

ARTICLE 19

# Background paper: Freedom of expression and information and persons with disabilities

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# Introduction

According to recent estimates, there are more than 1 billion people in the world (14% of the world's population) living with a disability.<sup>1</sup> Reaching an accurate figure of individuals living with disabilities is problematic, mainly due to the differences that exist in the various methods of census and statistics collection. Nonetheless, it is estimated that a high percentage of persons with disabilities are living in developing (low income) countries;<sup>2</sup> while in developed countries, it is predicted that the number of persons living with disabilities will increase with the ageing of the population.<sup>3</sup> Furthermore, statistics also show that approximately one in five people with disabilities are born with their disability, with most acquiring one during their working lives.<sup>4</sup> This renders people with disabilities the world's largest minority.<sup>5</sup>

Efforts to improve the protection of the human rights of persons with disabilities and to increase access and opportunities in society have been underway for decades; and countries have made advances in this area with varied results.<sup>6</sup> At the international level, the UN Convention on the Rights of Persons with Disabilities (CRPD),<sup>7</sup> in force since May 2008, has been welcomed by many as a defining international treaty which recognises the human rights of persons with disabilities. The sustainable development goals (SDGs) and targets<sup>8</sup> of the 2030 Agenda for Sustainable Development, agreed by UN Member States in September 2015,<sup>9</sup> include seven targets which explicitly refer to persons with disabilities.

Despite these advancements, it is widely documented that persons with disabilities virtually everywhere face social stigma and exclusion, discrimination, and various forms of abuse. They face serious barriers to inclusion and acceptance in society both physically and attitudinally, as well as legally and economically. The correlation between disability and poverty has also been widely recognised. For example, the 2011 WHO report highlighted the fact that significant progress on meeting the UN Millennium Development Goals (MDGs) required more action and attention to addressing the health, education, employment and other needs of persons with disabilities.<sup>10</sup>

It has also been recognised that freedom of expression and information – a fundamental human right – is central to the successful implementation of states' obligations to protect and promote the rights of persons with disabilities. The right to freedom of expression lies at the heart of human rights and democratic principles and is critical to the enjoyment of their other human rights, in particular the rights to privacy, association, right to political participation, right to education, right to health, and other civil and political and economic, social and cultural rights.

Despite this recognition, there has not yet been any comprehensive elaboration of what specific measures and steps must be taken by states and other duty bearers to ensure that persons with disabilities can fully realise their right to freedom of expression and information. Regrettably, this issue has been largely absent in the standard setting of the Human Rights Committee (including in the General Comment No. 34: Freedom of expression and opinion<sup>11</sup>) and has mainly been ignored by the mainstream freedom of expression and media community. The Committee on the Rights of Persons with Disabilities (CRPD Committee) is yet to address this issue in all its complexity; although in General Comment No. 2 (2014): Accessibility,<sup>12</sup> the CRPD Committee highlighted the close relationship between the right to accessibility and other rights protected by CRPD, in particular the rights to freedom of expression and information. Furthermore, Comment No. 2 outlined the set of requirements for states and

other entities to ensure that persons with disabilities can live independently and participate wholly in society, including through access to information and communication technologies.

ARTICLE 19 believes that there is a need to fill this gap at a level of principles. While recognising our limited expertise and limited activities in the area,<sup>13</sup> we hope that organisations working with persons with disabilities and freedom of expression and media community can join forces to explore the problems and challenges in this respect. We also find that it is important for the two communities to work together in order to influence and support initiatives at both an international and regional level, in order to advance protection, to ensure that gaps in protection are properly addressed and the highest possible standards are adopted.

The aim of this background paper is to present our limited perspective on the subject. It provides an overview of challenges to, and violations of, the right to freedom of expression of persons with disabilities, using examples to illustrate the problems. These challenges are grouped into three elements of freedom of expression: freedom of information, access to all forms of the media, including digital technologies and the ability of persons with disabilities – empowered by freedom of expression - to participate in public affairs.

The paper is based on desk research and is a summary of the available material on the subject, demonstrating respective challenges. It supplements a set of dedicated draft Principles on freedom of expression and persons of disabilities (Draft Principles), developed by ARTICLE 19, together with international experts and other partners, containing recommendations that could be used in international, regional and international advocacy on the subject. The paper is a work in progress: we are hoping to expand its scope and focus in the process of consultation on the Draft Principles.

# Disability: background

## Models of disability

Traditionally, persons with disabilities have been depicted as objects of welfare, health and charity programmes rather than subjects of legal rights:

- The **medical model** of disability assumes that the person with an impairment or a condition is the problem, and the remedy that is required is either care or a cure. Many domestic laws, particularly in welfare states, tend to conceive disability in line with the medical model. This tendency is aggravated in times of austerity, when distinctions between different types of disability acquire significance in budgets and in changing official definitions of vulnerability;<sup>14</sup>
- The term **human rights models** of disability refers to a collection of models that challenge the lack of understanding of agency, collectivity and history in the medical model. It is gradually replacing the medical model of disability, and focuses less on the functional impairments of individuals with a disability, and more on the limitations of a society that categorises people as 'normal' and 'abnormal'. According to this model, it is the disabling environment, the attitudes of others, as well as institutional structures that need to be changed – not the person's disability. The model recognises the inherent equality of all people, regardless of disabilities or differences, as well as society's obligation to support the rights of all individuals, including those who may need appropriate support.

According to the human rights model, disability should be understood as the negative interaction between a person's environment and his/her impairment. It is considered to be the result of a process which occurs when persons with disabilities experience barriers to their full participation in society and their recognition, enjoyment or exercise of human rights and fundamental freedoms in their civil, political, economic, social or cultural life, or in any other field of human endeavour. This model emphasises the societal (i.e. environmental, institutional and attitudinal) barriers that result in the exclusion of persons with disabilities.

## Definitions of disability

There is no universally agreed upon definition of "disability". The World Health Organization (WHO), based on the medical model of disability, developed the International Classification of Impairments, Disabilities, and Handicaps differentiated and defined impairment, disability, and handicap as:

Impairment: Any loss or abnormality of psychological, physiological, or anatomical structure or function.

Disability: Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.

Handicap: A disadvantage for a given individual, resulting from an impairment or disability, that, limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.<sup>15</sup>

In 2001, the WHO adopted the International Classification of Functioning, Disability and Health (ICF) which attempted to mediate between the medical and social models. It classifies problems in functioning around – impairments, activity restrictions and participation restrictions.<sup>16</sup>

The UN Convention on the Rights of Persons with Disabilities (CRPD), which promotes human rights model, recognizes that a disability is:

[An] evolving concept that results from the interactions between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.<sup>17</sup>

Further, regarding the description of which individuals are considered to have a disability, the Convention introduced a very broad formulation:

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>18</sup>

Here, the most relevant evidence of a disability is measured by how a person's environment has artificially limited that person's opportunity to participate fully in the public arena, such as employment, public accommodations, and government programs and services.

