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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Rights of persons with disabilities****Report of the Special Rapporteur on the rights of persons with  
disabilities\****Summary*

In the present report, submitted to the Human Rights Council pursuant to Council resolution 44/10, the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, provides an overview of the activities undertaken in 2020, and describes his vision of the mandate during his tenure.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



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## I. Introduction

1. The Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, submits the present report to the Human Rights Council pursuant to Council resolution 44/10. It is the first prepared by the current mandate holder since he took up his functions in October 2020. It contains a description of the activities undertaken by his predecessor, Catalina Devandas Aguilar, between 1 January and 31 August 2020, and of his activities since October 2020. In the report, the Special Rapporteur outlines his vision for the mandate during his tenure.

## II. Activities of the Special Rapporteur

### A. Country visits

2. Owing to the coronavirus disease (COVID-19) pandemic, the two country visits that the former Special Rapporteur had planned to undertake in 2020, to Botswana and China, could not take place. The Special Rapporteur hopes to be able to conduct those visits in the course of 2021.

### B. Engagement with stakeholders

3. In March 2020, the former Special Rapporteur presented her report comprising an overview of the activities undertaken in 2019 and a thematic study on the impact of ableism in medical and scientific practice (A/HRC/43/41) to the Human Rights Council. In October 2020, the newly appointed Special Rapporteur presented the report of his predecessor on disability-inclusive international cooperation (A/75/186) to the General Assembly. Both reports are available in accessible formats.<sup>1</sup>

4. In 2020, the former Special Rapporteur continued to promote the strengthening of system-wide accessibility, inclusion and mainstreaming of the rights of persons with disabilities in the United Nations, including in regard to the implementation of the United Nations Disability Inclusion Strategy. Together with other United Nations entities and organizations of persons with disabilities, she developed guidance materials to address the rights of persons with disabilities in the context of COVID-19, contributed to the Secretary-General's policy brief on a disability-inclusive response to COVID-19,<sup>2</sup> and participated in numerous webinars and meetings on the issue.

5. The former Special Rapporteur participated in numerous conferences and meetings organized by United Nations entities, States, civil society organizations and other stakeholders. These included the following: the Human Rights Council annual interactive debate on the rights of persons with disabilities; a hearing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability of Australia on the subject of COVID-19; a panel discussion of the Human Rights Council on the rights of persons with disabilities in the context of climate change; the 2020 World Summit on the Information Society Forum on information communications technology and accessibility; and a meeting of the United Nations Human Settlements Programme on inclusive cities for persons with disabilities and older persons.

6. Following previous work on access to justice, the former Special Rapporteur convened an expert meeting in Geneva in early 2020 with the purpose of validating the International Principles and Guidelines on Access to Justice for Persons with Disabilities. The International Principles and Guidelines, which were launched by the former Special Rapporteur together with the Committee on the Rights of Persons with Disabilities and the

<sup>1</sup> See [www.ohchr.org/en/issues/disability/srdisabilities/pages/reports.aspx](http://www.ohchr.org/en/issues/disability/srdisabilities/pages/reports.aspx).

<sup>2</sup> See [www.ohchr.org/Documents/Issues/Disability/Letter\\_all\\_PM\\_CRPD\\_COVID19.pdf](http://www.ohchr.org/Documents/Issues/Disability/Letter_all_PM_CRPD_COVID19.pdf) and <https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-A-Disability-Inclusive-Response-to-COVID-19.pdf>.

Special Envoy of the Secretary-General on Disability and Accessibility, are available in all the official languages of the United Nations and in Easy Read format.<sup>3</sup> The former Special Rapporteur produced four short animations to raise awareness on the rights of persons with disabilities: on the right to participation, on legal capacity, on the sexual and reproductive health and rights of women and girls with disabilities, and on ableism.<sup>4</sup> She also commissioned an independent evaluation of the first six years of the mandate.<sup>5</sup>

7. Since he assumed the mandate, the current Special Rapporteur has held numerous meetings and bilateral consultations with organizations of persons with disabilities and other civil society organizations, States, regional organizations, academics, the United Nations system, donors and other actors. These activities included the following: a hearing of the Joint Committee on Disability Matters of Ireland; a meeting of the Geneva-based Group of Friends on the Convention on the Rights of Persons with Disabilities; the thirteenth session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities; the European Commission conference on the European Day of Persons with Disabilities; and several events related to COVID-19 and persons with disabilities. To mark the International Day of Persons with Disabilities, the Special Rapporteur issued a statement, jointly with the Chair of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the Secretary-General on Disability and Accessibility, on the role that persons with disabilities must play in the process of building back better beyond the COVID-19 pandemic.<sup>6</sup>

### C. Communications

8. Summaries of communications sent and replies received during the period covered by the present report are available in the communications reports of the special procedures (A/HRC/43/77 and Corr.1, A/HRC/44/59 and A/HRC/45/3) and in the public communications database of the Office of the United Nations High Commissioner for Human Rights (OHCHR).<sup>7</sup>

## III. Key elements of the Special Rapporteur's vision of the mandate

9. In this section, the Special Rapporteur sets out the key elements of his vision of the mandate during his tenure, including a theory of change, core values that will animate his work, and an understanding of his role and methods of work.

10. In accordance with the mandate, the core of the Special Rapporteur's work consists of three interrelated activities:

(a) Gathering, requesting, receiving and exchanging information and communications from and with States and other relevant sources, including persons with disabilities and their representative organizations and other civil society organizations, on violations of the rights of persons with disabilities;

(b) Submitting annual reports on the activities undertaken in fulfilling his mandate to the Human Rights Council and the General Assembly, including thematic studies on key issues related to the advancement of the rights of persons with disabilities, in accessible formats including Braille and Easy Read;

(c) Conducting country visits at the invitation of Governments, in order to study national legislation, policies, programmes and practices, regulatory frameworks and institutions, and provide guidance and recommendations to effectively advance the rights of

<sup>3</sup> See [www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/GoodPracticesEffectiveAccessJusticePersonsDisabilities.aspx](http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/GoodPracticesEffectiveAccessJusticePersonsDisabilities.aspx).

