

**The rights of children with disabilities:
An analysis of the doctrine and work of CRC and CRPD**

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This study is composed of five parts. The first part, introductory, presents the purpose of the study. The second part considers three preliminary or contextual issues that should be taken into account throughout the whole study. In the third part, the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) are analysed together with the doctrine of their respective treaty bodies: the CRC Committee and the CRPD Committee. The aim is detecting whether there are similar or divergent conceptual positions between them with regard to the rights of children with disabilities. The fourth part focuses on the working methods of both Committees and the consideration of children with disabilities in them. Finally, in the fifth part different reflections and recommendations are drawn with some proposals. In contrast with the other parts in which the consultant tries to exclusively show the state of the matter, in this last part the expressed opinions are the exclusive responsibility of the consultant and are a means to try to help the treaty bodies to reach agreements in light of the conclusions drawn from the study.

I. Introduction

The CRC and the CRPD have complementary approaches.

The main purpose of the CRC, firstly, is to recognise all the civil, political, economic, social and cultural rights of all children, taking into account the specific situation of children in societies; and, secondly, to establish specific obligations to protect children from possible violations of rights, particularly from those violations to which they are especially vulnerable (violence, abduction, sale or trafficking, economic exploitation, sexual abuse, etc.).

The CRC has a non-discrimination approach as well. Thus, it includes non-discrimination as a general principle in art. 2 of the CRC, and it seeks to eliminate the traditional discrimination of children stemming from not being considered subjects of full legal rights as well. Both perspectives complement each other. The first one refers to discrimination between children for any characteristic they, their parents or their legal guardians have; the second, refers to the prohibition of any discrimination that could occur between children and adults.

Regarding the CRPD, it is a treaty that recognises persons with disabilities as rights holders and all the rights of persons with disabilities, considering their specific situation in societies. It also includes the prohibition of any discrimination that, for any reason, could exist, directly or indirectly, towards them. Its main purpose is to eradicate discrimination in the exercise of rights by children and adults with disabilities, that is, to eliminate the barriers that prevent persons with disabilities from exercising their rights on an equal basis with others. In relation to children with disabilities, the purpose of the CRPD is also to establish specific obligations to protect them from possible violations of rights, particularly from those violations to which they are especially vulnerable (institutionalization, social exclusion, segregated education, violence, sexual abuse, etc.)

In this sense, regarding children with disabilities, both Conventions overlap and complement each other. The CRC recognises the rights of all children equally,

specifically addressing their situation as children in society; and the CRPD adds the focus of the specific situation of children with disabilities.

In accordance with that perspective, we have to consider that a child with a disability is, first and foremost, a human being; as a human being under the age of eighteen, we consider him/her a child; and only because the child falls under the group which “includes persons with 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”¹, we consider him/her a child with a disability as well. Consequently, although the CRC includes a specific article devoted to children with disabilities (article 23), all the rights, guarantees and protection mechanisms it establishes are applicable to children with disabilities and must be understood as part of a human rights model.

Therefore, the rights guaranteed by the CRC shall be read together with the rights enshrined by the CRPD. Thus, although the CRPD also has a specific article –article 7– devoted to children with disabilities, the entire Convention, as a treaty of human rights applying to all persons with disabilities, is relevant when considering the rights of children with disabilities.

From this perspective, both treaty bodies responsible for each of these conventions, the CRC Committee and the CRPD Committee, have the responsibility to ensure the respect, protection and guarantee of the rights of children with disabilities and for that they must: in the first place, keep a common doctrine when interpreting the specification of rights in relation to the situation of all children; and, furthermore, keep a common doctrine with regard to the elimination of specific barriers faced by children with disability to exercise their rights on an equal basis with other children.

Articles 41 of the CRC and 4.4 of the CRPD are especially relevant on that matter, with a similar content according to which “nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of [children with disabilities] and which may be contained in the law of a State Party or international law in force for that State”. Hence, both treaty bodies –especially the 178 States that have ratified both Conventions²– shall seek the highest standard of protection and invoke the most beneficial provisions contained in either treaty.

Furthermore, both Committees, in their activity, must respect and guarantee the rights of children with disabilities, always taking into consideration the set of children's rights within the model of human rights. That implies, for example, that in their working methods, both Committees should foresee procedures that guarantee the participation of children with disabilities.

1 Article 1 CRPD.

2 Of the 196 States Parties to the CRC, in May 2019 there are 18 that have not ratified the CRPD (Bhutan, Botswana, Cameroon, Equatorial Guinea, Eritrea, Holy See, Lebanon, Liechtenstein, Niue, Salomon Island, Somalia, South Sudan, St. Kitts and Nevis, St. Lucia, Tajikistan, Timor-Leste, Tonga, and Uzbekistan). Of the 179 Parties that have ratified the CRPD there is 1 that has not ratified the CRC (European Union).

Thus, the purpose of this document is to analyse the practices of both Committees, with the main aim of highlighting their strengths and weaknesses related to the duty to act respecting and guaranteeing the rights of children with disabilities.

II. Preliminary/contextual issues

There are three preliminary issues of special relevance in relation to this study: a) the evolution over time of the terminology and concepts about children with disabilities used in the work of both Committees; b) the translations of such terminology; and c) the gender perspective in the framework of the rights of children with disabilities.

a) The evolution over time of terminology and concepts about children with disabilities

The effect of time is felt in the work of both Committees. To begin with, the two Conventions respond to two different moments. The CRC is from 1989 and the CRPD from 2006. The terms used and even the concepts about children with disabilities in both Conventions have inevitable differences, since they are in accordance with the concepts of disability of each period.

The CRC contains both a terminology (“mentally or physically disabled child”) and a wording that hint at a medical concept of disability (typical of the era in which it was written). On the other hand, the human rights model of disability, underpinned by the CRPD, challenges the so-called “medical model of disability”. From the medical model perspective, it is believed that the person has a problem and the ultimate aim is to cure or ‘fix’ the person. Under the human rights model of disability, the problem is the social barriers preventing people with disabilities from participating in society on an equal basis with others. The human rights model of disability recognises that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction of human rights³.

However, as time has passed, the Committee on the Rights of the Child has been incorporating both the terms and the social or human rights concept of disability. Proof of this, among many other examples, is the repeated request to the States parties to “promote a human rights-based approach to disability”⁴; or, as a main reflection of the evolution, the consideration of inclusive education that has been developing, in the General Observations and in the Concluding Observations to the States, from recommendations of it “whenever possible”⁵, to recommendations of it “with priority over

³ About the various models of disability, including medical, social and human rights, see CRPD GC No. 6 on equality and non-discrimination. In particular, about the human rights model of disability and inclusive equality, see: CRPD/C/GC/6, par. 8-11

⁴ There are many Concluding Observations in which we can find this observation. See, among the most recent ones, Ivory Coast session No. 81 (CRC/C/CIV/CO/2, par. 44).

⁵ The clearest example of this perspective is the General Comment No. 9 on The Rights of Children with Disabilities, which in paragraphs 66 and 67 translates a medical vision of disability in which the child has the limits to access inclusive education and, therefore, meaning various possibilities of “inclusion”. This

segregated education"⁶, to finally affirming that the State must guarantee inclusive education in all cases to all children⁷.

This evolution in the terms used is also observed in the work of the Committee on the Rights of Persons with Disabilities. Thus, for example, the CRPD Committee has considered, in the light of the evolution of concepts, and in accordance with the claims of organisations of persons with disabilities (in the sense of GC No. 7 of the CRPD Committees), that the terms "mental impairment" or "mental disabilities" are stigmatising and they must be replaced with "psychosocial impairment" or "psychosocial disabilities". In line with this evolution, the CRC Committee has also been abandoning, in recent years, the terminology of "children with mental disability" and generally uses (with some exceptions though) the term "children with psycho-social disability".

All of that shows us that concepts of human rights are evolving over time in accordance with the consensus reached by States regarding their content and the progress of the culture of human rights.

A first consequence of this evolution is that in order to understand the meaning of each Committee's work, it is necessary to place them in their temporal context; so that the possible comparison that could be made between different texts of a Committee or between texts of both Committees must always take into account that temporal factor.

In any case, this necessity to consider the temporal element will not only allow us: (1) to understand why certain terms and concepts that today would not seem justifiable were used; (2) to be more critical with terms and concepts that are still used by one or both Committees.

However, it should be noted that in this field, where terminology seeks to reflect a social and human rights model of disability, there are still discussions that sometimes lead to new consensus and in others, to no agreement. Such discussions are frequent among experts and activists on the rights of persons with disabilities, and it is not easy for non-disability specialists to be always up to date. This may explain some expressions used by the CRC Committee, which, wishing to express the social and human rights model of disability, uses expressions that, for example, have been used by the CRPD

perspective should be considered as overcome, as we will see below. Likewise, it was very frequent before 2011 to find COBs in which States are asked to move towards inclusive education "as far as possible" (see, for example, Azerbaijan session No. 59 CRC/C/AZE/CO/3-4 par. 57 f); or Gambia session No. 68 CRC/C/GMB/CO/2-3, par. 59 b).