On the domestic level, the approach that states take in defining disability is very diverse. Some states define disability in terms of the human rights model, emphasising the intersection between the individual and the environment, where discrimination derives from the existence of barriers to full participation.<sup>19</sup> Other states still focus on the medical model and rely heavily on strict medical assessments, assessing the extent of functional limitations experienced by the individual, with little consideration of how those limitations interact with the individual's environment.<sup>20</sup>

## Notes on “types” of disability

Under the medical model, "disability" can be broken down into a number of broad types, which an individual can either be born with, or acquire (e.g. as the effect of disease or accident or with age), for example:

- **Mobility and physical impairments:** including upper or lower limbs disability, manual dexterity or disability in co-ordination with different organs of the body;<sup>21</sup>
- **Sensory impairments:** the term encompasses visual loss (including blindness, partial sight or visual impairment), hearing loss (in a varied range) and multisensory impairment (having a diagnosed visual and hearing impairment with at least a mild loss in each modality or deaf-blindness);<sup>22</sup>
- **Cognitive or learning disabilities:** definitions are usually broad and include intellectual disabilities (defined by diminished cognitive and adaptive development), such as Down syndrome, traumatic brain injury, autism, dementia as well as less severe cognitive conditions such as dyslexia, attention deficit disorder, dyscalculia and others;<sup>23</sup>

- **Psychological disorders:** cover a range of syndromes and conditions characterized by different types and degrees of emotional, developmental, cognitive, and/or behavioural manifestations. Common subtypes of psychiatric disorders include, but are not limited to obsessive-compulsive, bipolar, generalized anxiety, mood, and post-traumatic stress disorders;<sup>24</sup>
- **Multiple impairments, a combination of two or more disabilities (e.g. cognitive, movement and/or sensory).**

However, the ways in which impairments are grouped vary. For example, some people argue that persons with communications disorders – covering speech, sensory, cognitive and psychological impairments and disorders – are more likely to face exclusion than others. When classifying disability in relation to legal standards, questions of consent and autonomy and the deprivation of legal capacity are important to consider as people with certain disorders or impairments are more likely to face deprivation of legal capacity than others.

### Measures to combat discrimination against persons with disabilities

There are a number of types of conduct that are prohibited under international law and require specific measures to address discrimination against persons with disabilities:

- **Direct discrimination** (based on the idea of formal equality) is defined as less favourable or detrimental treatment of persons with disabilities.
- **Indirect discrimination** occurs when a practice, rule, requirement or condition is neutral on its face, but impacts disproportionately upon persons with disabilities, unless that practice, rule, requirement or condition is justified.
- **Harassment** occurs where unwanted conduct takes place with the purpose or effect of violating the dignity of a person with disabilities and of creating an intimidating, hostile, degrading, humiliating or offensive environment.
- **Victimisation** refers to any adverse measure taken by an organisation or an individual in retaliation for efforts to enforce legal principles.
- **Positive action or affirmative measures** (or special measures) are proactive measures taken by a government or private institution to remedy the effects of past and present discrimination by instituting preferences that favour members of previously disadvantaged social groups. Such preferential treatment runs counter to the strictly formal notion of equality, but may be essential to ensure substantive equality.
- **Reasonable accommodation** this concept was initially developed in the context of employment conditions and referred to any adjustment to a job, employment practice, work environment, or the manner or circumstances under which a position is held or customarily performed, which makes it possible for a qualified individual to apply for, perform the essential functions of and enjoy the equal benefits and privileges of employment. The requirement to accommodate difference has arisen most frequently in the context of disability and with the latest developments in this area introduced by the CRPD.

While the categories of discrimination mentioned above relate to individuals, the concept of **accessibility** relates to groups and persons with disabilities at large and requires a set of measures to ensure that persons with disabilities have access to the physical environment, transportation, information and communication technologies and systems as well as other facilities and services open to the public.<sup>25</sup>



## Applicable international law

This section examines the international human rights standards relevant for the protection of the rights of persons with disabilities and standards on the right to freedom of expression and information, with emphasis on linkages between these rights.

### Protection of rights of persons with disabilities

As already noted, in the past decade there has been an improvement in the protection of the equal rights of persons with disabilities at international and regional levels, in particular through the introduction of the CRPD. Previously, persons with a disability were not explicitly recognised in the binding instruments of international human rights law. None of the equality clauses of the Universal Declaration of Human Rights (UDHR),<sup>26</sup> the International Covenant of Civil and Political Rights (ICCPR),<sup>27</sup> and the International Covenant on Economic, Social and Cultural Rights,<sup>28</sup> mention persons with disability as a protected category. However, several documents have been adopted to address this gap throughout the years,<sup>29</sup> and protection of the rights of children with disabilities is recognised in the Convention on the Rights of the Child.<sup>30</sup>

The **Convention on the Rights of Persons with Disabilities** is the first binding international instrument which provides for the comprehensive protection of all human rights and fundamental freedoms for persons with disabilities. Its purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. International monitoring of the CRPD is implemented by the Committee on the Rights of Persons with Disabilities, comprised of a maximum of 18 independent experts. A separate treaty, the Optional Protocol to the CRPD<sup>31</sup> establishes both complaints<sup>32</sup> and inquiry procedures.<sup>33</sup>

Eight principles form the basis for the CRPD: a) respect for the inherent **dignity, autonomy, and independence** of all persons; b) **non-discrimination** (the CRPD introduces a definition for discrimination on the basis of disability that includes both direct and indirect discrimination and establishes the novel concept that the denial of reasonable accommodation be classified as discrimination (under Article 2). Article 2 then provides that the principle of non-discrimination and equality of opportunities is a general principle permeating the CRPD and permits states to take positive action to remedy the disadvantage experienced by persons with disabilities); **full and effective participation and inclusion** in society; **respect for differences and acceptance** of persons with disabilities as part of human diversity and humanity; **equality of opportunity; accessibility; gender equity**; and respect for the evolving capacities of **children with disabilities** and respect for the right of children with disabilities to preserve their identities.<sup>34</sup>

As for the right to freedom of expression, the following provisions of the CRPD are of particular importance:

- **Article 2** of the CRPD declares sign language as a language and equates it to spoken languages;
- **Article 9** of the CRPD guarantees accessibility to, inter alia, information and communications specifically to person with disabilities. States should identify and eliminate

accessibility obstacles and barriers faced by persons with disabilities, including in relation to digital technologies. The provisions of Article 9 have been recently interpreted in detail in General Comment No 2 to the CRPD.<sup>35</sup>

- **Article 21** of the CRPD guarantees protection of the right to freedom of expression and opinion in the following terms:

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
  - b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
  - c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
  - d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
  - e) Recognizing and promoting the use of sign languages.
- Freedom of expression is also closely linked to the guarantees of **Article 29** of the CRPD, which sets out the rights of persons with disabilities with regards to their participation in political and public life. It requires that parties to the Convention guarantee political rights to persons with disabilities and adopt all appropriate measures to ensure that they enjoy these rights on an equal basis with others.