<sup>4</sup> Available at [www.ohchr.org/en/issues/disability/srdisabilities/pages/srdisabilitiesindex.aspx](http://www.ohchr.org/en/issues/disability/srdisabilities/pages/srdisabilitiesindex.aspx).

<sup>5</sup> See [www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/evaluation.aspx](http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/evaluation.aspx).

<sup>6</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26553&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26553&LangID=E).

<sup>7</sup> <https://spcommreports.ohchr.org/>.

persons with disabilities in accordance with the Convention on the Rights of Persons with Disabilities.

## **A. Theory of change: culture shift, law reform and systems change**

11. The adoption of the Convention was a watershed moment in international law. Anchored on personhood and equality, it fundamentally resets disability law and public policy for the twenty-first century. It embodies the culture shift to the human rights framing of disability and consigns the old paradigm of charity and welfare to history. It is an eloquent statement of the human rights frame in the specific context of disability. It promises to restore voice, choice and control to persons with disabilities who have been treated as objects of care for too long.

12. The Convention represents a profound cultural shift, and requires law and policy reform to give meaning to the rights of persons with disabilities. It often requires, and certainly implies, profound change in underlying systems and services in order to match policy shifts and to ensure that new thinking is not undermined by old systems. This ecosystem of change – cultural, legal and systems-based – lies at the heart of the shift to the human rights-based approach to disability and at the heart of the mission of the mandate holder.

13. Treaties, no matter how eloquently expressed, are not self-executing. The process by which they are internalized and operationalized is complex but vital. They must be made real in the “small places” where people live their lives. An authoritative understanding of the provisions and the obligations of the Convention, as provided by the Committee on the Rights of Persons with Disabilities, is indispensable in shaping law, policy and administrative arrangements. The ultimate goal is to embed the underlying values of the Convention as an automatic reflex in each of the contracting parties. This is a work in progress and is largely moving in the right direction.

14. However, times of crises often reveal deep truths. The COVID-19 pandemic has painfully shown that the old paradigm that existed prior to the adoption of the Convention, by which persons with disabilities are treated as if they are invisible or in ways that reinforce unequal power dynamics, is still alive. Invisibility can create inequality, and unequal treatment can itself lead to, or reinforce, invisibility. This is plain to see in the ways in which systems respond initially to crises like the COVID-19 pandemic. While the war of ideas has been won at least at an abstract level, the ideas have not yet been fully translated into the way in which systems naturally respond. This is crucially important as humankind faces many existential crises and will likely face more in the future. Humankind cannot respond to these crises by treating persons with disabilities as if they are invisible, as in the past. New ways will have to be found to enable the full expression of the voices of persons with disabilities. This applies to the legitimacy of such responses as well as their efficiency. Predictable problems may be identified and rectified if persons with disabilities are actively consulted and listened to.

15. Further, even if law and policy is reformed, old systems for administering disability-related services (such as traditional service paradigms or administrative arrangements) nearly always carry with them elements of the old way of thinking that, if left unchanged, can act as an undertow on otherwise positive change. Having the best law and policy is not enough: old systems and services have to change to match the aspirations and goals of law reform. Rights can be fully implemented when these traditional systems are also modified to reflect the ethic of voice, choice and control. Thankfully, humankind now has the Sustainable Development Goals, which, alongside the Convention, constitute a driver of systemic change. It is important to ensure that the chemistry that ought ideally to exist between the Goals and the Convention is maximized in the service of rights and systems change by and for persons with disabilities. In this regard, the OHCHR resource package on the Goals and the Convention, published in December 2020, is a tremendous asset that the Special Rapporteur will use extensively as his work unfolds.<sup>8</sup>

<sup>8</sup> See [www.ohchr.org/EN/Issues/Disability/Pages/SDG-CRPD-Resource.aspx](http://www.ohchr.org/EN/Issues/Disability/Pages/SDG-CRPD-Resource.aspx).

16. Clearly, the culture shift embodied by the Convention cannot be taken for granted. The challenge is to find ways to continually advocate that cultural shift. Additionally, it is clear that old systems such as service structures persist and will need to be fundamentally reset to give the culture shift a fair chance of success.

17. Continually articulating the importance of and the need for the culture shift represented by the Convention and pushing for logical changes to underlying systems of support is an ongoing process and a key task for the mandate holder.

## **B. Values of change: inclusive equality**

18. A key departure point for the Special Rapporteur's work will be the core concept of inclusive equality, put forward by the Committee on the Rights of Persons with Disabilities in its general comment No. 6 (2018) on equality and non-discrimination.

19. The Committee's understanding of equality is grounded on equal recognition as a person. Equality is not just about taking seriously the relativities of treatment between persons or different categories of persons: it is anchored on personhood and taking it seriously too.

20. Equality entails a positive and accommodating response to the difference of disability. Disability is not an excuse to exclude or segregate: it is an occasion to reflect on the value of human difference and to respect and accommodate it positively.

21. Equality, in the view of the Committee, entails a commitment to inclusion, belonging and participation. It logically requires a redesign of social support and services to make autonomy and participation a reality. This concept of equality is highly attuned to accumulated disadvantages, whether arising solely from disability or from the interaction of disability with other disadvantaged identities.

22. Further, inclusive equality entails rethinking distributive issues (the way in which social rights are delivered and the kinds of social systems that have evolved over decades that do not take account of the Convention) so that they truly underpin and not undermine personhood, inclusion and belonging.

23. The Special Rapporteur will be guided by this overall philosophy of inclusive equality in all of his work.

## **C. Process of change: a focus on the co-production of policy**

24. Voice is not just central to personhood. It is also vital to the way in which systems change and reform. The collective voices of persons with disabilities must be heard. In terms of substance, the Convention amplified and applied general human rights to reach the circumstances of persons with disabilities. It also innovated in terms of process.