6 There are many examples of COB between 2011 and 2018 in which this expression is used.

7 As of January 2019, the CRC Committee takes a qualitative leap by asking all States that it examines to guarantee an inclusive education. For example, if in 2011 Bahrain was told to "strengthen its efforts to ensure that adequate human, technical and financial resources are allocated *to achieve the fullest possible inclusion* of children with disabilities in mainstream education facilities", in 2019 it is asked to "ensure that laws, policies and programmes, including the education development plan, *guarantee all children with disabilities the right to inclusive education in mainstream schools*" (the emphasis are not in the original texts). This stance has been kept in the 81st session of the CRC in May 2019, asking States to "Guarantee all children with disabilities, including those with intellectual and psychosocial disabilities, the right to inclusive education in mainstream schools, with adequately trained specialized teachers and professionals to provide individual support and all due attention to them" (see, for example, Botswana CRC/C/BWA/CO/2-3, par. 44 c; or Ivory Coast CRC/C/CIV/CO/2, par. 44 c).

8 CRPD/C/GC/7, par. 11-12

Committee in the past, but have subsequently become matters under discussion⁹. Anyway, the CRC Committee uses, on some occasions, expressions that reflect a medical perspective, especially when it reiterates recommendations made to the same State party previously.

Moreover, there are traces of the medical model of disability in the fact that the CRC Committee considers the issue of children with disabilities within the "disability, basic health and welfare" section of the COBs to States parties. It is a contradiction that the recommendations on children with disabilities are kept in the section of health, especially considering that in the process of evolution of the doctrine of the CRC Committee on children with disabilities, the topics covered in these recommendations have more to do with accessibility, registration, inclusive education, etc., than with health.

b) Translation in the official documents of the terminology used by the Committees

Another preliminary consideration for understanding the doctrine embodied in the official documents of both Committees concerns the versions of the documents in the working language used and the *official translations* of these documents.

Unfortunately, sometimes, after having spent a lot of time discussing within a Committee the precise term that should be used in a General Observation or in the COB to a certain State, the term is mistranslated in the official versions in other languages.

This problem is especially important in relation to children with disabilities, on the one hand, because the evolution in the terminology used has not reached all countries and all languages simultaneously; and, on the other, because of different realities of different countries and different cultures, some terms, although similar in colloquial language, have however very different meanings in the terminology of rights.

This can be seen, for example, in the occasional translation of the terms "inclusion", "inclusive education", "inclusive classrooms" and "social inclusion", to the terms "integration", "integrated education", "integrated classrooms" or "social integration"¹⁰. This circumstance leads us to two quick conclusions: first, when it comes

⁹ This is the case of expressions like "children with special educational needs", "children with autism spectrum", etc.

¹⁰ As it is well known, the terms "inclusion" and "integration" have different meanings, especially, even though not exclusively, in the field of education. As it will be shown below, when talking about education, the terms of integration and inclusion are not just written differently, but both having different meanings, different conceptualizations and different impacts to educational practice. Integration means just putting children in mainstream school, that children have to adapt to regular education, when the concept of inclusion means the accommodation of mainstream educational settings for making room for diversity of children and diversity of teaching methods for ensuring effective participation of children in regular education processes with the goal of inclusion, it means that regular education adapts to children. As it is indicated, for instance, in the General Comment No. 4 of the CRPD Committee: "Integration is the process of placing persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions. Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching

to seeing what is the terminology and doctrine of a Committee, it is necessary to consult the document in the language it was originally drafted and approved by the Committee; secondly, the Committees must carefully monitor the translation of their documents and maintain a fluent dialogue with the translation services so that they are aware of the various meanings of the terms within the framework of the evolution of the Committee's doctrine¹¹.

c) The gender perspective in the context of the rights of children with disabilities

When addressing the rights of children with disabilities, the gender perspective should be a cross curricular subject in the doctrine of both Committees.

However, in this matter, a first difference between the two Conventions stands out: the CRC lacks a gender perspective. The reference is always to children in general and never specifically refers to girls, even in areas in which the gender perspective can be especially relevant such as in the issue of sexual abuse. The only approach to the gender perspective is found in article 2 of the CRC, prohibiting discrimination by sex. This situation has remained constant in the texts, as well as the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, which, due to its content, might suggest that it should make a special reference to girls, but solely makes a generic reference to "their special vulnerability" in the Preamble¹²; however this specificity to situations of special vulnerability that girls live in different societies then disappears completely in the articles. In short, the CRC and its Optional Protocols treat the rights of children in an "asexual" manner, lacking a gender perspective.

Quite the opposite, the CRPD has an explicit gender perspective in its content. Thus, in addition to an explicit reference in the Preamble to the special situation of vulnerability of women and girls with disabilities in relation to violence, abuse and exploitation¹³, it establishes as one of the General Principles of the Convention the "equality between men and women" and devotes several articles to develop that gender perspective. First, a specific article to women and girls with disabilities (article 6) is devoted to: pointing out multiple discrimination and the obligation to adopt specific measures "to ensure the full development, advancement and empowerment of women"

and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion" (par. 11).

11 In this sense, it is important to highlight that the CRPD Committee has been working closely with language services at UNOG for over a year in order to address this issue. UNOG has organised regular workshops on disability-related terminology and translation for translators, with the participation of persons with disabilities (staff, civil society) and CRPD Secretariat. See section V on Conclusions and Recommendations, at the end of this study.

12 "Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited".

13 "Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation".

and girls and the obligation to include the rights of women and girls with disabilities in all actions aimed at implementing the Convention. Second, it explicitly highlights the need to adopt a gender perspective in several articles, such as art. 28, on adequate standard of living and social protection, or art. 16 on freedom from exploitation, violence and abuse.

However, it should be noted that the CRC Committee, despite the text of the Convention, does not forget the gender perspective and frequently has pointed out the special situation of girls who are at greater risk of being subject to discrimination, especially in the field of access to education, child marriage, in sexual and reproductive health and discrimination in multiple areas, such as inheritance, migration¹⁴ or abuse, including sexual abuse, neglect and exploitation¹⁵. With regard to the General Comments, the CRC only made generic references to "gender-based discrimination"¹⁶ or emphasised the need for a "gender sensitive"¹⁷ perspective in its initial works. This situation started to change with *General Comment No. 13 on the right of the child to freedom from all forms of violence*, which adopts a clearer gender perspective, and is especially relevant in the *Joint General Recommendation / General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices* that, of course, has a clear gender perspective. This assumption of gender perspective is kept throughout most of the latest General Comments¹⁸. However, it is also worth noting the existence of room for improvement of this gender perspective in the doctrine of the CRC Committee. Thus, in addition to the absence of the terms "gender" or "girl" in some initial General Comments¹⁹, the absence of a gender perspective is particularly remarkable in two General Comments related to two of the four general principles of the CRC: the *General Comment No. 12 on the right of the child to be heard*²⁰; and *No. 14 on the right of the child to have his or her best interests taken as a primary consideration*²¹. Concerning specifically children with

14 CRC/C/GC/9 par. 8.

15 *Ibidem*.

16 General Observation No. 1 (paragraph 11), No. 3 (paragraphs 8 and 33), and No. 4 (paragraphs 24 and 41).

17 E.g. General Observation No.6 (paragraphs 48, 52, 59 62, 74, 75, 87).

18 See, for example the *General Comment No. 20 on the Rights of the Child in Adolescence* in which the word 'girl' appears 37 times, integrated throughout the text, and there is a full paragraph dealing with girls. See also the GC 15 on the right to the highest attainable standard of health which mentions girls 7 times and contains a paragraph on gender discrimination.

19 As it is the case of *General Comment No. 2 on the Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child*, or of *No. 5 on General Measures of Implementation of the Convention on the Rights of the Child*.

20 In which the only reference in such an important principle is found in paragraph 77, which states that "the Committee urges States parties to pay special attention to the right of the girl child to be heard, to receive support, if needed, to voice her view and her view be given due weight, as gender stereotypes and patriarchal values undermine and place severe limitations on girls in the enjoyment of the right set forth in article 12".

21 In this General Comment the gender perspective is completely absent. The terms "gender" or "girl" are never mentioned.

disabilities, the *General Comment No. 9 on the rights of children with disabilities*, in the section devoted to the analysis of article 2 of the CRC (non-discrimination) as one of the "key provisions for children with disabilities", devotes its paragraph 10 to refer to the need to take into account "gender discrimination"²².

We may say that this is the usual stance kept until now by the CRC Committee: the consideration of gender discrimination. This does not necessarily imply a gender perspective in its doctrine. A gender perspective implies keeping in mind the specificity of girls and their circumstances when interpreting the Convention, which put them especially at risk of certain violations or require specific measures to ensure that their rights are fully respected.

Regarding the CRPD, it has shown a greater gender perspective in its doctrine. Without any doubt, the CRPD's own wording helps. But it has also been developed by the CRPD Committee in its *General Comment No. 3 (2016) on Women and girls with disabilities*.