### Other mechanisms of protection

The 2013 **Marrakesh Treaty** to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty),<sup>36</sup> is devoted to copyright limitations that limit the exclusive rights of creators and allow consumers to use protected content without permission from creators. It sets out minimum standards that Treaty member-countries must adhere to and include in their own domestic copyright laws. The Treaty applies to all literary and artistic works (including text, notation, and related illustrations) whether or not the works are published or otherwise made publicly available in any media.

Additional protection of the rights of persons with disabilities is provided in the regional human rights instruments:

- In **Africa**, the African Charter on Human and Peoples' Rights provides that the disabled have the right to special measures of protection in keeping with their physical or moral needs and that every individual shall have the right to enjoy the best attainable state of physical and mental health.<sup>37</sup> The African Charter on the Rights and Welfare of the Child also includes special mention of persons with disabilities.<sup>38</sup> The African Union has also previously declared years 2000-2009 as the Africa Decade of Disabled People.
- In the **Americas**, the American Convention on Human Rights<sup>39</sup> does not explicitly address the subject of disability; however, specific references to the rights of persons with

disabilities are mentioned in the 1988 Protocol of San Salvador.<sup>40</sup> Moreover, the 1999 Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities aims to prevent and eliminate discrimination and ensure the integration of persons with disabilities into society; the Convention explicitly links protection from discrimination and community integration.

In contrast to the European Court (below), the institutions of the Inter-American and African systems have historically exhibited far less interest in addressing rights of persons with disabilities. No particular instruments on disability have been adopted in Asia.

- In **Europe**, although the European Convention of Human Rights<sup>41</sup> does not contain any specific provisions relating to persons with disabilities, the extensive body of case law of the European Court of human rights has interpreted the application of the Convention in several aspects. Protection is also provided in the European Social Charter<sup>42</sup> and in a number of instruments that concern persons with disabilities more specifically.<sup>43</sup> Moreover, there is a considerable body of standards in the area of non-discrimination and human rights for persons with disabilities that has been adopted by the European Union.<sup>44</sup>

## Right to freedom of expression

The right to freedom of expression is guaranteed in Article 19 of the UDHR<sup>45</sup> and in Article 19 of the ICCPR,<sup>46</sup> as well as in other international and regional human rights instruments.<sup>47</sup> The guarantee of freedom of expression applies with particular force to the media.

Article 19 ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.<sup>48</sup> States are required to take into account the extent to which developments in information technology, such as Internet and mobile-based electronic information dissemination systems, have dramatically changed communication practices around the world.<sup>49</sup> The legal framework regulating the mass media should take into account the differences between the print and broadcast media and the Internet and their convergence.<sup>50</sup>

## Restrictions on the right to freedom of expression

The right to freedom of expression is not absolute and may be restricted under certain circumstances. Nonetheless, any limitations must remain within strictly defined parameters (the three-part test)<sup>51</sup> which require that any interference:

- **Is provided for by law**, the law must be accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct”;<sup>52</sup>
- Pursues a **legitimate aim**, provided in Article 19(3), namely the protection of the rights or reputations of others, protection of national security or of public order (ordre public), or of public health or morals. This list is exhaustive;
- Is **necessary** to secure one of those aims: there must be a “pressing social need” for the restriction, the reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.<sup>53</sup>

## Right to freedom of information

The right to information is part of the broader fundamental right to freedom of expression.<sup>54</sup> The specific meaning and **content of freedom of information** is laid out in a number of authoritative sources.<sup>55</sup> ARTICLE 19 has also published a standard-setting document on the subject, including *The Public's Right to Know: Principles on Freedom of Information Legislation*,<sup>56</sup> which encapsulates international best practices in this area, including its nine crucial elements of maximum disclosure,<sup>57</sup> obligation to publish information,<sup>58</sup> promotion of open government,<sup>59</sup> limited scope of exceptions,<sup>60</sup> processes to facilitate access,<sup>61</sup> costs,<sup>62</sup> open meetings,<sup>63</sup> precedence of disclosure,<sup>64</sup> and protection of whistleblowers,<sup>65</sup> as well as an obligation of proactive disclosure.<sup>66</sup>

The obligation to provide information should apply to all public bodies, owned or controlled by the government (at local, municipal and state level), as well as other organizations which operate with public funds or which perform public functions.<sup>67</sup> Additionally, in several countries, state-owned or state-subsidised companies are subject to right to information laws.<sup>68</sup>

## Restrictions on the right to freedom of information

The right to freedom of information can be restricted only under limited circumstances. Information holders must disclose any information which they hold and are asked for, unless:<sup>69</sup>

- The information concerns a **legitimate, protected interest**: laws must contain an exhaustive list of all such interests and should be limited to matters such as law enforcement, the protection of personal information, national security, certain commercial interests, safety and protecting the effectiveness and integrity of government decision-making processes. Exceptions should be narrowly drawn, should be based on content, and where relevant, be time-limited.
- Disclosure threatens **substantial harm** to a respective legitimate aim. Simply because the information falls within the scope of a listed legitimate interest, does not mean non-disclosure is justified. Otherwise a class exception would be created that would seriously undermine the free flow of information to the public. Instead, the public body must demonstrate that the disclosure of the information would cause substantial harm to the protected interest.
- The harm outweighs the **public's interest benefit in disclosure**.

If applied properly, the three part test would rule out all blanket exclusions and class exceptions as well as any provisions whose real aim may be to protect the government from harassment or criticism, to prevent the exposure of wrongdoing, to avoid the concealment of information from the public or to preclude entrenching a particular ideology.

## Freedom of expression and information of persons with disabilities

Law, policies and practices concerning freedom of expression and information should also follow the above-mentioned principles in relation to persons with disabilities. Taken as a whole, states' obligations with regard to the right to freedom of expression include:

- Obligation to **respect the right** by refraining from engaging in any act, custom, or practice that creates barriers to people's enjoyment of the right (e.g., not prohibiting people who are deaf from communicating in sign language).
- Obligation to **protect the right** by ensuring that non-State or "private" actors, such as businesses that distribute information to the general public, do not create or fail to remove barriers to enjoyment of the right (e.g., repairing inaccessible web pages).
- Obligation to **fulfil the right** by requiring States to take proactive action to ensure enjoyment of the right by persons with disabilities.

# Freedom of expression and information and persons with disabilities: challenges and problems

## Right to information

Available research shows that persons with disabilities face a broad range of problems that hinder their access to information. Key problems include the following issues:

### **Lack of comprehensive and effective legal frameworks on freedom of information**

The existence of a comprehensive legal and policy framework is crucial for persons with disabilities to have the basis for demanding and accessing information they need on various issues relevant to their lives. There is an important global trend towards adoption of right to information laws: today, nearly 100 countries have adopted dedicated laws granting individuals a general right to access information held by public bodies, and imposing an obligation on public bodies to proactively disclose key types of information<sup>70</sup> (as compared to 1990, when only 13 countries had such laws).