25. Article 4 (3) of the Convention famously requires that the voices of persons with disabilities and their representative organizations be heard, that persons with disabilities should be closely consulted and actively involved in the development and implementation of legislation and policies to implement the Convention and in other decision-making processes concerning issues that affect them. Furthermore, article 33 (3) requires that civil society, in particular persons with disabilities and their representative organizations, be actively engaged in the process of monitoring the implementation of the Convention at the domestic level. Clearly, the Convention envisages a domestic institutional architecture of change involving power (Government), voice (civil society) and ideas (the checking value of national human rights institutions and the value added of innovative blueprints for change generated by dedicated research bodies working with civil society). At the heart of this new architecture for change is the voice of persons with disabilities.

26. This image of the co-production of public policy between States, organizations of persons with disabilities and independent institutions lies at the heart of the process-based innovations of the Convention. A key concern for the Special Rapporteur across all thematic and other work will be how, or whether, this process of co-producing change is working.

27. In carrying out his work in accordance with the mandate, the Special Rapporteur intends to develop a regular dialogue and to consult with the three above-mentioned categories of stakeholders, who are crucial for the implementation and monitoring of the Convention at national level, as called for in article 33 of the Convention.

28. With regard to States, the Special Rapporteur will support them in developing and strengthening their national efforts to advance the implementation of the rights of persons with disabilities and to translate the commitments of the Convention into national laws, policies, programmes and practices. This will be done, for instance, through the provision of advisory services, technical assistance, capacity-building, international cooperation and exchange of good practices on issues of interest or concern, as well as awareness-raising on the rights of persons with disabilities.

29. Similarly, the Special Rapporteur will actively involve persons with disabilities and their representative organizations, and other civil society organizations, in his endeavours to identify, exchange and promote good practices relating to the realization of the rights of persons with disabilities and their participation as equal members of society. He will do this by adopting a participatory, consultative and open approach in his work. He will also work in an inclusive manner, aiming to ensure that the needs and concerns of persons with all different kinds of impairment are taken into equal consideration and addressed. A key concern will be voices that are seldom heard, including those of persons with intellectual or psychosocial disabilities, autistic persons, deaf persons, deafblind persons and persons with disabilities from the global South, especially from local communities.

30. The Special Rapporteur will also work with national human rights institutions and other national independent monitoring bodies and mechanisms that may be designated under article 33 of the Convention to strengthen their frameworks, or advocate their creation where they have not yet been established. He will also encourage the development of new dedicated research bodies and institutes to forward the goals of the Convention and to advance new blueprints for change through innovative research conducted collaboratively with civil society.

#### **D. Intersectionality**

31. The Convention made an innovative stab at embracing intersectionality. This is reflected in preambular paragraphs (p), (q) and (s). Preambular paragraph (p) refers to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status. In preambular paragraph (q), States parties recognize that women and girls with disabilities are often at greater risk of violence, injury or abuse. In preambular paragraph (s), States parties emphasize the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities. This concept is matched by the provisions of articles 6, on women with disabilities, and 7, on children with disabilities.

32. The move towards embracing intersectionality is also profound in that it compels us to ask ever deeper questions about why these accumulated disadvantages arise in the first place and their underlying cause, whether their implications carry across identity boundaries and whether proposed solutions can be more generalized to have life-course and cross-boundary impacts. This process is fully in keeping with the Sustainable Development Goals and the commitment to leave no one behind. Of course, the move towards intersectionality aids the building of cross-identity reform agendas that are sustainable and stand a chance of being implemented given broad cross-community support.

33. The Special Rapporteur will integrate a gender perspective throughout his work under the mandate and will address multiple, intersectional and aggravated forms of discrimination faced by persons with disabilities, as well as the multiple layers of barriers that these intersections may create.

34. While acknowledging the importance of addressing discrimination on the basis of different grounds – including race, colour, sex, sexual orientation, gender identity, language,

religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status – the Special Rapporteur intends to continue the work commenced by his predecessor focusing on the rights of older persons with disabilities. In addition, he intends to explore other revealing aspects of intersectionality – for example, concerning the rights of indigenous persons with disabilities, as further explained in section IV B. of the present report – and key intersectional learning and impacts.

## **E. A collaborative approach with the United Nations system**

35. The Special Rapporteur will continue to work closely with the other special procedures and other human rights mechanisms of the Human Rights Council, the treaty bodies, in particular the Committee on the Rights of Persons with Disabilities, and the Special Envoy of the Secretary-General on Disability and Accessibility to enhance impact and avoid duplication.

36. The Special Rapporteur will reach out to cognate special procedure mandate holders to seek ways to enrich their thematic or country-specific work to reflect the disability dimensions. He will also collaborate actively with experts of the human rights treaty bodies where such common work advances the overall goal of justice and human rights for persons with disabilities. Such collaboration is certainly a logical entailment of a commitment to intersectionality, and will apply to all the thematic work that will be pursued by other United Nations human rights experts and to other work, including common positions and statements. Given that the Convention spans across almost all human rights, broad and ongoing discussions with other experts of the United Nations human rights machinery will be necessary.

37. The Special Rapporteur will also liaise closely with the United Nations system at large, including the Secretariat, agencies, funds, programmes, country teams and the United Nations Partnership to Promote the Rights of Persons with Disabilities, and welcomes the exchange of information and mutual sharing of findings and developments on aspects related to disability inclusion.

38. In this context, the Special Rapporteur pledges to continue the sterling efforts of his predecessor to ensure the successful implementation of the United Nations Disability Inclusion Strategy. As mandated by the Human Rights Council in its resolution 44/10, he will contribute closely in the implementation of the Strategy and other efforts for ensuring that the United Nations system is fit for purpose in relation to disability inclusion.

39. The Special Rapporteur recognizes the important advances made by the United Nations system in the first year of implementation of the Strategy, which in his view would have not been possible without the strong leadership shown by the Secretary-General and his senior leadership. The Special Rapporteur particularly welcomes the establishment of a dedicated team in the Executive Office of the Secretary-General, under the leadership of the Secretary-General's Senior Advisor on Policy, with technical expertise on disability inclusion. The technical team has been instrumental in coordinating and leading the development of guidance and the provision of technical support to all United Nations entities at Headquarters and in the field. Examples include the production of the Secretary-General's policy brief on a disability-inclusive response to COVID-19 and the development of the United Nations country team accountability scorecard on disability inclusion.