Thus, the CRPD Committee has not only highlighted that "women and girls with disabilities are more likely to be discriminated against than men and boys with disabilities and women and girls without disabilities"²³, it has also expressed concern about the lack of inclusion of a gender perspective in disability policies²⁴; and the lack of a disability-rights perspective in policies promoting gender equality²⁵. Likewise, the CRPD has had a gender perspective in the areas in which girls with disabilities are particularly at risk, as is the case, for example, of harmful practices, which are justified by invoking customs and sociocultural and religious values, such "mercy killings"²⁶, infanticide²⁷, accusations of "spirits possession" and restrictions in feeding and nutrition; or marriage of girls with disabilities, especially girls with intellectual disabilities, justified under the pretext of providing future security, care and financing; etc.²⁸ In that sense, the jurisprudence by the CRPD Committee has included measures to address multiple and intersectional discrimination, recognising that individuals, girls and women with disabilities particularly, do not experience discrimination as members of a homogenous group but rather, as individuals with multidimensional layers of identities, statuses and life circumstances.

In conclusion, despite the existence of room for improvement by the CRC Committee to the gender perspective, both Committees claim their necessary application.

22 "10. Girls with disabilities are often even more vulnerable to discrimination due to gender discrimination. In this context, States parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society."

23 CRPD/C/GC/3, par. 9.

24 See, for example, CRPD/C/SWE/CO/1, par. 13, and CRPD/C/KOR/CO/1, par. 13.

25 See, for example, CRPD/C/AZE/CO/1, par. 16, CRPD/C/ESP/CO/1, par. 21, and CRPD/C/GC/3, par. 10.

26 See A/HRC/20/5 and Corr.1, par. 24.

27 *Ibid.*

28 CRPD/C/GC/3 par. 36

However, gender perspective, in both Committees, and specially in the CRPD Committee doctrine, sounds more like *women's perspective* than a gender perspective in the broad sense, as defined in the ECOSOC agreed conclusions 1997/2²⁹. In that sense, some recommendations are made in the final part of this document³⁰.

III. Conceptual issues

The analysis of the General Comments and of the COBs to the States shows us certain matters in which both Committees maintain a very similar doctrine and reinforce each other; others in which one or both Committees do not refer to the specificity of the situations of children with disabilities, although they should have taken them into account; and, finally, others where there are certain tensions or lack of harmony between the doctrine of the two Committees.

a) Similar positions that reinforce each other

There are several issues in which both Committees make recommendations in a very similar sense. We cannot perform an exhaustive analysis of all of them, so we have decided to choose some of the most relevant ones. In this group of subjects, we should include:

i. The evolving capacities of children with disabilities

The first issue that should be noted in this regard is that every child is a person in evolution. Their situation, ability to understand and autonomy evolves in a very important way throughout the time of childhood and adolescence. The situation, needs, autonomy and comprehension skills of a 3 year old child is very different from those of a 17 years old child, although both are children. Childhood is not a fixed condition: the treatment of children must be consistent with their age and maturity. In the understanding that “maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child”³¹.

²⁹ “Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.” (See *Official Records of the General Assembly*, Fifty-second Session, Supplement No. 3 (A/52/3/Rev.1), chap. IV, para. 4)

³⁰ See Part V on Conclusions and Recommendations, at the end of this study

³¹ CRC GC No. 12, par. 30.

These considerations must be applied exactly in the same way in relation to children with disabilities: the treatment of children with disabilities, each child with a disability, must be consistent with their age and maturity.

The consideration of the child as a subject in evolution is recognised both in the CRC and in the CRPD.

Article 5 of the CRC recognises “the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide [...] direction and guidance” to children. But this approach should be “appropriate”, address “the exercise by the child of the rights” and be done “in a manner consistent with the evolving capacities of the child”. In other words, it should be done according to their age and maturity, as they acquire the adequate understanding, they should have more autonomy, take more responsibilities and participate more actively in all the matters that affect them.

In the same sense, Article 3 of the CRPD, while affirming as a general principle the "respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons", also recognises the principle of “respect for the evolving capacities of children with disabilities”.

The logical consequence of this article is that, in the first place, the traditional discriminatory treatment of children with disabilities denying them the right to exercise their autonomy must be eradicated. Secondly, it must be taken into account that children with disabilities are subjects in evolution, who must be treated under the same general principles that apply to all children. Third, in order to eradicate discrimination against children with disabilities, they must be recognised and respected, they must be given support to strengthen their capacities for independent decision-making, all existing barriers that prevent them from exercising their rights on an equal basis with other children must be overcome, and they should also be protected against inappropriate responsibilities and decisions according to their maturity, with the same general principles that are applied to other children.

The joint reading of articles 5 CRC and 3 CRPD should lead to an emphasis on creating opportunities for children with disabilities to be heard and participate in the decisions that affect their lives, providing them with support and, when relevant, reasonable accommodation.

The CRC Committee has issued two General Comments to especially indicate the need to take into account the stage of development of the child in the specification of their rights: *General Comment No. 7 on Implementing child rights in early childhood*; and the *General Comment No. 20 on the implementation of the rights of the child during adolescence*. Both General Comments specified the challenges of children with disabilities in relation, precisely, "to ensure that they have equal opportunities to participate fully in education and community life, including by the removal of barriers that impede the realization of their rights"³². With regard to the CRPD Committee, there

³² See: GC No. 7, paragraph 36 d); GC No. 20, paragraph 31 and 32.

are also many references to the respect of children's evolving personal capacity³³. We may say, therefore, that both Committees maintain, in relation to this question, similar positions that reinforce each other.

However, it should also be noted that neither the CRC nor the CRPD Committee seem to include references to specific matters related to recognition before the law/legal capacity and children with disabilities. This could be an area to explore for both Committees.

ii. General measures of implementation

Both the CRC and the CRPD include, in their respective articles 4, the obligation of States to "undertake all appropriate legislation, administrative, and other measures for the implementation of the rights recognised in the Convention". These measures, which includes International cooperation, are called *General measures of implementation*, which the CRC Committee has developed in its General Comment No. 2 (*on the Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child*), No. 5 (*on General Measures of Implementation of the Convention on the Rights of the Child*), No 16 (*on State obligations regarding the impact of the business sector on children's rights*) and No. 19 (*on Public budgeting for the realization of children's rights*) and which we also found in articles 28.3 and 23.4 of the CRC or 4.1, 31, 32 and 33 of the CRPD.

Basically, these general measures of implementation are: a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention³⁴; the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels³⁵; a comprehensive national strategy rooted in the Convention³⁶; data collection and analysis and development of indicators³⁷; independent national human rights institutions³⁸; training of professionals and staff working with children with disabilities in the rights recognised in the Conventions so as to better provide the assistance and services guaranteed by those rights³⁹; cooperation with civil society in the implementation of the Convention⁴⁰; the guarantee that every social actor (including the private sector) respect those rights⁴¹;

33 See, for example, CRPD General Comment No. 7, paragraph 25; COB Macedonia session 27 CRPD/C/MKD/CO/1.

34 CRC GC No. 5, par. 18; CRPD, art. 4.1 b.

35 CRPD, art. 33.1; CRC GC 5 paragraphs 37 ss.

36 CRPD, art. 4.1 c); CRC GC No. 5 par. 28-36.

37 CRPD, art. 31; CRC GC No. 5 par. 48-50.

38 CRPD, art. 33; CRC GC No. 2 and GC No. 5, par. 65.

39 CRPD, art. 4.1 i); CRPD GC No. 5, par. 53-55.

40 CRPD, art. 4.3 and General Comment No. 7; CRC, General Comment No. 5, paragraphs 56-59.

41 CRPD, art. 4.1 d) and e); CRC GC No. 16.

international cooperation⁴²; and to make children with disabilities visible in budgets and to allocate resources to the maximum extent of available resources⁴³.

It can be said that both Committees maintain the same doctrine and similar recommendations to the States in relation to the General measures of implementation concerning children with disabilities.

Thus, for example, in relation to national human rights institutions, the CRC Committee devoted its *General Comment No. 2 on The role of independent national human rights institutions in the promotion and protection of the rights of the child*, to showing from the beginning the importance that it gives to independent institutions of human rights supervision and to the need for a specialisation in childhood within them. It is true that there are few references to children with disabilities in this General Comment, but it is also true that references to the need for groups in situations of special vulnerability or disadvantage are frequent, "in the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged"⁴⁴, among which the CRC Committee includes children with disabilities. With regard to the CRPD Committee, in accordance with article 33 (2) of the CRPD, it has recognised the importance of establishing, maintaining and promoting independent monitoring frameworks, including national human rights institutions, at all stages of the monitoring process⁴⁵; understanding that "such institutions play a key role in the monitoring process of the Convention, in promoting compliance at the national level and in facilitating the coordinated actions of national actors, including State institutions and civil society, to protect and promote human rights"⁴⁶.

Concerning the collection of disaggregated data, the CRC Committee has repeatedly recommended that States establish "a system for collecting data on children with disabilities in order to design inclusion policies"⁴⁷; improve "the collection of data on children with disabilities and carry out studies and analyses on the effectiveness of the implementation of the Convention and the laws and policies in force"⁴⁸; to establish "a system for the collection of disaggregated data on children with disabilities, including information on children living in institutions, children who are victims of violence and children in school"⁴⁹; or that they collect "data on children with disabilities who have been

42 CRPD, art. 32; CRC GC No. 5, par. 60-64.

43 CRPD, art. 4.2; CRC GC No. 19.

44 CRC General Comment, No. 2, paragraph 15.

45 CRPD/C/GBR/CO/1, pars. 7 and 37; CRPD/C/BIH/CO/1, par. 58; CRPD/C/ARE/CO/1, par. 61; and CRPD/C/SRB/CO/1, par. 67.

46 GC 7 CRPD: par. 36.

47 See, for example, Central African Republic session No. 74 (CRC/C/CAF/CO/2, par. 53 b); Estonia session No. 74 (CRC/C/EST/CO/2-4, par. 39 c); Venezuela session No. 67 (CRC/C/VEN/CO/3-5 par. 51 a); Qatar session No. 75 (CRC/C/QAT/CO/3-4, par. 29 a); Mongolia session No. 75 (CRC/C/MNG/CO/5, par. 29 c).