Despite this global recognition, many countries, especially those in the developing world, have no dedicated freedom of information legislation giving practical effect to the right:<sup>71</sup>

- In **Africa**: only 18 countries (out of 55) have adopted specific freedom of information legislation; while two countries have executive regulations on the subject (Niger and Tunisia) and some countries having sectorial legislation, meaning legislation that guarantees the right to freedom of information on a specific subject;
- In the **Americas and the Caribbean**, 21 countries (out of 55) have adopted right to information laws;
- In **Asia and the Pacific**: only 14 countries (out of 45) have adopted access to information laws; and one country (China) has introduced executive regulations;
- In the **Middle East**: only five countries (out of 14) have adopted right to information legislation;
- In **Europe and Central Asia**, 46 countries have adopted right to information laws.

Despite dedicated laws being on the books, many **legislative frameworks are extremely weak**, including the limited scope of access to information laws, complicated procedures for requesters, extensive lists of exceptions, a lack of appeal proceedings in cases of refusal to provide requested information, failure to guarantee sanctions for authorities failing in their obligations to provide information, lack of promotional measures, and finally, the lack of strong oversight bodies.<sup>72</sup>

### **Failure of authorities and information holders to meet their obligations under the law**

Even in cases where a sufficient legal framework for freedom of information exists, the relevant authorities often fail to meet their minimum obligations under the respective legislation. Implementation of freedom of information laws is often lacking because of

structural problems on the side of authorities and the failure to remove practical obstacles faced by persons with disabilities.

- Information on crucial issues for persons with disabilities, especially welfare and social protection, education, health care, election, employment, access to justice or transportation, is **inadequate or not provided on proactive basis**.<sup>73</sup> The lack of such information and the inability to ascertain which services and other measures are available leads to further disempowerment and exclusion of persons with disabilities and their families, as well as their inability or unwillingness to express their needs.
- In many countries, information is not provided in a **variety of formats** that would make it accessible for persons with disabilities. The format required depends on the form of disability, for example:
  - Deaf and deaf-blind people use sign languages, and need sign language interpreters, including tactile or hands-on interpreters; people who are hard of hearing may need speech-reading, assistive listening devices, and good environmental acoustics in indoor settings;
  - People who are blind or have low vision require information in Braille, and access to information in Braille, audio and large-print materials, screen readers, and magnification equipment;
  - People with intellectual impairments need information presented in clear and simple language;
  - Non-speaking individuals need access to “augmentative and alternative communication”, including communication displays, sign language and speech-generating devices.

At the same time, reports also show that information is often provided in accessible formats only when the information relates to disability itself.<sup>74</sup> Reports indicate that the vast majority of other information intended for the general public remains in inaccessible formats and languages. Problems are not simply limited to government policy brochures and information documents, but extend to information given at police stations, hospitals, schools and other support services.

- **Lack of awareness and prejudices:** in many countries, the failure to provide access to information is sometimes the result of an intransigent mindset and culture of secrecy. However, negative attitudes and prejudices, which are a cross-cutting issue in the lives of many persons with disabilities, also impact the provision of information by public authorities and other duty bearers. Awareness raising, training and proactive measures to address these issues are therefore needed.<sup>75</sup>
- **Data accessibility:** the realisation of the right to freedom of information for persons with disabilities can be seriously flawed not only in terms of the availability of information, but also in the way in which information is delivered to the public. Even if governments routinely make data available through a dedicated portal or other means, the data released is often “raw” and difficult to understand, released without ensuring that the data is fit for purpose or explained in context.<sup>76</sup> Efforts must be made to ensure that necessary information is presented in a way that is accessible, relevant and understandable to a variety of intended users.

### **Data collection and indicators**

Reports also indicate that data collections on various aspects of disability and contexts are inadequate, despite their importance for understanding the existing problems faced by persons with disabilities and developing responses to them. Further, disaggregation of data based on other grounds (gender, region, occupation) is also crucial for uncovering patterns, trends, and other challenges faced by persons with disabilities.

In 2011, a WHO World Report on Disability<sup>77</sup> noted the lack of a consistent approach in this respect through censuses (that cover entire populations, occur at long intervals, and incorporate only a few disability-relevant questions and that only result in limited information), surveys (that are more representative of the actual situation) and data registries. It also recommended that states adopt a cost-effective and efficient approach to gain comprehensive data on persons with disabilities in order to gain extensive information on disability and functioning with a view to improving the protection of their rights and for detecting or preventing discrimination. Improving the quality of information in this way, both nationally and internationally, is essential for monitoring progress in the implementation of the CRPD and in the achievement of internationally agreed development goals.

However, the problem of accessible information also relates to habits of description, classification and aggregation in different statistical systems. Some statistics systems automatically classify persons with disabilities outside the labour force, for example. Others see persons with disabilities as potential participants in the labour force, but don't disaggregate disabled unemployed workers from other unemployed. Not having statistics to measure progress or setbacks really affects the capacity of disability rights associations to advocate for change. It also makes it hard to include disability issues in the sustainable development goals and other international initiatives. This has been recognised by organisations that deal with the challenge of disability definition and measurement across different cultures and national systems, such as the Washington Group on Disability Statistics.<sup>78</sup>

### **Access to all media and digital technology**

Media and digital technologies make it possible for persons with disabilities to seek, impart and disseminate information and opinions. Thanks to the media, persons with disabilities are able to access, examine, and critically assess their individual and community needs and interests, and make informed choices about a wide range of issues. Media literacy – the ability of individuals to use media effectively – is also important to express and communicate ideas, information and opinions, to identify, and avoid or challenge media content and services and make effective use of media in the exercise of their rights.<sup>79</sup>

In recent years, digital technologies (including the Internet and mobile phones) and assistive technologies (the equipment people use to aid them in their area of disability) have brought many technical solutions that allow persons with disabilities to access content in the media and access services which were previously unavailable. With the help of such technologies, persons with disabilities are also able to overcome many potential communication barriers.



## Legacy media and persons with disabilities

Legacy (or mainstream media) – TV, radio and newspapers – are still the main source of authoritative news for persons with disabilities. With technological advancements, in particular, with assistive technologies, persons with disabilities have greater access to news content due to the increasingly accessible means of receiving information. Moreover, assistive technologies not only make mass media content more accessible, but also allow persons with disabilities to actively participate in creation and distribution of the media.