40. Through the strengthening of system-wide accessibility, inclusion and mainstreaming of the rights of persons with disabilities in the United Nations, the United Nations system can become a model of sorts for others throughout the world, and United Nations country teams can do their part to ensure that the abstract values of the Convention reach into their work, which has such a vital role to play in giving the Convention meaning for the people that they serve.

41. Under Human Rights Council resolution 44/10, the mandate of the Special Rapporteur embodies the value added of working towards sustainable development from a human rights-based perspective. Given the close chemistry between the Convention and the Sustainable Development Goals, the Special Rapporteur wishes to capitalize on both the human rights

and the development agendas in order to address the real challenges that persons with disabilities face in their everyday lives, especially in situations of extreme poverty and exclusion.

42. Episodic advances for rights is not enough. Systemic change also needs to happen to make the gains sustainable. However, systemic change without recourse to the underlying rights is also not enough. Both have to be made to work well together, and all projects of the Special Rapporteur will reflect this chemistry, especially in plotting a way forward. Given the commitment in the 2030 Agenda for Sustainable Development to leave no one behind, and given the rights enshrined in the Convention, the Special Rapporteur will work with both instruments to help animate the process of change.

43. Furthermore, in accordance with the mandate, the Special Rapporteur will continue to cooperate closely with the Conference of States Parties to the Convention and the Commission for Social Development by exchanging policy perspectives regularly and participating in their annual sessions upon request.

#### **IV. Thematic priorities**

44. Given the broad scope of the mandate, the Special Rapporteur intends to focus on three categories of thematic work that he considers priorities, and which build upon the work of the previous mandate holder. They will not necessarily be pursued in exact sequence, and will generally be pursued by reviewing literature, convening expert meetings of key stakeholders in the field, surveying the community, including specifically civil society, presenting specific thematic reports, conducting country visits and communicating with States.

45. A particular emphasis in pursuing this thematic work will be to ensure that the various thematic reports are designed to inform and cause regional or domestic reform debates about practical steps to advance culture shift towards the values and rights enshrined in the Convention, to advance law and policy reform and to ensure that systems change in order to enable the enjoyment of human rights by persons with disabilities. Each thematic project will be informed by a gender perspective, taking into account the accumulated disadvantages of women and girls with disabilities.

46. The first category of projects encompasses some of the key existential threats that face humanity including the following: the COVID-19 pandemic and the need for a resilient and inclusive recovery; climate change and the need for disability-inclusive planning; armed conflicts and associated peacebuilding processes and humanitarian settings; and extreme poverty and the need for innovative solutions. The projects point to the obvious need for enhanced multilateral responses and the overriding need to ensure that the voices of persons with disabilities are heard and taken seriously in the world's response.

47. The second category covers hidden or underanalysed intersectional factors. Key intersections with disability will include old age and indigenous origin. Again, the intent is to explore the systemic or common blockages and the way in which change can work sustainably across identities.

48. The third category focuses on particular rights or clusters of rights, issues, topics or institutional arrangements that have not, so far, received much attention and are nonetheless foundational. It is a necessarily open-ended agenda since issues will arise during the Special Rapporteur's tenure that will demand a response. In one project, the debate about deinstitutionalization and long-term care will be taken a stage further by examining innovation with respect to the design and delivery of services in the twenty-first century: the initial responses to the COVID-19 pandemic revealed the extent to which service paradigms are fragile everywhere in the world.

49. In a second project, a key enabler of new services will be studied: artificial intelligence. Artificial intelligence promises many breakthroughs in the lives of persons with disabilities as well as others, but may come with many risks. The balance of risks and opportunities needs to be explored to properly harness the new technologies to the underlying goals of the Convention.

50. In a third project, the potential of regional organizations and other regional groupings of States to advance the rights and goals of the Convention will be addressed. Regional efforts are important in moving forward the implementation of the Convention and need to be highlighted and advanced.

51. In a fourth project, the right to participate in the cultural life of society will be more specifically examined. This right is important as an aspect of self-expression, access to culture more generally and participation in the ecosystem of the production of culture.

52. Lastly under this category, in a fifth project, the rights of prisoners and detainees with disabilities will also be examined: though not an identity as such, this group faces many challenges throughout the world and a dedicated focus on their situation is warranted.

## **A. Key existential threats and disability**

53. The first category of thematic priorities that the Special Rapporteur will address has to do with the grand existential threats that face all of humanity, which underscore the urgency of multilateral action and the need for a strong disability voice. They include the themes that are set out below.

### **1. The COVID-19 emergency: building back better**

54. The COVID-19 emergency – or rather the various policy responses to it – has revealed that the old paradigm of treating persons with disabilities as if they are invisible continues to persist. Preventive and precautionary measures were relatively inaccessible to many persons with disabilities during the crisis. Service support was removed or proved fragile. There was an increase in isolation as well as critical shortages, including of food, nutrition, basic medications and mental health services. Virtual learning environments did not (and do not) suit all learners and also serve to expose the digital divide in every society. Families were left largely unsupported. Visitor restrictions were in many cases disproportionate. This situation arose despite the provisions of article 11 of the Convention dealing with emergencies, which requires States to ensure the safety of persons with disabilities in situations of risk, including humanitarian emergencies. It even led to an increase in the number of persons with disabilities facing homelessness. Triage guidelines on the rationing of scarce medical resources explicitly discriminated against persons with disabilities, despite the provisions of article 25 (f) of the Convention, under which States are explicitly required to prevent discriminatory denial of medical care or services to persons with disabilities. The placement of persons with disabilities in institutions heightened their risks many times over of contracting the virus. Such congregated settings should not exist since they are a form of unjustifiable segregation or discrimination and they cannot fulfil the promise under article 19 of the Convention of living independently and being included in the community. To this basic human rights concern is now added a public health concern.

