unions;*
- k. *Ensure protection from dismissal for persons with disabilities on the grounds of discrimination”*

22. Paragraph 75

Inclusion Europe is concerned about the invisibility of people living in institutions, psychiatric hospitals and other closed places who are rarely included in the scope of studies, researches. This situation results in an incapacity to monitor anti-discrimination policy and laws in these

places and beyond, a total ignorance by the authorities of the discrimination faced by this population.

“Data collection and analysis are important measures to monitor anti-discrimination policy and laws. State parties should collect and analyse data, disaggregated by, inter alia: sex, age, ethnicity, type of impairment, socioeconomic status, gender identity, sexual orientation, religion, language. The data collected should be broad and cover statistics, as well as narratives and other forms of data. Design, collection and analysis of data should be participatory, i.e., undertaken in close and meaningful consultation with organizations of persons with disabilities. People living in closed places such as institutions, psychiatric hospitals are often overlooked by researches and studies collecting data. They should be systematically included in such studies. Data should give information on all forms of discrimination.”

Additional comments

23. Paragraph to be added under iii. Art. 5(2) Prohibition of discrimination and equal and effective legal protection

Inclusion Europe has expressed concern about the underreporting of discrimination against people with intellectual disabilities due to the lack of support they may face while trying to report case of discrimination such as abuse. The existing monitoring mechanisms of institutions, psychiatric hospitals, should be strengthened to reveal cases of abuse in places where people cannot report.

“Support should be offered to people who want to report abuse and violence in institutions and once they are out. In this way, monitoring mechanisms need to be better implemented: be independent from all possible influence, have the required mandate to organise regular and compulsory assessments of institutions and have sufficient resources to monitor places and investigate cases of discrimination. Too often, the only existing and effective monitoring mechanisms are government entities.”

24. Para to be added under Art. 5(2) Prohibition of discrimination and equal and effective legal protection

Inclusion Europe is concerned about **long-term impact of discrimination** such as violence and the need for support of people with intellectual disabilities and their families. Very often, there is no accompaniment after such violence has occurred and its impact on the victim is not addressed. In some cases, victims do not share their experience with their family directly after it happened to not worry them, by shame or by fear.

“Victims of discrimination should receive the right support they need to recover from their experience. Professionals working in general services of victims supports should be trained on how to best accompany person with disabilities. This type of support should be provided as a part of a global strategy aiming to prevent discrimination/to punish it when it occurs/support the victims on a long-term perspective”

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