48 See, for example, Serbia session No. 74 (CRC/C/SRB/CO/2-3, par. 44 a); East Timor session No. 70 (CRC/C/TLS/CO/2-3, par 45 g); Pakistan session No. 72 (CRC/C/PAK/CO/5, par 46 d).

49 Mexico session No. 69 (CRC/C/MEX/4-5 par. 46 g).

victims of crime and in the next report provide the Committee with information on their findings; carry out research and collect data and statistics on violence against children with disabilities"⁵⁰. The CRPD has a specific provision, Article 31 on data collection and disaggregation, and like the CRC Committee regularly asks the States to collect data, disaggregating them, among others, by age and, therefore, obtain data on children with disabilities⁵¹.

The doctrine of both Committees is also similar in relation to the review of laws⁵²; the formulation of comprehensive strategies or national plans for children with disabilities⁵³; the allocation of resources for guaranteeing the rights of children with disabilities⁵⁴; the existence of mechanisms for coordinating policies related to children with disabilities⁵⁵; the training of professionals and staff working with children with disabilities in the rights recognised in the Conventions so as to better provide the assistance and services guaranteed by those rights⁵⁶ and the rest of General measures of implementation.

In conclusion, it can be said that there is a harmony between the doctrine of both Committees regarding the need for States to adopt general measures of implementation in relation specifically to children with disabilities, with only minor differences.

iii. Assessing and determining the child's best interests

The best interests of the child, included in art. 3 of the CRC, is one of the four general principles of the Convention. Regarding the CRPD, it includes this same principle in art. 7.2 in similar terms to the CRC.

⁵⁰ Sweden session No. 68 (CRC/C/SWE/CO/5, par. 40 b).

⁵¹ See, for all of them, Canada session No. 17 (CRPD/C/CAN/CO/1, par. 14 a) and par. 54). However, we should note a small difference in the field of data collection. The CRPD Committee usually adds to that recommendation that the data collection be done "by respecting the right to privacy" (ad ex: Russian Federation session No. 19 CRPD/C/RUS/CO/1, par. 63) and that the State must "ensure the protection of personal data" (ad ex: Uganda session No. 15 CRPD/C/UGA/CO/1 par. 45). Yet, it is not easy to find such references in the practice of the CRC Committee, having found it only once (France session No. 71 CRC/C/FRA/CO/5, pars. 36 and 37)

⁵² See, for example, Egypt session No. 57 (CRC/C/EGY/CO/3-4, par. 61 a); Democratic Republic of the Congo session No. 74 (CRC/C/COD/CO/3-5, par.34 a); Estonia session No. 74(CRC/C/EST/CO/2-4, par. 39 a); Latvia session No. 71 (CRC/C/LVA/CO/3-5, par.47 a); Jordan session No. 66 (CRC/C/JOR/CO/4-5, par.42 a).

⁵³ See, for example, Belarus session No. 56 (CRC/C/BLR/CO/3-4, par. 52 a); South Africa session No. 73(CRC/C/ZAF/CO/2, par. 44); Ukraine session No. 56 (CRC/C/UKR/CO/3-4, par. 53 a); Finland session No. 57 (CRC/C/FIN/CO/4, par. 19 and 41); Bahrain session No. 57 (CRC/C/BHR/CO/2-3, par. 54 a); Panama session No. 58 (CRC/C/PAN/CO/3-4, par. 53); Barbados session No. 74 (CRC/C/BRB/CO/2, par. 46); Venezuela session No. 67 (CRC/C/VEN/CO/3-5, par. 51 b)

⁵⁴ See, for example, Fiji session No. 67 (CRC/C/FJI/CO/2-4, par. 40 d); Turkmenistan session No. 68 (CRC/C/TKM/CO/2-4, par. 11 a); Uruguay session No. 68 (CRC/C/URY/CO/3-5, par. 14 d)

⁵⁵ See, for example, Dominican Republic session No. 68 (CRC/C/DOM/CO/3-5, par. 48 d); India session No. 66 (CRC/C/IND/CO/3-4, par. 62 a).

⁵⁶ See, for example, Belarus session No. 56 (CRC/C/BLR/CO/3-4, par. 52 e); Singapore session No. 56 (CRC/C/SGP/CO/2-3, par. 53 d); Bahrain session No. 57 (CRC/C/BHR/CO/2-3, par. 54 d).

The CRC Committee, in its *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, has developed the triple nature of the child's best interests as a substantive right, a fundamental, interpretative legal principle and a rule of procedure. It is especially relevant that, when explaining the *Best interests assessment and determination*, it explicitly states that "the purpose of determining the best interests of a child or children in a vulnerable situation should not only be in relation to the full enjoyment of all the rights provided for in the Convention, but also with regard to other human rights norms related to these specific situations, such as those covered in the Convention on the Rights of Persons with Disabilities"⁵⁷. This way, the CRC Committee ratifies the complementary nature of both Conventions. This vision explains why the CRC Committee urges States to "ensure adequate safeguards and clear criteria, particularly for children with disabilities"⁵⁸ to determine the needs and best interests of the child.

This complementary nature of both Conventions has been indicated by the CRPD Committee in its *General Comment No. 6 on equality and non-discrimination*, stating that: "The concept of the '*best interests of the child*' contained in article 3 of the Convention on the Rights of the Child should be applied to children with disabilities with careful consideration of their circumstances. States parties should promote the mainstreaming of disability in general laws and policies on childhood and adolescence. The concept of best interest, however, should not be used to prevent children, especially girls with disabilities, from exercising their right to bodily integrity. It should be used to ensure that children with disabilities are informed, consulted and have a say in every decisionmaking process related to their situation. In particular, States parties should address violence and institutionalization of children with disabilities, who are denied the right to grow up in their families as a matter of discrimination"⁵⁹.

This vision explains why the CRPD Committee requests States to "introduce guidelines among all levels of administration on how to implement the principle of the best interests of the child in the design, implementation and monitoring of legislation and policies concerning children with disabilities"⁶⁰.

In this line, it is important to highlight four ideas:

a) The first, that it is with the protection of all the rights of children how we achieve the protection of their best interests. As the CRC Committee has stated: "The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child"⁶¹. The CRC Committee has reiterated on several occasions that "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's

57 CRC/C/GC/14, par. 75.

58 See, for example, Romania session No. 75 CRC/C/ROU/CO/5, par. 29 c).

59 CRPD/C/GC/6, par. 38

60 See, for example, Canada session No. 17 CRPD/C/CAN/CO/1, par. 18 d).

61 CRC/C/GC/14, par. 4.

rights under the Convention.”⁶² And it recalls that “there is no hierarchy of rights in the Convention; all the rights provided for therein are in the “child's best interests” and no right could be compromised by a negative interpretation of the child's best interests”⁶³. Therefore, in order to achieve the best interests of children with disabilities, in order to achieve the holistic development of the child with disabilities, it is necessary that they can enjoy all the rights (all included in CRC and CRPD, but not only those) on an equal basis with others;

b) The second one, that "assessing the child's best interests is a unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general. These circumstances relate to the individual characteristics of the child or children concerned, such as, inter alia, age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc."⁶⁴;

c) The third idea is the need of listening to the child in the process of assessing and determining the child's best interests⁶⁵; and, in the light of art. 7.3 of the CRPD, children with disability have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity;

d) Finally, in accordance with the cross-references between the CRC and the CRPD that we indicated in the introduction, in the evaluation and determination of the best interests of the child, it should be considered –together with the General principles of the CRC referred to by the General Comment 14 of the CRC Committee– the General principles of art. 3 of the CRPD.

iv. Right of children to be heard and to participate in matters that affect them

Article 12 of the CRC recognises the right of every child “who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”. The CRC Committee has developed the content of this article in its *General Comment No. 12 on The right of the child to be heard*.

Article 7 of the CRPD demands that the right to be heard be respected for children with disabilities on an equal basis with other children and that they be “provided with

⁶² General comment No. 13 (2011) on the right to protection from all forms of violence (CRC/C/GC/13), para. 61, or CRC/C/GC/14, par. 4

⁶³ Ibidem.

⁶⁴ Ibidem, par. 48

⁶⁵ See, CRC/C/GC/14, par. 43-45, and CRPD/C/GC/6, par. 38

disability and age-appropriate assistance to realise that right". According to the CRPD jurisprudence⁶⁶, the supported-decision making that recognise diverse, augmentative and alternative methods of communication, should be provided for children with disabilities, to express their views, will and preferences, especially for those who use non-verbal forms of communication.