55. There is widespread realization that the above should not happen again. There is an equal realization that any post-COVID-19 recovery programme should be both inclusive and resilient. “Build back better” should be more than just a slogan.

56. The purpose of this work package is to articulate what building back better actually means in the context of recovery programmes as they touch on persons with disabilities, including in the context of the Sustainable Development Goals. At issue are the following articles of the Convention: article 11 (situations of risk and humanitarian emergencies), on ensuring adequate preparations; article 4 (3), on ensuring that the voices of persons with disabilities are heard in the planning and implementation of emergency measures; article 5 (equality and non-discrimination), on ensuring equal treatment in emergency measures; article 19 (living independently and being included in the community), on avoiding the heightened risks that come with institutional settings; and article 25 (health), on ensuring equal access to and avoiding discriminatory rationing of health-care services.

## 2. Climate change: voice and inclusion

57. Climate change is exceptionally harmful to all of humanity. Alongside its impact on biodiversity, there is increasing recognition that its impact on humankind can be felt more intensely by groups affected by poverty and discrimination.

58. The Intergovernmental Panel on Climate Change foresees that the poorest people will continue to experience the worst effects of climate change through lost income and livelihood opportunities, displacement, hunger and adverse impacts on their health. Multiple and intersectional factors of discrimination related to gender, age, displacement, indigenous origin or minority status can further heighten the risks of persons with disabilities experiencing the negative impacts of climate change.

59. Even if, through global agreements for action, some impacts can be neutralized or even reversed, there are likely to be many negative impacts. These impacts will alter the climate of coastal areas, increasing displacement of people from their communities. Land that is currently habitable and arable may cease to be either. Whole human communities – and their health and well-being, sense of dignity and security and livelihoods – will be affected.

60. Minimizing the change and adapting as our ecosystem changes will be key to humans flourishing in the future. The 2030 Agenda and the Sustainable Development Goals underscore the circular nature of the relationship between the economy, society and climate. The Paris Agreement and Sendai Framework for Disaster Risk Reduction 2015–2030 champion adaptation and mitigation as key to facing the long-term challenges climate change brings.

61. While the Sustainable Development Goals and Sendai Framework include processes to ensure the engagement of persons with disabilities and their representative organizations as they develop, such engagement is still lacking in the case of the United Nations Framework Convention on Climate Change, within its multilateral processes and at national level. States have yet to find a way to operationalize article 4 (3) of the Convention on the Rights of Persons with Disabilities in the context of climate action.

62. Climate adaptation measures have for the most part overlooked engagement with persons with disabilities and their representative organizations. Many of the risks caused by climate are predictable, and avoidable, if persons with disabilities and their representative organizations can become part of the solution that States are building through their climate mitigation and adaptation measures.

63. Many opportunities will likely arise to build much more climate-friendly and inclusive environments, such as inclusive and accessible mass transit, buildings and homes. Again, the success of such measures depends on consistent engagement of persons with disabilities and their representative organizations as innovative solutions are rolled out.

64. The purpose of this work package is to itemize the dangers and risks of a non-inclusive approach to climate change adaptation for persons with disabilities, to suggest ways in which the voice and the engagement of persons with disabilities and their representative organizations can be successfully factored in, and to suggest what a successful and inclusive adaptive approach can look like. At issue are the following articles of the Convention: article 11 (situations of risk and humanitarian emergencies), unquestionably including natural disasters such as climate change; article 4 (3), on ensuring that the voices of persons with disabilities are heard in adaptation planning; article 28 (adequate standard of living and social protection), on adjusting social protection to cushion the inevitable impacts; and article 27 (employment), on planning for an inclusive labour market and minimizing loss.

## 3. Armed conflicts and peacebuilding: better protection, more visibility

65. The world has seen a resurgence of armed conflicts in the past decades. Article 11 of the Convention, on situations of risk and humanitarian emergencies, requires States parties to take all necessary measures to ensure the protection of persons with disabilities in situations of risk, including situations of armed conflict. It refers to existing obligations that arise, inter alia, under international humanitarian law. It thus places a premium on the current status of persons with disabilities under the laws of war.

66. Many challenges arise in this context. Persons with disabilities are indeed visible in international humanitarian law – but more as medical objects than as subjects bearing human rights. The net result is that this body of laws does not do an optimal job of protecting civilians with disabilities during armed conflicts. Several questions therefore arise: how can international humanitarian law be interpreted creatively to accommodate a different way of viewing persons with disabilities, as subjects of rights rather than as objects of care? How can the existing rules and protections governing the conduct of hostilities be nuanced to reflect this perspective and hence do a better job of protecting civilians with disabilities?

67. The historic adoption by the Security Council of its resolution 2475 (2019), on the protection of persons with disabilities in armed conflict, has created a new space to reflect more deeply on international humanitarian law and broad protection issues. The momentum must now be maintained in order to work through the exact entailments of that resolution in the context of international humanitarian law.

68. Further, the resolution breaks new ground by highlighting the positive role of persons with disabilities in post-conflict processes of reconciliation, reconstruction and peacebuilding. It thus places a spotlight on a previously underappreciated role played by persons with disabilities in peacebuilding processes.

69. The purpose of this work package is to continue the conversation about the exact entailments of article 11 of the Convention in the context of armed conflict: what can be positively transferred from the Convention to ensure greater sensitivity to the protection and other needs and rights of civilians with disabilities caught up in war zones? What role have persons with disabilities played so far in peacebuilding processes and with what impact, and how can this role be better facilitated in the future to ensure more inclusive and resilient peacebuilding? At issue is not just article 11 of the Convention, but also article 4 (3), on ensuring that the voices of persons with disabilities are heard when it comes to the broad question of protection both during armed conflict and in the ensuing peace processes.

#### **4. Extreme poverty and disability: towards new policy options**

70. In preambular paragraph (t) of the Convention. States parties highlight the fact that the majority of persons with disabilities live in conditions of poverty. Extreme poverty is an endemic feature of disability worldwide. Both at the individual and the household levels, persons with disabilities are disproportionately poor.