Despite many advances, numerous challenges still remain (as documented, in particular, in the World Bank and WHO reports):

- **Lack of regulation:** the reports note that the regulation of the media does not necessarily follow the pace of technology developments. Many countries lack specific legislation requiring content to be accessible for persons with disabilities and fail to address the gaps brought by convergence (moving from broadcast to cable and Internet and from analogue to digital), with the resultant lack of clarity of the applicable regulatory frameworks (e.g. whether the originally contained captions or descriptions apply on the content disseminated online). The 2011 report also notes possible practical challenges to these developments, such as difficulties in addressing the full spectrum of digital technologies and their applications for persons with disabilities and the consistency of standards for the same product or for services across sectors.
- **Lack of accessibility of media content:** Mainstream media content has often been inaccessible to persons with disabilities, and media producers often do not know how to make their content available to persons with disabilities. The situation is usually better in relation to public service media where the obligation to make the content accessible is often directly provided for in the respective legislation.<sup>80</sup> For example, news fonts have traditionally been a smaller point size that excludes readers with low vision. Similarly, broadcast media have failed to provide captioning, audio description and sign language interpretation.<sup>81</sup> It has been also reported that in Europe, only 10% of national-language broadcasts of commercial broadcasters were provided with subtitles, only five countries provided programmes with audio description, and only one country had a commercial broadcaster that provided audio description.<sup>82</sup> Similarly, in Asia, closed captioning or sign-language interpretation of television news broadcasts has been seriously limited and, where it was available, was limited to large cities.<sup>83</sup>
- **Diversity of content in the legacy media:** In most countries, broadcasting legislation imposes obligations on broadcasters to have regard to diversity, including persons with disabilities. Broadcasting codes or guidelines usually also include standards and practices relating to persons with disabilities or, might be broad enough to encompass disability. Most codes or guidelines result from broadcasting legislation, but do not have the force of the law; rather they are statutory, co-regulatory or self-regulatory. These might also be supplemented with action or diversity plans adopted by regulatory agencies of the media. However, the content specifically addressing the needs and concerns of persons with disabilities is often limited, especially in rural and less represented areas, where access to public service media is more limited.
- **Portrayal of persons with disabilities in the media:** in addition to a lack of diverse content, persons with disabilities are often portrayed in the media with negative or patronising connotations, with ridicule, or with a view to inspiring pity towards them, perpetuating stereotypes about them.

However, there have been efforts undertaken by media organizations to report about disability issues responsibly, including taking care with the terminology used, efforts to include them in creation of content directly (e.g. through open formats that allow persons with disabilities to produce their own content, unique in its first-person perspective or accurate in its personal, cultural content).<sup>84</sup>

How the media portray disability can help increase awareness throughout society about the realities faced by persons with disabilities, reduce stereotypes, prejudices and harmful practices, and promote awareness of their capabilities and contributions. The best practices in this respect must be further examined both in the mainstream media and in cooperation with the civil society. This includes: larger, systematic, and comparative studies of representation of different media forms and genres across various legacy media; studies of audiences with disabilities; disability and media policy; studies of media institutions and workers, and how they construct disability in their work – for instance, in news and other forms of journalism; the forms of disability represented in the media; understanding how many persons with disabilities are employed in media industries, what kinds of work they are doing, and what their experiences might be.

### **Digital technologies – the digital divide**

Several reports indicate that there is a gap, a “digital divide,” within and between societies in the degree to which persons with disabilities have access to and use digital technologies. Persons with disabilities experience a variety of barriers to access the Internet, mobile phones, televisions, personal computers, tablets, as well as many other digital interfaces in public and private spaces. Even where persons with disabilities have physical access to these technologies, they might face obstacles in making use of them or might require assistive technology to use computers and the Internet.

- **Lack of accessibility:** reports note that many digital technologies products and services have not been designed with a universal design approach and, as a result, have created further barriers for persons with disabilities (for example: a web site may be designed in such a way that blind users cannot read its contents with screen reader software or it may use colours that visually impaired users are unable to differentiate; emergency communications, including call centres, may also be unreachable for persons with disabilities who cannot use voice communications). For these reasons, many organisations of persons with disabilities have called for universal design principles to be applied to computers and the Internet – taking a proactive rather than a reactive approach to accessible technology.
- **Lack of compatibility:** Mainstream digital devices and systems, such as telephones, television, and the Internet, are often incompatible with assistive devices and assistive technology, such as hearing aids or screen readers. Overcoming this requires designing the mainstream features for the widest possible range of users, ensuring the devices are adaptable or can be used with a wide range of user interface devices.
- **Costs:** the reports also note that the cost of many technologies is limiting for persons with disabilities who live in poverty both in developing and developed countries. In addition to initial costs that can already be prohibitive, the technology is developing at a fast pace

and is reactive to design and even if purchased, it might quickly become obsolete or in need of an upgrade.<sup>85</sup>

- **Copyright:** Further challenges to ensuring access to content for persons with disabilities are caused by excessive copyright claims. For example, it is estimated that only less than 5% of books published every year are available to blind and visually impaired persons. Moreover, reproduction of books in accessible formats such as Braille, audio, and large print works can be done only with permission from copyright holders. There are also considerably high expenses for such a procedure. In this regard, the new Marrakesh Treaty has made an important contribution in improving access to content for people with print disabilities:
  - The Treaty makes it mandatory for signatories to adopt copyright exceptions for the non-profit creation and distribution of accessible versions of works for the benefit of persons with print disabilities. All signatories must bring their copyright legislation in line with the standard already followed by developed countries.
  - It requires signatories to allow lawfully made accessible copies to be distributed by organisations assisting persons with print disabilities to similar organisations in other signatory countries or directly to disabled individuals in those countries. It requires WIPO to establish information-sharing procedures to enhance cooperation between member states by establishing a voluntary register of institutions assisting persons with print disabilities.
  - Finally, it requires that states introduce exceptions to their anti-circumvention schemes. This is particularly important to enable persons with disabilities (or their representatives) to circumvent digital locks (DRM) placed on e-books and other works, so that they can utilise adaptive technologies to access the work.

### **Ability to participate in public life**

ARTICLE 19 has also long argued that denying people an effective voices in society, especially the most disadvantaged and marginalised individuals, perpetuates inefficient, and often corrupt, forms of governance and service delivery that keeps them in a subordinate position. This also applies to persons with disabilities: the ability of persons with disabilities to communicate effectively, to voice their concerns either individually or collectively with others and through various channels is central to the realisation of a broad range of civil and political as well as economic, social and cultural rights.

If their human rights are to be wholly realised, persons with disabilities must be able to participate in all decision making in society and in public debates, in particular those that affect them and their communities, in order to put forward ideas and potentially have these realised, to demand that governments uphold their obligations, and to hold governments or private companies to account. They should be able to do so without fear, intimidation and harassment; states must also create an enabling environment in which the participation of persons with disabilities in public life and public affairs is enabled.

Unfortunately, studies indicate that a variety of obstacles exist that prevent individuals and groups from taking part in public affairs.