This right is treated in a very similar way by both Committees and even cross references are frequent. Thus, the CRPD Committee frequently cites General Comment No. 12 of CRC⁶⁷ and the CRC Committee cites the CRPD⁶⁸.

It is true that the CRPD Committee places more emphasis on providing the necessary supports and accessibility to all facilities and procedures related to public decision-making and consultation⁶⁹. But this question is not forgotten either by the CRC Committee⁷⁰.

It should also be noted that both Committees contemplate this right, in relation to children with disabilities, both in their individual and collective dimensions⁷¹.

v. Accessibility

Both the CRC Committee and the CRPD Committee have in common the motivation for enhancing accessibility for people with disabilities from the childhood perspective⁷². In their recommendations they talk about accessibility in a very broad sense, which specifically covers each problem in order to reach an adequate standard of living for children with disabilities and to exercise their rights on an equal basis with others. Thus, recommendations are made to States on the accessibility of transport, physical environment, information and the media, cities and rural areas, cultural life, heritage, leisure places, educational material, of the accessibility of playgrounds and school in general, of the data on the accessibility of future places of work, accessibility to health, justice, etc.⁷³.

66 CRPD General Comment No. 1

67 See, for example, CRPD General Comment No. 7, paragraph 28.

68 See, for example, CRC General Comment No. 12 that makes reference to art. 7 of the CRPD (CRC/C/GC/12, paragraph 78; or Denmark session No. 56 (CRC/C/DNK/CO/4), par. 46 b).

69 See, for example, Malta session No. 20 (CRPD/C/MLT/CO/1, par. 12 b). Also see CRPD/C/GC/7, general comment No. 7 of the CRPD paras. 24-26.

70 See, for instance, General Comment No. 12, paragraphs 21, 78, 100 or 115; or Denmark session No. 56 (CRC/C/DNK/CO/4).

71 CRC/C/GC/12, par. 9 and 78; Qatar session No. 75 CRC/C/QAT/3-4.

72 See, for example, CRPD/C/GC/5 par. 76.

73 See, for example, Venezuela session No. 67 (CRC/C/VEN/CO/3-5, par. 51 b); Colombia session No. 68 (CRC/C/COL/CO/4-5, par. 38 d); Mexico session No. 69 (CRC/C/MEX/4-5, par. 46 d); Serbia session No. 74 (CRC/C/SRB/CO/2-3, par. 40 f); Canada session No. 17 (CRPD/C/CAN/CO/1, par. 44 d); Luxembourg session No. 18 (CRPD/C/LUX/CO/1, par. 43 e); Sudan session No. 19 (CRPD/C/SDN/CO/1, par. 14 c).

vi. Violence, abuse and exploitation

Both the CRC and the CRPD contain specific provisions on violence, abuse and exploitation. Both children and persons with disabilities are in a situation of greater risk to these violations of rights due to their situation, often dependent on other people.

The CRC Committee has developed the content of the obligations of the States in this area in two General Comments: The *General Comment No. 8 (2006) on The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*⁷⁴ and the *General comment No. 13 (2011) on The right of the child to freedom from all forms of violence*⁷⁵. The CRPD Committee does not have a General Comment on violence, but references to measures to eradicate violence are very frequent, both in its General Comments and in its COBs to the States⁷⁶.

In line with this position, both Committees have explicitly stated the special situation of greater risk and the need to adopt special measures in relation to children with disabilities⁷⁷; linking it, in the most recent COBs, with the goal 16.2 of the Sustainable Development Goals to end all forms of violence against children⁷⁸. They have also requested that measures be taken to end impunity for the mistreatment of children with disabilities, guaranteeing the investigation, prosecution and punishment imposed on the authors⁷⁹, as well as establishing complaint mechanisms for children with disabilities who have been victims of violence⁸⁰.

That concern increases in the COBs to States when talking about sexual abuse, to which children with disabilities, and even more specifically girls with intellectual or psychosocial disabilities, are at greater risk⁸¹.

It is true that there is a striking absence of any reference to children with disabilities, and even to children in vulnerable situations or in situations of greater risk, in the *General Comment No. 8 on The right of the child to protection from corporal*

74 CRC/C/GC/8.

75 CRC/C/GC/13.

76 See, for example, CRPD/C/GC/3, par. 33.

77 See, for example, Brazil (CRPD/C/BRA/CO/1, par. 14); South Africa Session No. 20 (CRPD/C/ZAF/CO/1, par. 13 a); Bahrain session No. 57 (CRC/C/BHR/CO/2-3, par. 54 e); Canada session No. 61 (CRC/C/CAN/CO/3-4, par.60 d).

78 See, for example, Oman session No. 19 (CRPD/C/OMN/CO/1, par. 16 b); o Central African Republic session No. 74 (CRC/C/CAF/CO/2, par. 45).

79 See, for example, Russia session No. 19 (CRPD/C/RUS/CO/1, par. 37); Madagascar session No. 59 (CRC/C/MDG/CO/3-4, par. 48 a); Togo session No. 59 (CRC/C/TGO/CO/3-4, par. 52 b); Senegal session No. 71 (CRC/C/SEN/CO/3-5, par. 50 c); Lithuania session No. 64 (CRC/C/LTU/CO/3-4, par. 38); Guinea Bissau session No. 63 (CRC/C/GNB/CO/2-4, par. 51 a).

80 See, for example, Philippines session No. 20 (CRPD/C/PHL/CO/1, par. 15 b and 31 a); Germany session No. 65 (CRC/C/DEU/CO/3-4, par. 53).

81 See, for example, New Zealand session No. 73 (CRC/C/NZL/CO/5, par. 24 a); Gabon session No. 72 (CRC/C/GAB/CO/2, para 45 d); Germany session No. 65 (CRC/C/DEU/CO/3-4, par. 35 a); Guinea Bissau session No. 63 (CRC/C/GNB/CO/2-4, par. 51 c); and CRPD/C/GC/3 par. 33

*punishment and other cruel or degrading forms of punishment*⁸². However, this "lapse" must be considered overcome given the fact that the CRC Committee has considered children with disabilities when making recommendations on corporal punishment to children with disabilities in the COBs to the States⁸³. The CRPD Committee, for its part, has also recalled the obligation to prohibit all forms of corporal punishment for children with disabilities⁸⁴.

Finally, both Committees have also referred to the violence exercised among children, not only in the sphere of bullying but also in other areas⁸⁵. Children with disabilities are frequently at greater risk to this type of violence as a result of discrimination, stigmatisation and stereotypes. The CRPD has referred more frequently to this matter, but the CRC has also referred to these situations of heightened risk.

- vii. The eradication of certain harmful practices (including forced sterilisation)

In line with the previous section, we find the same harmony between both Committees in relation to the eradication of harmful practices. A first point of reference is the *Joint General Recommendation / General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices*⁸⁶. Although references to girls with disabilities are not abundant in the text, the fact of exposing what is understood by harmful practices already points out the special incidence they have on women, children and persons with disabilities, so it is easy to infer that a special consideration must be made, then, to girls with disabilities⁸⁷.

In that same line, the CRPD Committee took a stance in its *General Comment No. 3 (2016) on women and girls with disabilities*⁸⁸.

82 CRC/C/GC/8

83 See, for example, Senegal, session No. 71 (CRC/C/SEN/CO/3-5, par. 36)

84 CRPD/C/GC/5, par. 37

85 See, for example, Belgium session No. 80 (CRC/C/BEL/CO/5-6 par. 39 g); Italia session No. 80 (CRC/C/ITA/CO/5-6 par. 32 c); Japan session No. 80 (CRC/C/JPN/CO/4-5 par. 39 a)

86 CEDAW/C/GC/31/CRC/C/GC/18

87 "Many other practices having been identified as harmful practices are all strongly connected to and reinforce socially constructed gender roles and systems of patriarchal power relations and sometimes reflect negative perceptions of or discriminatory beliefs regarding certain disadvantaged groups of women and children, including individuals with disabilities or albinism. The practices include, but are not limited to, neglect of girls (linked to the preferential care and treatment of boys), extreme dietary restrictions, including during pregnancy (force-feeding, food taboos), virginity testing and related practices, binding, scarring, branding/infliction of tribal marks, corporal punishment, stoning, violent initiation rites, widowhood practices, accusations of witchcraft, infanticide and incest." (CEDAW/C/GC/31/CRC/C/GC/18 par. 9).

88 "Girls with disabilities are particularly at risk of harmful practices, which are justified by invoking sociocultural and religious customs and values. For example, girls with disabilities are more likely to die because of "mercy killings" than boys with disabilities because their families are unwilling or lack the support to raise a girl with an impairment. Other examples of harmful practices include infanticide, accusations of "spirit possession" and restrictions in feeding and nutrition. In addition, the marriage of girls

Finally, the strong stand of both Committees in relation to the practice of forced sterilisation on children with disabilities should be noted.

Concerning the CRPD Committee, which tends to have a more adult-centred view, in the sense that the grounds for the condemnation of this practice are based on the violation that this entails to the right of girls with disabilities to realise their motherhood when they reach adulthood⁸⁹. However, it is also true that, on several occasions, the CRPD Committee has also examined the issue of sterilisation under CRPD article 17 on the right to personal integrity and recommended a prohibition against forced sterilisation, particularly of children⁹⁰.