71. This poverty is multidimensional in nature and is compounded across the lifespan. Intersectional factors such as gender, ethnic or minority origin, rural and peri-urban residence and old age lead to further, disproportionate poverty among persons with disabilities. These factors often function in a negative feedback loop: children and adolescents with disabilities are denied education or face limited educational and skills training opportunities; adults with disabilities, lacking marketable education and skills, face disproportionately high rates of unemployment and underemployment, all the more so in difficult economic times.

72. Millions of persons with disabilities are self-employed yet struggle to get equal access to microcredit and other economic development opportunities. Benefits and entitlements available for certain persons with disabilities are often limited, difficult to obtain and restrictive in the options that they provide. Persons with disabilities are often denied the right to equal inheritance within families and communities. Moreover, persons with disabilities are often denied the right to make their own decisions about how the income or benefits that they earn will be spent.

73. This poverty too often results in unequal access to resources, including health care, safe housing, clean water and adequate nutrition, accessible transport and a range of other socioeconomic variables that have a significant impact on the daily lives and long-term survival of persons with disabilities.

74. Poverty among persons with disabilities must be conceptualized beyond the individual directly concerned. An emerging body of research clearly shows that there are additional extra costs to households with members with disabilities. Persons with disabilities often not only face issues of poverty themselves, but also are responsible for others, including children, spouses and parents. The poverty that affects them also can result, therefore, in issues of both

immediate and multigenerational poverty. More specifically, the ripple effect of poverty in the context of disability also affects many family members who provide informal and unpaid care, especially women, who often find themselves without pension entitlements in old age. It is notable how many social systems in both low- and high-income countries depend on families, usually on women, as a default. The result is that women often end up being the tangible victims of this intersectional impact. This feminization of poverty is an almost automatic effect of traditional policy approaches to disability and needs to be addressed and tackled.

75. It appears that for persons with disabilities, escaping poverty, particularly intergenerational poverty, –is especially difficult. Employment, which constitutes the normal route for generating the means necessary for a good life, is exceptionally difficult for many persons with disabilities across the world. Relative economic inactivity, in-work poverty and precarious employment mean reduced or no pension entitlement, which complicates life later on in old age. Even if the employment market were more inclusive, persons with disabilities might lack marketable skills owing to underinclusive educational systems.

76. Social protection programmes are hardly ever sufficient and many poverty alleviation measures seem to carry with them perverse poverty traps. Very few social protection systems take adequate account of the extra costs of disability, costs that are often incurred because of other policy failings, such as the need for taxis in lieu of accessible public transport. Age-based benefits fail to keep track of the life course and these failings at key inflection points can be extremely damaging. Cash or in-kind benefits often taper rapidly away as persons earn an income, badly affecting persons with disabilities who may then find that their new earnings are not sufficient to cover the ongoing costs of disability. Anti-poverty international development assistance programmes are often based on assumed need instead of on the voice of persons with disabilities.

77. The Sustainable Development Goals now offer space for new imagination of policy that ties economic development alongside social development and takes a broader view of social protection to empower persons with disabilities. This approach perhaps points to a different slant on development assistance, focusing on establishing a sustainable basis for economic and social development that stands a chance of lifting persons with disabilities and their families from extreme poverty.

78. The purpose of this work package is to fundamentally rethink traditional approaches to alleviating extreme poverty in the context of disability and the Sustainable Development Goals, and build upon the work undertaken by the Special Rapporteur's predecessor in the areas of social protection (A/70/297), disability-inclusive policies (A/71/314) and related rights. At issue are article 24 (education), article 27 (work and employment), article 28 (adequate standard of living and social protection) and preambular paragraph (t) of the Convention.

## **B. Key intersectional learning and impacts**

79. The second group of thematic priorities that the Special Rapporteur will address concerns hidden intersectionality. The aim is not merely to determine the way in which groups relate to one another, but also to reveal underlying systemic or common experiences and the roots of discrimination. Also of interest is the common challenge of imagining solutions that cut across intersectional divides and hence stand a better chance of sustainability.

### **1. Older persons with disabilities: continuing the conversation**

80. The move towards the human rights approach with respect to older persons is well under way. Many older persons are persons with disabilities, and to that extent, the Convention applies. Many other older persons do not have disabilities.

81. The underlying problematics of ableism and ageism share many commonalities, however. The groups affected by both have remained relatively invisible until recently. The drafting of the Convention holds many lessons for the evolution of the rights-based approach

to age and perhaps for the eventual drafting of a treaty on the rights of older persons. The emphasis on personhood in the Convention – in terms of autonomy, decision-making and independent living – and its focus on inclusive equality seem especially apt in the context of age.

82. The dialogue between the disability and age advocacy groups is ongoing. A great deal of common understanding is emerging. Of especial and foundational interest are considerations of autonomy and legal capacity spanning both groups, and the future of long-term care for older persons.

83. The purpose of this work package is to continue the conversations previously begun during the former mandate holder's tenure, to work towards common understanding, to clarify commonalities and to work towards sustainable life-course policy solutions. At issue are the following articles of the Convention: article 5 (equality and non-discrimination), combined with preambular paragraph (p) as regards multiple discrimination on the basis of age and disability; article 4 (3), on ensuring that the voices of persons with disabilities are heard and that they are closely consulted; article 12 (equal recognition before the law); and article 19 (living independently and being included in the community).

## **2. Indigenous peoples with disabilities: taking cultural diversity seriously**

84. The Convention is notable for its explicit provisions on intersectionality, and on women and girls with disabilities and children with disabilities (articles 6 and 7). Its preambular paragraph (p) lists further intersectional factors, explicitly including indigenous origin. The fact that there is no explicit provision in the Convention on indigenous persons with disabilities is no bar to considering them, their status and their rights. Indeed, articles 21 and 22 of the United Nations Declaration on the Rights of Indigenous Peoples refer specifically to the rights of persons with disabilities.