### Public participation and collective expression

Despite legislative and policy developments to improve the protection of the rights of persons with disabilities, available studies show that persons with disabilities remain under-represented in public, civic and community participation. Efforts to remedy this situation have been slow. The main problems that contribute to this under-representation include:

- **Under-representation of persons with disabilities in decision making structures:** many persons with disabilities, especially those with intellectual or psychosocial disabilities, have been deprived of legal capacity and placed under guardianship or in institutions against their will. Deprivation of legal capacity also often results in the denial of the right to vote in many countries or to be elected into public office.
- **Lack of accessibility:** in many areas where mechanisms for public consultations on specific issues exist (e.g. environmental and community issues), these fail or do not sufficiently take into consideration the needs and constraints of persons with disabilities. For example, venues where hearings take place may not be accessible. In addition, public information is frequently not provided in accessible formats; this includes court procedures and processes, public information placed on inaccessible websites of governments and authorities, uncaptioned parliamentary procedures, the failure to broadcast simultaneous sign language interpretation, including of the news. Reports also noted growing support for and promotion of organizations of persons with disabilities to support such access.<sup>86</sup>
- Other **constraints to participation** include a heavy reliance on traditional methods of involvement, barriers in timescales and timing of participation processes, variations in the recognition of practical barriers and actions taken, lack of feedback, limited proactive involvement of persons with disabilities and the attitudes of responsible agencies towards persons with disabilities.
- Restrictions faced by persons with disabilities go beyond participation in political processes. Available information indicates that they are often also prevented from collectively expressing their views through various forms of **protest** and through limitations on their right to peaceful assembly. This is both due to laws and policies that fail to provide reasonable accommodation for their specific needs (e.g. physical barriers) and due to the lack of accommodation to facilitate their communication.<sup>87</sup>

### Tolerance and non-discrimination

In addition to barriers, social exclusion and discriminatory and prejudicial practices in society, persons with disabilities are frequently targeted by “hate speech”. This occurs in various contexts, including in the media, in political debates (e.g. in relation to cutting social support or benefits) or through social media.

The extent to which states permit, prohibit, or sanction “hate speech” varies greatly. National laws contain vague and overbroad prohibitions, implemented inconsistently and often with counter-productive consequences. In this debate, it is important to understand the circumstances under which the ICCPR) and other regional standards permit states to limit the right to freedom of expression; and to be mindful that states are only obliged to prohibit expression that amounts to the “advocacy of hatred” that constitutes “incitement” to

discrimination, hostility or violence (Article 20(2) of the ICCPR), and to understand what this obligation entails.

At the same time, recognition by states of disability as a protected characteristic varies significantly and guidance at the international and regional levels in this regard is limited. International human rights institutions have been slow to recognise that disability should be included among the defining characteristics of groups protected from discrimination (as compared to racial, xenophobic, anti-Semitic or homophobic speech).

Against this setting, there has been a growing demand to tackle “hate speech” through restrictive measures that can amount to censorship. ARTICLE 19 has always argued that prohibitions which unnecessarily censor contentious viewpoints are often counter-productive to the aim of promoting equality for persons with disabilities and fail to address the underlying social roots of the kinds of prejudice that “hate speech” is symptomatic of. In most instances, equality is better promoted through positive measures to increase understanding and tolerance, rather than through censorship of views perceived as injurious to persons with disabilities.

ARTICLE 19 has undertaken several initiatives to clarify the extent of state obligations in respect to combating “hate speech” in a framework that is also conducive to freedom of expression: in particular, the 2009 Camden Principles on Equality and Freedom of Expression” (the Camden Principles)<sup>88</sup> and a 2012 policy paper Prohibiting incitement to discrimination, hostility or violence.<sup>89</sup> Although these documents do not address “hate speech” against persons with disabilities, the recommendations are applicable to all protected grounds, including disability. The documents can be summarised as follows:

- “Hate speech”, “incitement” and “hate crimes” are terms that are often conflated and used interchangeably. While all of them are symptomatic of intolerance and prejudice against protected groups, each raises different concerns for the right to freedom of expression. For this reason, it is important that the terms are employed accurately in order to properly denote the state’s obligation under international human rights law.
- There is no universally accepted definition of the term “hate speech”. The term is usually used to refer to expression that is abusive, insulting, intimidating or harassing and/or which incites to violence, hatred or discrimination.<sup>90</sup> However, it is only in very narrow circumstances that states are required by international human rights law (Article 20(2) of the ICCPR) to prohibit the most severe forms of “hate speech”: the advocacy of hatred that constitutes incitement to hostility, discrimination or violence.
- ARTICLE 19 also recommends that all domestic prohibitions of incitement should include disability as a protected characteristic.
- Any restrictions on “hate speech,” including incitement, must respect the right to freedom of expression. This response may be premised on a combination of two measures:
  - Comprehensive **positive policy measures** to tackle the root causes of prejudice and intolerance against persons with disabilities.<sup>91</sup>
  - Coherent legal framework for **prohibiting** the advocacy of hatred against persons with disabilities that constitutes **incitement to discrimination, hostility, or violence** that meets international standards in this area.

- In order to comply with freedom of expression, prohibitions should primarily be through civil and administrative laws, and only in the most serious cases should criminal sanctions be imposed. Criminal sanctions should not be the default response to instances of incitement if less severe sanctions or measures could achieve the same effect. ARTICLE 19 also recommends numerous measures for States to adopt to ensure uniform and consistent implementation of their obligations, as well as measures that should be offered to victims of incitement.



## About ARTICLE 19

ARTICLE 19: Global Campaign for Freedom of expression (ARTICLE 19) is an international human rights organization that works globally to promote and protect freedom of expression and information. It was founded in 1987 and has an international office in London and regional offices in Bangladesh, Brazil, Kenya, Mexico, Senegal, Tunisia and Myanmar.

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. It has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals, as well as on existing laws that affect the right to freedom of expression, and develops policy papers and other documents. This work, carried out since 1998 as a means of supporting positive legal reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All legal and policy materials are available at <http://www.article19.org/resources.php/legal>.

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<sup>1</sup> UN, [Factsheet on Persons with Disabilities](#). UN News Center.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid. For example, in countries where life expectancy is over 70 years or age, people spend on average 8 years of their life living with disabilities.

<sup>4</sup> Forum on Disability briefing for CSR practitioners, [Disabled employees: Labour standards, and Employers](#).

<sup>5</sup> Jack A. Nelson, *The Disabled, the Media, and the Information Age*. Westport, CT: Greenwood, 1994.

<sup>6</sup> UN, *Factsheet on Persons with Disabilities*, op.cit., which notes that at least 45 countries have disability-specific laws.

<sup>7</sup> [Convention on the Rights of Persons with Disabilities](#), A/Res/61/106, 24 January 2007, Preamble, para e).

<sup>8</sup> The [17 Sustainable Development Goals \(SDGs\)](#), adopted at the summit held from 25 to 27 September 2015, in New York and convened as a high-level plenary meeting of the General Assembly.

<sup>9</sup> [The 2030 Agenda for Sustainable Development](#). Adopted in September 2015, ibid.

<sup>10</sup> World Health Organization and World Bank, [World Report on Disability](#), 2011.

<sup>11</sup> UN Human Rights Committee, [General Comment No.34](#), 102<sup>nd</sup> session. Geneva, 11-29 July 2011.

<sup>12</sup> CRPD Committee, [General comment No. 2 \(2014\), Article 9: Accessibility](#), 11 April 2014.

<sup>13</sup> ARTICLE 19's Office for Kenya and East Africa has been implementing project on access to information for persons in disabilities in Kenya. In 2011, in our proposal on the draft text of General Comment No. 34, ARTICLE 19 proposed that the General Comment should explicitly affirm the rights of people with disabilities to freedom of expression on an equal basis with the others; ARTICLE 19, [Statement on General Comment No. 34](#) on Article 19 of the ICCPR on Freedom of Opinion and Expression upon completion of the first reading by the Human Rights Committee, January 2011.