With regard to the CRC Committee, it considers the phenomenon of forced sterilisation as a form of violence against girls itself⁹¹.

Finally, it should be noted that both Committees have even come to consider forced sterilisation or contraception a form of torture or ill-treatment⁹².

viii. Inclusive education

As the CRPD Committee affirms: “Recognition of inclusion as the key to achieving the right to education has strengthened over the past 30 years and is enshrined in the Convention on the Rights of Persons with Disabilities, the first legally binding instrument to contain a reference to the concept of quality inclusive education. Sustainable Development Goal 4 too affirms the value of inclusive, quality and equitable education. Inclusive education is central to achieving high-quality education for all learners, including those with disabilities, and for the development of inclusive, peaceful and fair societies”⁹³.

with disabilities, especially girls with intellectual disabilities, is justified under the pretext of providing future security, care and financing. In turn, child marriage contributes to higher rates of dropping out of school and to early and frequent childbirth. Girls with disabilities experience social isolation, segregation and exploitation inside the family, including by being excluded from family activities, prevented from leaving home, forced to perform unpaid housework and being forbidden from attending school” (par. 36).

89 CRPD/C/GC/3 par. 39. Also see art 23 (1) (c) “Persons with disabilities, including children, retain their fertility on an equal basis with others”.

90 See for example, Colombia (CRPD/C/COL/CO/1 paragraph 46-47) or Norway (CRPD/C/NOR/CO/1 para 29-30).

91 CRC/C/GC/9 par. 60; New Zealand session No. 73 (CRC/C/NZL/CO/5, par. 30 f).

92 “They are widely denied access to sexual and reproductive health information and services and may be subjected to forced sterilization or contraception, which is in direct violation of their rights and can amount to torture or ill-treatment” (CRC GC 20 on the Rights of Children in Adolescence, para. 31); “Certain forms of violence, exploitation and abuse may be considered as cruel, inhuman or degrading treatment or punishment and as breaching a number of international human rights treaties. Among them are: forced, coerced and otherwise involuntary pregnancy or sterilization; any medical procedure or intervention performed without free and informed consent, including procedures and interventions related to contraception and abortion; invasive and irreversible surgical practices such as psychosurgery, female genital mutilation and surgery or treatment performed on intersex children without their informed consent; the administration of electroshock treatment and the use of chemical, physical or mechanical restraints; and isolation or seclusion” (CRPD GC No 3 on Women and girls, para. 32).

93 CRPD/C/GC/4, par. 2.

That justifies the importance that the CRPD Committee always gives to this topic, as well as the fact that it issued the *General Comment No. 4 (2016) on the right to inclusive education*. For the CRPD Committee, inclusive education is not a matter of choice between segregated education and inclusive education since the choice to segregation explicitly conflicts with a human rights standard. Only inclusive education can provide both quality education and social development for persons with disabilities, and a guarantee of universality and non-discrimination in the right to education⁹⁴.

Concerning the CRC Committee, although it has not always considered the right to an inclusive education to be inalienable, it has experienced, as we pointed out in the previous considerations, an evolution in its doctrine on this subject.

Thus, initially, the CRC Committee asked the States to provide inclusion in the mainstream education system to the greatest possible extent⁹⁵ for children with disabilities.

Later, the CRC Committee considered that it should make inclusive education prevail and began to recommend to the States to "set up comprehensive measures to develop inclusive education and ensure that inclusive education is given priority over the placement of children in specialized institutions and classes"⁹⁶. That is, it asked States to give priority to inclusive education, but it also accepted the existence of special education systems.

Following the publication of General Comment No. 4 of the CRPD, the CRC Committee confirms a doctrine that had already begun a few years before⁹⁷ and, definitely, from January 2019, changed its position and called on States to "guarantee [to] all children with disabilities the right to inclusive education in mainstream schools"⁹⁸, ceasing all references to "priority over segregated education"⁹⁹, to claiming that the State must guarantee it in all cases to all children¹⁰⁰.

In this sense, and according with what is said above in relation with integrated education, inclusive education is definitively distinguished from segregated and integrated education. In this line, the previously referenced paragraph 11 of the General Comment 4 CRPD states: "The Committee highlights the importance of recognising the differences between exclusion, segregation, integration and inclusion. *Exclusion* occurs

94 CRPD/C/GC/4, par. 2.

95 See, for example, Azerbaijan session No. 59 (CRC/C/AZE/CO/3-4, par. 57 f); or Gambia session No. 68 (CRC/C/GMB/CO/2-3, par. 59 b). Likewise, the *General Comment No. 9 on The rights of children with disabilities*, in paragraphs 66 and 67, considers that there can be multiple possibilities of "inclusion".

96 See, for example, Lao session No. 79 CRC/C/LAO/CO/3-6, par. 30.

97 See, for example, Nauru session No. 73 (CRC/C/NRU/CO/1 par. 41 c); Democratic Rep. of the Congo session No. 74 (CRC/C/COD/CO/3-5 par. 34 d); Serbia session No. 74 (CRC/C/SRB/CO/2-3 55 c)

98 See, for example, Bahrain session No. 80 CRC/C/BHR/CO/4-6 par. 36; Belgium session No. 80 CRC/C/BEL/CO/5-6 par. 30; Guinea session No. 80 CRC/C/GIN/CO/3-6 par 33.

99 There are many examples of COB between 2011 and 2018 in which this expression is used.

100 Doctrine that the CRC Committee has continued to maintain in its session of May 2019: Botswana session No. 81 (CRC/C/BWA/CO/2-3 par. 43 c); Côte d'Ivoire session No. 81 (CRC/C/CIV/CO/2 par. 44 c); Malta session No. 81 (CRC/C/MLT/CO/3-6 par. 39 a); Singapore session No. 81 (CRC/C/SGP/CO/4-5 par. 35 b); Tonga session No. 81 (CRC/C/TON/CO/1 par. 46 d)

when students are directly or indirectly prevented from or denied access to education in any form. *Segregation* occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairment, in isolation from students without disabilities. *Integration* is a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions. *Inclusion* involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion”.

In line with this reasoning, both Committees agree on the fact that inclusive education is not something exclusively related to children with disabilities, but that one of the characteristics of inclusive education is the respect for and value of diversity: “all members of the learning community are equally welcome and must be shown respect for diversity irrespective of disability, race, colour, sex, language, linguistic culture, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status. All students must feel valued, respected, included and listened to. Effective measures to prevent abuse and bullying are in place. Inclusion takes an individual approach to students”¹⁰¹.

Therefore, a decisive evolution is seen in the doctrine of the CRC Committee, which ends up being aligned with the doctrine of the CRPD Committee. However, this evolution is not enshrined in a general document and, therefore, it should not be taken for granted that it could go back to previous positions if it is not affirmed in a general manner.

b) Lack of reference to the specificity of children with disabilities

In this section the analysis focuses on particular subjects in which it is observed that frequently (although not necessarily always) one or both Committees do not seem to have a special sensitivity, either towards the perspective of disability in the case of the CRC, or towards the perspective of childhood in the case of the CRPD.

However, before performing this analysis, a clarification must be made, which largely explains this lack of perspectives.

As noted, the CRC devotes an article to children with disabilities (article 23), as well as the CRPD with its article 7. This leads to the fact that, in the COBs to the States, both Committees include a specific cluster on children with disabilities, which suggests that all the recommendations on children with disabilities are included in that cluster. And, indeed, these clusters gather some of the most important concerns of both Committees on children with disabilities. But, as a consequence, when analysing the set

¹⁰¹ CRPD/C/GC/4, par. 12 e)

of other COBs clusters relating to the set of rights considered in the Conventions, the perspective regarding children with disabilities is usually lost in generic concepts, such as references to "children in a situation of vulnerability" (in the case of the CRC)¹⁰² or to persons with disabilities, without making any difference by age (in the case of the CRPD)¹⁰³.

Those generic references lose the perspective and specificity of children with disabilities, since children in situations of vulnerability also include children in refugee situations, children from minority groups, children living in poverty, children living in alternative care and children in conflict with the law, among others¹⁰⁴. Likewise, the generic reference to "persons with disabilities", used by the CRPD Committee, makes the perspective and specificity of children with disabilities lose sight, since it includes people of all ages.

However, although it is true that children with disabilities can be considered to be implicitly included in these generic references, it is also true that, at times, specific references to children with disabilities in certain subjects are appropriate, given the particular barriers they face in the exercise of rights. This, in addition, helps the vision of intersectionality of the rights of children with disabilities.

As in the previous section, we cannot discuss all the subjects in which one or both Committees seem to have little sensitivity in relation to the perspective of childhood with disability. Therefore, we only chose some topics that we find require special reflection by the Committees. Among them, we consider that we should highlight a lack of perspective on children with disabilities, by one or both Committees, in the following areas:

- i. Non-discrimination and awareness and fight against stigmatisation

As we have pointed out in the introduction, both Conventions have an approach against discrimination throughout and, in addition, a complementary character between them in relation to the discrimination of children with disabilities. Thus, the adoption of measures to fight stigmatisation and discrimination of children with disabilities is constant in the COBs to the States by both Committees.