85. Indigenous peoples, including those with disabilities, often live in highly disadvantaged and marginalized circumstances and, especially in coastal regions, tend to be particularly exposed to the risks of climate change. The cultural identity of indigenous peoples is an important part of who they are and how they live. It is a truism that the Convention must be implemented in a culturally sensitive way, balancing respect for the rights of persons with disabilities with respect for the cultural sensitivities of indigenous peoples and with the overall need to advance the material development of the living conditions of indigenous peoples, as specifically called for under article 21 of the Declaration.

86. The purpose of this work package is to develop a deeper understanding of the situation of indigenous peoples with disabilities, to understand and appreciate the cultural prism through which the Convention must be applied, and to develop approaches that are both effective and culturally sensitive. At issue is article 5 (equality and non-discrimination), combined with preambular paragraph (p), of the Convention. This work package will entail examination of the multiple and compounding forms of disadvantage, discrimination and abuse on the basis of indigenous origin and disability. The examination will cover the consequences of intergenerational trauma due to out-of-home care, school dropout rate, homelessness, poverty or earlier and more frequent contact with the criminal justice system, in which indigenous origin and disability have been a factor.

87. In carrying out this work, the Special Rapporteur intends to cooperate closely with the relevant United Nations bodies and mechanisms that focus on issues affecting indigenous peoples, including the Special Rapporteur on the rights of indigenous peoples, the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues.

## **C. Focus on specific issues, groups and institutions**

88. The third group of thematic priorities that the Special Rapporteur will address concerns specific rights, issues or groups and other institutional issues that have not, so far, received much attention. Those priorities include, but are not limited to, those set out below.

## 1. Reimagining and building more responsive and resilient service paradigms

89. As previously mentioned, good laws and policies will eventually be undercut if old service systems based largely on a medical model of disability persist. Even in parts of the world with advanced disability rights legislation, there still tends to be a reliance on old models of service, which only sends mixed messages about disability.

90. In any event, the COVID-19 pandemic has vividly demonstrated that old service models were too fragile and lacked critical continuity during times of crisis. Change in the service ecosystem is inevitable and can be incredibly positive in advancing the overall goals of autonomy and inclusion enshrined in the Convention.

91. It is therefore right that active consideration should now be given to switching away from an old-service, medical model of proven need, and delivered via bureaucratic systems, towards a rights-based model based on inclusion.

92. At the foundation of any new model must be responsiveness to the wishes and preferences of the person. The time is right: there is a growing trend around the world towards the personalization of services, and indeed the devolution of budgets to the person so that they remain in control, with support where needed. There is also a growing trend of traditional service providers, variously commissioned by arms of the State through block grants, being supplanted by electronic platforms that allow the user to shop around and select for themselves that which makes most sense for their own circumstances and life choices. This welcome trend, away from coercive measures in the mental health field, also calls for new kinds of community-based services, which may be particularly impactful during moments of crisis.

93. This situation proves especially relevant in low-income countries that might be about to start imagining and creating a new service structure. They do not have to repeat the mistakes of high-income countries that are now trying hard to make their systems more nimble and responsive.

94. New service paradigms bring many risks. What standards should be used to assess whether new services are consistent with the Convention? How can standards be maintained during transition and under any new arrangements? How, in the move towards new service paradigms, can precarious employment contracts and arrangements be avoided? How can casualization of the workforce be avoided? If no services are currently in place, how can they be built up over time?

95. The purpose of this work package is to scope out a completely new service paradigm that is more in keeping with the letter and spirit of the Convention. Among other benefits, this work might also afford an opportunity to reflect more deeply on the feminization of poverty and the impact of informal caring arrangements as a policy default that affects women and families more generally. At issue is article 19 (living independently and being included in the community) of the Convention.

## 2. Harnessing artificial intelligence positively

96. Machine learning and decision-making are advancing apace. The use of algorithms, machine learning, artificial intelligence and automated decision-making is growing fast in every aspect of life. The lives of all will be affected and are to some extent even now. Humankind is – or is becoming – the sum total of what it consumes and the electronic trail that it leaves in its wake. Much of this progress is highly positive: for example, electronic platforms that emerge in the future to manage and arrange personal assistance services will doubtless draw on artificial intelligence.

97. Artificial intelligence works on the basis of making predictions by matching data input with a training set of data. The training set is sometimes skewed, and it follows that the output can be skewed. This implicit bias can lead to a highly reductionist view of human identity and might even, in the wrong hands, be used to shape human identity. Alternatively, owing to inaccessibility and information blind spots, a very partial view of human identity could emerge that further shapes (or distorts) the flow of information and decision trails. It could end up reinforcing concentric circles of exclusion. Moreover, the long-standing digital divide means that not everyone will benefit from the advent of artificial intelligence.

98. A number of problems arise for persons with disabilities and deserve further scrutiny. First, in the employment context, artificial intelligence and machine learning might have the effect of further disadvantaging persons with disabilities. Businesses across the world are using artificial intelligence systems to trawl the Internet for curricula vitae to match job descriptions. The curricula vitae are then used to generate a shortlist. There may be many reasons why the curriculum vitae of a person with disabilities does not exactly fit the artificial intelligence system's predictions or preferences. The system may therefore exclude candidates on the basis of their disability, and the candidates may simply never know that the reason why they were not shortlisted for interviews was because of their disability. While this issue is going to be very significant for all, persons with disabilities will be particularly affected.

99. Second, since artificial intelligence and machine learning work by considering a data set, a person's characteristics must be capable of being reduced to data input. Impairments are so numerous in kind that it is not possible to do so without asking all the necessary questions that will provide relevant answers to fit the definitions of disability. Some systems can and do segment data by function (such as visually impaired, reduced mobility and so on), which, while potentially useful, does not typically imply or lead to the next set of logical questions about the nature or degree of reasonable accommodation that may be appropriate.