<sup>14</sup> See, e.g., T. Degener, [The Definition of Disability in German and Foreign Discrimination Law](#), *Disability Studies Quarterly*, Spring 2006, Volume 26, No 2.

<sup>15</sup> [UN Enable : First 50 Years : Chapter II - What Is a Disability?](#), UN News Center.

<sup>16</sup> See [discussion in World Report on Disability](#), WHO 2011, p. 5.

<sup>17</sup> CRPD, op.cit., Preamble, para e).

<sup>18</sup> Ibid., Article 1 para 2.

<sup>19</sup> For example, the Supreme Court of Canada has stated that disability should not be confined within a narrow definition. In *Mercier* case, Justice L'Heureux-Dubé stated that disability manifests not only as a physical limitation, but also as a social construct that must be interpreted broadly: "[B]y placing the emphasis on human dignity, respect and the right to equality rather than a simple biomedical condition, this approach recognizes that the attitudes of society and its members often contribute to the idea or perception of a 'handicap'[the term used in the Quebec statute at issue]. In fact, a person may have no limitations in everyday activities other than those created by prejudice and stereotypes....Thus, a 'handicap' may be the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all of these factors;" see *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2000], para 76.

<sup>20</sup> See, e.g. [the American with Disabilities Act](#) (defines disability as "a) a physical or mental impairment that substantially limits one or more major life activities of such individual; b) a record of such an impairment; or c) being regarded as having such an impairment (as described in paragraph (3)) or the UK Disability Discrimination Act (defines a person with disabilities as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities).

<sup>21</sup> See, e.g. Disability Studies, Leeds, [Defining Impairment and Disability](#), Online resources.

<sup>22</sup> Ibid.

<sup>23</sup> See, [Cognitive disabilities Information](#), Disabilities World, online.



<sup>24</sup> See, e.g. Office of Disability Policy, Princeton, Guidelines for Documentation of Psychiatric Disabilities, 2012.

<sup>25</sup> C.f. CRPD, General Comment No. 2, op.cit.

<sup>26</sup> UN General Assembly, [Universal Declaration of Human Rights](#), 10 December 1948, 217 A (III). The UDHR, as a UN General Assembly resolution, is not directly binding on States; however, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948 See, for example, *Filartiga v. Pena-Irala*, 630 F 2d 876 (1980) (US Circuit Court of Appeals, 2<sup>nd</sup> Circuit).

<sup>27</sup> [International Covenant on Economic, Social and Cultural Rights](#), UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

<sup>28</sup> [ICCPR](#), UN General Assembly Resolution 2200A (XXI) of 16 December 1966, into force 3 January 1976.

<sup>29</sup> See, for example, [Declaration on the Rights of Mentally Retarded Persons](#), GA Res. 2856 (XXVI), 26 U.N. GAOR Supp. (No. 29) at 93, U.N. Doc. A/8429 (1971), [World Programme of Action Concerning Disabled Persons](#), A/RES/37/52, 3 December 1982 (a global strategy to “enhance disability prevention, rehabilitation and equalization of opportunities, which pertains to full participation of persons with disabilities in social life and national development); [Standard Rules on the Equalisation of Opportunities for Persons with Disabilities](#) (1993) (although not legally binding, they outline a strong moral push for states to take action to ensure disabled individuals are ensured equal opportunities); , .

<sup>30</sup> [Convention on the Rights of the Child](#), 1989; it refers to “mentally and physically disabled children” and outlines a range of obligations designed to ensure that they receive “special care” in relation to their “special needs.”

<sup>31</sup> [Optional Protocol](#) to the CRPD.

<sup>32</sup> Complaints procedure allows for individual complaints to be lodged with the Committee where there is an allegation that a state party has violated its obligations under the CRPD and where the complainant has exhausted all available domestic remedies.

<sup>33</sup> Inquiry procedure allows the Committee to initiate its own inquiries where there is information to suggest that a state party has engaged in grave or systematic violations of the CRPD.

<sup>34</sup> CRPD, Article 3.

<sup>35</sup> General Comment No. 2, op.cit.

<sup>36</sup> [Marrakesh Treaty](#), adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities in Marrakesh, on June 27, 2013.

<sup>37</sup> The African Charter on Human and Peoples, adopted 22 November 1969, in force 18 July 1978; Articles 18/4 and 16/1.

<sup>38</sup> [African Charter on the Rights and Welfare of the Child](#), CAB/LEG/24.9/49, 1999, Article 13.

<sup>39</sup> [American Convention on Human Rights](#), 22 November 1969

<sup>40</sup> [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights](#) (Protocol of San Salvador). Under Article 18, States Parties agree to undertake programs aimed at providing disabled persons with resources needed to attain the greatest possible development of their personality. States Parties also agree to provide special training to the families.

<sup>41</sup> [The European Convention on Human Rights](#), ETS 5, 4 November 1950.

<sup>42</sup> Revised [European Social Charter](#), CETS No.: 163, adopted on 1 May 1996, in force since 1 July 1999, it mentions protection of persons with disabilities in respect of the right to protection of health(Article 11), the right to social and medical assistance (article 13) and right to vocational training, rehabilitation and social resettlement (article 15)

<sup>43</sup> See, for example, [Recommendation on the Situation of the Mentally III](#) (EC Recommendation No. 818), Recommendation on Rehabilitation Policies for the Disabled (EC Recommendation No. 1185), [Recommendation on a Coherent Policy for the Rehabilitation of People with Disabilities](#) (EC Recommendation No. (92) 6), [Recommendation Towards full social inclusion of people with disabilities](#) Recommendation 1592 (2003), [Towards concerted efforts for treating and curing spinal cord injury](#) - Parliamentary Assembly Recommendation 1560 (2002), [Towards full citizenship of persons with disabilities through inclusive new technologies Resolution](#), ResAP(2001)3, [Resolution on a Charter on the Vocational Assessment of People with Disabilities](#) (AP (95) 3), The [Recommendation on a Coherent Policy for the Rehabilitation of People with Disabilities](#); European Parliament Resolution on Sign Languages (1998); Parliamentary Assembly Recommendation 1598 (2003) on the protection of sign languages in the member states of the Council of Europe and others.

<sup>44</sup> E.g. the Council of Ministers has adopted resolutions to combat discrimination against people with disabilities in different areas of life, such as education, employment and access to information technology (Resolution of the Council and the Ministers for Education meeting within the Council of 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education, Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council of 20 December 1996 on equality of opportunity for people with disabilities, Council Resolution of 17 June 1999 on equal employment opportunities for people with disabilities, Council resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, and Council Resolution on 6 February 2003 "eAccessibility" - improving the access of people with disabilities to the knowledge based society), and the European Parliament has adopted resolutions on the rights of persons with disabilities ([Resolution on the rights of Disabled People](#), and [Resolution on the human rights of disabled people](#)). The EU also has a Disability Strategy.