Both the CRC Committee and the CRPD Committee:

102 This generic reference can happen either by using that generic term, either by making a long list of children who are considered vulnerable (for example: "Roma children, children with disabilities, minority children and refugees and asylum-seeking children"), grouping them together as if their situation was the same.

103 As it will be shown in the subsections of this section, it is important to note that there are many issues in which the CRPD Committee talks about "persons with disabilities" in relation to matters regarding the specificity of childhood.

104 An example can be found in the GC No. 19 of the CRC Committee at the beginning, in par. 3, where it states that "*children in vulnerable situations* are those who are particularly susceptible to violations of their rights, such as, but not limited to, children with disabilities, children in refugee situations, children from minority groups, children living in poverty, children living in alternative care and children in conflict with the law", and as of that moment there is a continuous reference to "children in vulnerable situations" without specifying the reason of that situation (the emphasis is not in the original text)

- Have repeatedly urged States to adopt a coherent and comprehensive national strategy to raise awareness in society and the media about the negative effects of stigmatisation¹⁰⁵;

- Have called for the eradication of structural inequality and discrimination in all legislative, normative and programmatic measures to promote the rights of the child, paying special attention to children with disabilities, and the cumulative effect of multiple discrimination¹⁰⁶;

- Have requested public awareness-raising campaigns, including human rights education programmes, in partnership with community, traditional and religious leaders, media professionals, as well as with the children themselves (in the case of the CRC Committee) and the organisations of persons with disabilities (in the case of CRPD Committee) to combat the stigmatisation of and prejudices against children with disabilities¹⁰⁷;

- Have requested that all laws and policies in the field of disability be examined in order to suppress the pejorative expressions of the Law and to repeal all the pejorative and discriminatory provisions against children with disabilities that it contains¹⁰⁸; or

- Have asked for the repeal of the legal provisions that provide for minor penalties for sexual crimes committed against children with disabilities¹⁰⁹.

It can be said, therefore, that both Committees keep a similar doctrine in relation to direct discrimination¹¹⁰ and structural or systemic discrimination¹¹¹.

105 See, for example, Qatar session No. 75 (CRC/C/QAT/CO/3-4, par. 29 e); South Africa session No. 20 (CRPD/C/ZAF/CO/1, par. 15 a)

106 See, for example, Poland session No.20 (CRPD/C/POL/CO/1, par. 8 b); South Africa session No. 73 (CRC/C/ZAF/CO/2, par. 24 a); China session No. 64 (CRC/C/CHN/CO/3-4, par. 61 a); Luxembourg session No.64 (CRC/C/LUX/CO/3-4, par. 37 c).

107 See, for example, South Africa session No. 20 (CRPD/C/ZAF/CO/1, par. 15 b); Bulgaria session No. 20 (CRPD CRPD/C/BGR/CO/1); Georgia session No. 74 (CRC/C/GEO/CO/4, par. 30 e); Cambodia session No. 57 (CRC/C/KHM/CO/2, par. 52 e); Togo session No. 59 (CRC/C/TGO/CO/3-4, par. 32 b); Madagascar session No. 59 (CRC/C/MDG/CO/3-4, par. 48 b); Azerbaijan session No. 59 (CRC/C/AZE/CO/3-4, par. 57 a); Central African Republic session No. 74 (CRC/C/CAF/CO/2, par. 53 e); Georgia session No. 74 (CRC/C/GEO/CO/4, par. 30 e); Serbia session No. 74 (CRC/C/SRB/CO/2-3, par. 23 a); Malawi session No. 74 (CRC/C/MWI/CO/3-5, para 32 g); South Africa session No. 73 (CRC/C/ZAF/CO/2); Slovakia session No. 72 (CRC/C/SVK/CO/3-5, par. 16 b); China session No. 64 (CRC/C/CHN/CO/3-4, par. 61 g).

108 See, for example, Philippines session No. 20 (CRPD/C/PHL/CO/1); Niue session No. 62 (CRC/C/NIU/CO/1, par. 50 a).

109 See, for example, Niue session No. 62 (CRC/C/NIU/CO/1 par. 50 b).

110 “Direct discrimination occurs when women with disabilities are treated less favourably than another person in a similar situation for a reason related to a prohibited ground. It also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation” (CDESC Committee, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 10, and CRPD Committee CRPD/C/GC/3 par. 17).

111 “Structural, or systemic, discrimination is reflected in hidden or overt patterns of discriminatory institutional behaviour, discriminatory cultural traditions and discriminatory social norms and/or rules. Harmful gender and disability stereotyping, which can lead to such discrimination, is inextricably linked to a lack of policies, regulations and services specifically for women and girls with disabilities”

However, despite this similarity in the doctrine of both Committees, an important difference must be pointed out: the CRC Committee never refers to indirect discrimination¹¹², discrimination by association¹¹³ or discrimination due to lack of reasonable accommodation¹¹⁴. The CRPD is especially vigilant regarding these types of discrimination.

In conclusion, although both Committees are vigilant in the area of direct, structural and intersectional discrimination, the CRC Committee does not have the same sensitivity in relation to indirect discrimination, by association and by denial of reasonable accommodation, and more attention to intersectional discrimination could be given by both Committees¹¹⁵.

This silence can be explained by the different approach of both Conventions indicated in the introduction. However, we believe that this point could be considered jointly and separately by both Committees (especially by the CRC Committee).

ii. Abortion, sexual and reproductive education and health for girls with disabilities

There are no references to abortion related to girls with disabilities by the CRC Committee. There is an absence of references both concerning the practice of forced abortions on girls with disabilities, and regarding the access to abortion.

Anyhow the CRC Committee does explicitly recommend "that States ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal"¹¹⁶, and it can be considered that it includes girls with disabilities in the global concept of "girls". In addition, the Committee has specifically commented on the situation of special vulnerability of adolescents with disabilities in relation to sexual and reproductive health. Thus, in his *General Comment No. 20 on the implementation of the rights of the child during adolescence* it explicitly states, in relation to adolescents with disabilities, that "they are widely denied access to sexual and reproductive health

(CRPD/C/GC/3 par. 17).

112 "Indirect discrimination refers to laws, policies or practices that appear neutral when taken at face value but that nonetheless have a disproportionately negative impact on women and girls with disabilities. For example, health-care facilities may appear neutral but are discriminatory when they do not include accessible examination beds for gynaecological screenings" (CDESC/C/GC/20 par. 10 and CRPD/C/GC/3 par. 17).

113 "Discrimination by association is discrimination against persons on the basis of their association with a person with a disability. Often, women in a caregiver role experience discrimination by association" (CRPD/C/GC/3 par. 17).

114 "Denial of reasonable accommodation is discrimination that occurs when necessary and appropriate modifications and adjustments (that do not impose a disproportionate or undue burden) are denied despite being needed to ensure that women with disabilities enjoy, on an equal basis with others, their human rights and fundamental freedoms" (CRPD/C/GC/3 par. 17).

115 Although it is true that there are references in GC No. 6 of CRPD Committee to children with disabilities and multiple and intersecting forms of discrimination (See CRPD/C/GC/6, paras 37 and 38)

116 CRC/C/GC/15 par. 70.

information and services... which is in direct violation of their rights”¹¹⁷. Abortion is not expressly mentioned, but the sexual and reproductive health information and services are. Nevertheless, it is also true that issues related to abortion involve special problems in relation to girls with disabilities, which deserve particular attention from the CRC Committee.

With regard to the CRPD Committee, it has a rich doctrine regarding abortion and sexual and reproductive health information and services, but it does not always make the proper approach in relation to childhood, thus forgetting some specific questions that arise in relation to girls, who also have specific problems different from those of adult women.

iii. Children in street situation

In the doctrine of the CRPD Committee there seems to be a particularly remarkable silence with regard to children with disabilities in street situations, despite being a particularly important issue¹¹⁸. As the CRC Committee has pointed out, “children with disabilities end up in street situations for various reasons, including economic and social factors, and are sometimes exploited for begging... Intellectual and psychosocial disabilities can render children in street situations particularly vulnerable to exploitation and abuse”¹¹⁹.

Regarding the measures to be adopted, in its General Comment No. 21, the CRC Committee affirms that: “Interventions that do not respect children as active agents in the process of moving off the street into alternative care do not work: children often end up back on the streets when they run away or when placements break down. Placements fail when children in street situations are sent to unfamiliar areas to live with little-known relatives. By applying a child rights approach to the development and provision of alternative choices, States will ensure that children are not forced to depend on their street connections for their survival and/or development and that they are not forced to accept placements against their will. States should ensure, through legislation, regulation and policy directives, that the child’s views are solicited and considered in decisions regarding placements, development and review of care plans, and visits with family.¹²⁰ States should respect the established international parameters that limit institutionalisation as a last resort,¹²¹ ensure that children are not placed in alternative care unnecessarily and

¹¹⁷ CRC/C/GC/20 par. 31

¹¹⁸ The CRPD Committee has never referred to street children. The only references that can be found indirectly are those related to abandoned children. In this sense, the CRPD Committee has addressed the abandonment of children with disabilities and their increased vulnerability to exploitation through begging, especially in urban areas, and has made the following kinds of recommendations: “Take the necessary measures to prevent children with disabilities from falling into exploitation by begging and create programmes at national, county and municipal levels for their rehabilitation, recovery and inclusion in family and community life” (see COBs on Kenya, Bolivia, El Salvador, Dominican Republic)

¹¹⁹ General Comment No. 21 (2017) on children in street situations, CRC/C/GC/21 par. 52.