100. Third, there is a lot of evidence that people and firms that use artificial intelligence and machine learning systems treat the outcomes as being definitive even though in theory they are solely advisory, in a phenomenon known as automation bias. Serious adverse impacts on persons with disabilities can result, since the space for assumptions and bias seem too wide at present. Lastly, specific technologies do not deal with disability permutations, as is the case, for example, with biometric analysis by facial recognition or emotional analysis.

101. The purpose of this work package is to think through the long-term implications of advances in artificial intelligence for persons with disabilities, to propose ways of harnessing the new technology to be of benefit to persons with disabilities, and to identify risks and propose ways of avoiding those risks. At issue are the following articles of the Convention: article 5 (equality and non-discrimination); article 22 (respect for privacy); article 27 (work and employment), on using artificial intelligence in hiring; article 28 (adequate standard of living and social protection), on potentially using artificial intelligence to determine social entitlements and packages; and article 4 (1) (g), on promoting the availability and use of new technologies.

### **3. The role of regional organizations and arrangements among States**

102. The Convention was unique in creating space for regional integration organizations to adhere to the treaty, as provided for in its article 44. A key requirement is that some competence be transferred to the regional organization by its member States. The European Union clearly qualifies and has indeed adhered to the Convention, with the effect of generating a great deal of activity within its sphere of competence and animating how it otherwise supports its member States in their own spheres of competence to respect the Convention.

103. That other regional organizations do not technically qualify to adhere to the Convention under article 44 does not mean that they do not have a role to play and are not in fact playing that role. Many do play a significant role, including the Organization of American States, the African Union, the Association of Southeast Asian Nations and the Council of Europe. Looser alignments of States also contribute to the process of implementation, including the Commonwealth and similar groupings. Indeed, much of this work is aided or guided by the various United Nations regional commissions.

104. The time is right to take stock of these regional arrangements and their considerable value added to the process of implementation in their own regions. Some have adopted regional strategies. Some have adopted more specific policies to guide their member States. Some have judicial organs that have issued major judgments affecting the field, which variously take account of the Convention. Some have dedicated administrative units that take charge of the regional agenda and help shape it. All engage constructively in varying degrees with civil society.

105. The purpose of this work package is to explore how regional arrangements are currently performing in adding value to the efforts of their respective member States. Obviously, these organizations vary in terms of the level and degree of their own legal competence to act, but all of them can act to help or support their member States. The work package will involve exploration of the critical success factors that enable regional organizations and groupings to add real value. Due account will be taken of local circumstances, including culture, resources and constraints. At the same time, the work package should include exploration of how such regional arrangements are giving effect to the Convention, within their own spheres of competence, to ensure effective implementation of global standards in regional settings. At issue are the following articles of the Convention: article 44 (regional integration organizations); and article 32 (1) (international cooperation), as regards the role of regional organizations.

#### **4. Cultural rights and democratic renewal**

106. Article 30 of the Convention provides, *inter alia*, for the right to participate in cultural life. This article is of obvious interest to individuals in terms of their right to individual cultural expression (overlapping with article 21, on freedom of expression and opinion, and access to information). It is directly concerned with personhood and the self-realization of each individual, and applies to the right of access to general culture, which is the common heritage of humankind (overlapping with article 9, on accessibility).

107. That common heritage is important as it is constitutive of humankind's identity. It concerns the intangible and mystic cords of memory that connect humankind. Access to and a right to participate in the construction of this common heritage is vital, and the various roles involved in making this cultural heritage – as artist, technician or director, for example – ought to be as open to persons with disabilities as to others. Culture also concerns the possibilities of imagination and reimagining in the life of the polity and is an indispensable aid in the process of democratization (overlapping with article 29 of the Convention, on participation in political and public life).

108. The purpose of this work package is to explore the various dimensions of the right to culture that directly or indirectly affect persons with disabilities. It will start from the premise that persons with disabilities are active agents in the production and consumption of culture. It will involve a review of culture policies around the world in order to identify promising practices. At issue are article 21 (freedom of expression and opinion, and access to information), article 30 (participation in cultural life, recreation, leisure and sport) and article 27 (work and employment) of the Convention.

#### **5. Prisoners and detainees with disabilities**

109. Prisoners and detainees lose their liberty and closely associated rights for determinate periods. Criminal trials tend to focus on an event and culpability for an event. They rarely open up an examination of accumulated disadvantages over time prior to an event. The emphasis appears to be on punishment rather than rehabilitation.

110. Many complex issues arise in this context. For example, given that persons with disabilities are overrepresented in detention population, what are their living and other conditions? What adjustments and reasonable accommodation are due to persons with disabilities in correctional and other detention facilities?

111. Of particular concern are the mental health issues that affect many prisoners, the mental health impacts of detention and long-term mental health issues of post-prison life. To some extent, those concerns relate to the minimum standards of detention to avoid inhumane or degrading treatment. Similarly, they relate to some extent to the accessibility rights and reasonable accommodation due to persons with disabilities in institutional settings. They also give rise to questions about diversion programmes that can facilitate the lives of prisoners and detainees with disabilities and enable them to integrate back into their communities.

112. The purpose of this work package is to identify and unpack the many issues that affect prisoners and detainees with disabilities around the world, to identify promising practices, to suggest ways of eliminating inhuman and degrading treatment and to point to alternatives that respect the rights of prisoners with disabilities. At issue are article 14 (liberty and security

of the person), article 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment), article 16 (freedom from exploitation, violence and abuse), article 17 (protecting the integrity of the person) and article 26 (habilitation and rehabilitation) of the Convention.

## V. Conclusion

113. **In accordance with his mandate, pursuant to Human Rights Council resolution 44/10, the Special Rapporteur intends to carry out his work in a comprehensive, inclusive and collaborative manner. He will be working closely with States, the United Nations system, academia, persons with disabilities and their representative organizations, and other actors towards specific outcomes to better the lives of persons with disabilities across the world. In order to ensure the effective implementation of the mandate and in a spirit of collaboration, the Special Rapporteur calls for support for his endeavours with a view to ensuring that his work will bring about real change in the lives of persons with disabilities and the realization of their human rights without discrimination and on an equal basis with others.**

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