<sup>45</sup> UDHR, op.cit., Article 19 states: Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;"

<sup>46</sup> Article 19 of the ICCPR stipulates: 1. Everyone shall have the right to freedom of opinion.  
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.  
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:  
a. For respect of the rights or reputations of others;  
b. For the protection of national security or of public order (ordre public), or of public health or morals.

<sup>47</sup> For example, the UN Convention on the Rights of the Child; The European Convention on Human Rights (Article 10), the American Convention on Human Rights (Article 13) and the African Charter on Human and Peoples' (Article 19) Adopted 22 November 1969, in force 18 July 1978.

<sup>48</sup> General Comment No. 34, op.cit., para. 12.

<sup>49</sup> Ibid., para 15.

<sup>50</sup> Ibid., para 39.

<sup>51</sup> UN Human Rights Committee, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

<sup>52</sup> European Court of Human Rights, *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49.

<sup>53</sup> European Court of Human Rights, *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40.

<sup>54</sup> See, e.g. the [UN Convention Against Corruption](#), General Assembly resolution 58/4 of 31 October 2003, which recognizes that States should "[ensure] that the public has effective access to information," para 13.

<sup>55</sup> See Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/2000/63, 18 January 2000, para 42; or the 2004 [Joint Declaration on Access to Information](#) of three special mandates on freedom of expression at the UN, OSCE and OAS.

<sup>56</sup> ARTICLE 19, [The Public's Right to Know](#): Principles on Freedom of Information Legislation, London, June 1999. The UN Special Rapporteur on the Right to Freedom of Opinion and Expression endorsed these Principles in his 2000 report to the UN Human Rights Commission, who then referenced the Principles in its resolution on the right to freedom of expression.

<sup>57</sup> Maximum disclosure: Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; “information” includes all records held by a public body, regardless of the form in which it is stored.

<sup>58</sup> Obligation to publish: Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public.

<sup>59</sup> Promotion of open government: At a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information; the law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government.

<sup>60</sup> Limited scope of exceptions: A refusal to disclose information may not be based on the aim to protect governments from embarrassment or the exposure of wrongdoing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest

<sup>61</sup> Processes to facilitate access: All public bodies should be required to establish open, accessible internal systems for ensuring the public’s right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal(s).

<sup>62</sup> Costs: The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself.

<sup>63</sup> Open meetings: The law should establish a presumption that all meetings of governing bodies are open to the public.

<sup>64</sup> Precedence of disclosure: The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it

<sup>65</sup> Protection of whistle-blowers: Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing.

<sup>66</sup> This means that public bodies should also disseminate, proactively without waiting for a request, information of key public interest. This presupposes an obligation on governments and public bodies to create, compile or collect information in certain contexts. Public bodies should be aware of the aim of the principle and should fulfil this obligation through assessment of what kind of information is needed and in which format; the language used when collecting and compiling information should not be overly technical. Moreover, building a system of pro-active disclosure should be an exercise that involves civil society and civil servants, all trying to meaningfully provide information that can be read, reviewed and used by all individuals, including persons with disabilities.

<sup>67</sup> The Right to Know Principles, op.cit.

<sup>68</sup> For example, Bulgaria, the United Kingdom, Armenia, Estonia, Bosnia and Herzegovina, Macedonia, Georgia, Serbia, Sweden, Kyrgyzstan, Jamaica, Australia, USA or Israel; UNESCO, [Freedom of Information A Comparative Legal Survey](#), Second Edition, 2008.

<sup>69</sup> This section is based on ARTICLE 19’s Principles, op.cit..

<sup>70</sup> The list of the countries with the right to information legislation, as of September 2013, is available [here](#).

<sup>71</sup> This section is adapted from ARTICLE 19, Right to Information around the world, September 2016, available at <http://bit.ly/2djGtcu>.

<sup>72</sup> See [The Global Right to Information Index](#) which assesses the strengths and weaknesses of the legal framework based on several different categories and rates countries based on their performance under the set criteria.

<sup>73</sup> Kenya Society for Mentally Handicapped, [Right to Information](#). See also, WHO 2011 report, op.cit.

<sup>74</sup> Joint DPO submission on Australia: List of Issues Prior to Reporting, Country report task force, Human Rights Committee, 106<sup>th</sup> Session.

<sup>75</sup> C.f. Word Report on Disability, op.cit.

<sup>76</sup> See, e.g. the UK and information on [www.gov.uk](http://www.gov.uk). The 2012 amendment to the Freedom of Information Act requires public authorities to release data “in a standardised reusable format.” In August 2012, the Public Accounts Committee criticised bodies for putting raw data into the public domain and pretending this fulfils transparency requirements. See, for example, The Guardian, [Turning raw FOI data into usable information](#), May 2012; The Guardian, [Government criticised for dumping raw data to fulfil transparency promises](#), August 2012.

<sup>77</sup> WHO, The World Report on Disability, 2011, op.cit.

<sup>78</sup> [The Washington Group on Disability Statistics](#) was formed as a result of the UN International Seminar on Measurement of Disability in New York in June 2001.

<sup>79</sup> Cf. [European Charter for Media Literacy](#).

<sup>80</sup> For example, the World Disabilities report notes that such obligation exists in countries such as Ireland, Italy, Finland, Portugal, Thailand, Viet Nam, India, China, Japan, the Philippines, Colombia, Mexico or Australia

<sup>81</sup> For example, the survey of the World Federation of the Deaf, found that only 21 of 93 countries were found to provide captioning of current affairs programmes and the proportion of programmes with sign language was very low. See World Disability Report, op.cit.

<sup>82</sup> [Measuring progress of eAccessibility in Europe](#), Brussels, European Commission, 2007

<sup>83</sup> [Regional report of Asia 2005](#), Chicago, International Disability Rights Monitor, 2005; cited in World Disability Report.

<sup>84</sup> See, e.g. initiatives by the CNN, Washington Post, Huffington Post or the Guardian.

<sup>85</sup> Kennard and Lyle, With freedom comes responsibility: ensuring that the next generation of technologies is accessible, usable and affordable. The Journal of Communications Law and Policy, CommLaw Conspectus, 2001,10:5-22; cited in World Disabilities report.

<sup>86</sup> International Disability Alliance contribution to OHCHR Thematic Study on "The participation of persons with disabilities in political and public life", 2012.

<sup>87</sup> See, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HR/C/26/29, 14 April 2014.

<sup>88</sup> ARTICLE 19, The [Camden Principles on Freedom of Expression and Equality](#), London, 2009.

<sup>89</sup> ARTICLE 19, [Prohibiting incitement to discrimination, hostility or violence](#), 2012.

<sup>90</sup> For example, the Council of Europe Committee of Ministers has indicated that the term “hate speech” includes: “[A]ll forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of immigrant origin; see Committee of Ministers Recommendation, 30 October 1997. See also, the European Court of Human Rights, *Gündüz v. Turkey*, No. 35071/97 (2004), paras. 22 and 43

<sup>91</sup>These recommendations are largely derived from those contained in The Camden Principles, op.cit.