¹²⁰ See General Comment No. 12, par 54; No. 6, par. 40; and No. 7, par. 36 (b).

¹²¹ See General Comment No. 3, par. 35.

ensure that, where alternative care is provided, it is delivered under appropriate conditions responding to the rights and best interests of the child”¹²².

The CRC GC on *Children in Street Situations*, was drafted following a day of general discussion with experts from the field, and many regional consultations with children themselves, and this paragraph in particular is one that was pushed very hard by children as human rights defenders, and adults who were in street situations when they were children.

Although this position of the CRC Committee refers to all children in street situation and not specifically to children with disabilities, it could raise divergences regarding the position held by the CRPD Committee in relation to what it calls "the right to grow up in a family"¹²³.

It cannot be said that there is a discrepancy or lack of harmony in the doctrine of both Committees concerning children with disabilities in street situations, since the CRPD has not passed judgement on the obligations of the States with respect to these children. But we can sense a possible implicit lack of harmony.

iv. Juvenile justice and deprivation of liberty

Within the framework of juvenile justice, it can be said that, in general terms, there is harmony in the doctrine of both Committees in relation to the need to foresee reasonable support and procedural and age-appropriate accommodations within the framework of judicial processes.

However, there is a prominent difference in the attention given by both Committees to the deprivation of liberty of children with disabilities in conflict with the law.

The CRC Committee considers that “children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pre-trial detention nor by way of a punishment. Deprivation of liberty should only be applied if necessary with a goal of providing the child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime and the child should be placed in an institution that has especially trained staff and other facilities to provide this specific treatment. In making such decisions the competent authority should make sure that the human rights and legal safeguards are fully respected”¹²⁴.

The CRPD Committee has shown, from the beginning, a special concern to prevent the deprivation of liberty due to disability¹²⁵, but the deprivation of liberty of a child with disabilities in conflict with the law does not need to be "due to their disability", but because of being in conflict with the law.

122 CRC/C/GC/21 par. 45.

123 Vide infra next section about children deprived of a family environment.

124 CRC/C/GC/9 par. 74 c)

125 CRPD/C/GC/3 par. 53; CRPD/C/GC/5 par. 48

The CRPD Committee has also expressed concern about the special situation of greater risk of children with disabilities deprived of their liberty who are subject to higher levels of violence, as well as to cruel, inhuman or degrading treatment or punishment¹²⁶.

However, it is remarkable that the CRPD has never taken a stance, according to our knowledge, about the deprivation of liberty of children with disabilities in conflict with the law. In this sense, it is striking that there is no reference to the deprivation of liberty of children with disabilities in the *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities on The right to liberty and security of persons with disabilities*¹²⁷.

There is no divergence in the opinion of both Committees, but there is a silence from the side of the CRPD that, perhaps, should be reviewed.

A different question, but related to the deprivation of liberty, concerns forced internment in psychiatric institutions or in any other institution, due to disability. In this sense, both Committees have been forceful in pointing out to the States the obligation to “prohibit any type of deprivation of liberty of children on the basis of impairment, as well as the involuntary hospitalisation and forced institutionalisation of children with intellectual and/or psychosocial disabilities”¹²⁸.

c) Issues where there are contradictions or lack of harmony

Finally, there are two issues in which the doctrine of the two Committees contradicts each other or, at least, shows significant differences.

i. Eugenic abortion

Although the general rule is that both Committees demand free and safe access to abortion for girls (although the CRC Committee does not usually refer to girls with disabilities, as we have seen), it is also true that, sometimes, there are contradictions in its doctrine regarding the possibility of carrying out or not eugenic abortion.

Thus, the CRC Committee has made recommendations such as: “ensure children’s access to safe abortion and post-abortion care services, at least in cases of rape, incest and serious impairment of the foetus and in cases of risk to the life and health of mothers, and provide clear guidance to health practitioners and information to adolescents on safe abortion and post-abortion care”¹²⁹. On the other hand, fetal impairment as an explicit

126 CRPD/C/GC/3 par. 53; CRPD/C/GC/6 par. 56; see also A/HRC/20/5 and Corr.1, par. 39.

127 Adopted during the Committee’s 14th session, held in September 2015.

128 See COB’s to Montenegro (CRPD/C/MNE/CO/1 para. 28); In the same way: COB’s to Seychelles (CRPD/C/SYC/CO/1 para. 28); COB’s to Mauritius (CRPD/C/MUS/CO/1 para. 25-26); COB’s to Serbia (CRPD/C/SRB/CO/1 para. 25-26); or, in the case of CRC Committee: COB’s to France (CRC/C/FRA/CO/5)

129 COB to Peru, adopted in February 2016 (CRC/C/PER/CO/4-5, par. 65 b)).

ground for legal access to abortion, contributes to a climate of stigma that can lead to discrimination against persons already living with disabilities. In fact, the CRPD Committee does not permit in any case the so-called eugenic abortion, because it is discriminatory; thus, among many other cases, the example from the United Kingdom in 2017 can be cited: “The Committee is concerned about perceptions in society that stigmatize persons with disabilities as living a life of less value than that of others and about the termination of pregnancy at any stage on the basis of foetal impairment. The Committee recommends that the State party amend its abortion law accordingly. Women’s rights to reproductive and sexual autonomy should be respected without legalizing selective abortion on the ground of foetal deficiency”¹³⁰. Indeed, the CRPD Committee has not only considered as discriminatory the eugenic-based abortion directly performed by the selection of the foetus, but it has also considered it discriminatory because the periods allowed for such a eugenic abortion are different from those of other cases. Thus, in the COB to Spain in 2011, it recommended: “that the State party abolish the distinction made in Act 2/2010 in the period allowed under law within which a pregnancy can be terminated based solely on disability”¹³¹. Similar concern and corresponding recommendation was expressed in the COB for Spain in 2019¹³².

The existence of similar divergences with the CEDAW, as indicated with respect to the CRC Committee, finally led to the adoption of a *Joint statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)* of 29 August 2018, in which both Committees state, among other things, that “health policies and abortion laws that perpetuate deep-rooted stereotypes and stigma undermine women’s reproductive autonomy and choice, and they should be repealed because they are discriminatory. In order to respect gender equality and disability rights, in accordance with the CEDAW and CRPD Conventions, States parties should decriminalize abortion in all circumstances and legalise it in a manner that fully respects the autonomy of women, including women with disabilities”¹³³.

Anyway, it is necessary to consider that the CRC Committee does not really take a stance in favour of eugenic abortion. The General comment No. 15 (2013) *on the right of the child to the enjoyment of the highest attainable standard of health*¹³⁴ is limited to recommending “that States ensure access to safe abortion and post-abortion care services”, without making any reference to abortion due to specific circumstances (nor malformation of the foetus, nor any other). The same expression is used in most of the COBs to States that have not given access to safe abortion to all adolescents.

130 CRPD/C/GBR/CO/1, par. 12 and 13.

131 CRPD/C/ESP/CO/1, par. 18.

132 CRPD/C/ESP/CO/1, par 17 and 18. The CRPD Committee has tried to move towards concerns similar to the UK example, trying to address fetal impairment under art 5 non-discrimination as well as article 8 awareness raising (CRPD/C/GBR/CO/1, par. 13)

133 Available online at <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

134 CRC/C/GC/15 (2013).

Nevertheless, it would be advisable to adopt a common position on this issue to serve as a reference and to avoid contradictory recommendations.

ii. Children deprived of a family environment

Both Committees seem to have the biggest problems of harmonisation in relation with children deprived of a family environment. The position of both Committees has been developed, in the case of the CRPD Committee, mainly through the *General Comment No. 5 on the Right to independent living*; and, in the CRC Committee, mainly through its support for the *Guidelines for the alternative care of children*¹³⁵ approved by the General Assembly of the United Nations on the occasion of the 20th anniversary of the Convention on the Rights of the Child in 2009.

However, it should be noted that, in fact, there are many common points between both Committees and there are only a few points of divergence between the two texts.

In the first place, we shall remember that both Conventions affirm that:

- the best possible environment for children with disabilities is their family environment¹³⁶;

- children should not be separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child¹³⁷;

- children with disabilities are best cared for and nurtured within family environments and those families need to be adequately supported¹³⁸; and

- family-support and community-based services should be inclusive and accessible for children with disabilities and include support for parents and other legal guardians who have a disability¹³⁹.

In line with this legal framework, both Committees have repeatedly stated that a child may not be separated from his or her parents on the grounds of a disability of either the child or his or her parents¹⁴⁰.

Both Committees have repeatedly expressed their concern about the high number of institutionalised children with disabilities. And, at the same time, both Committees

¹³⁵ *Guidelines for the Alternative Care of Children*, GA resolution 64/142, annex.

¹³⁶ Convention on the Rights of the Child, Preamble: “The child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.” Convention on the Rights of Persons with Disabilities Article 23 (3).

¹³⁷ Convention on the Rights of the Child Article 9 (1). Convention on the Rights of Persons with Disabilities Article 23 (3).

¹³⁸ Convention on the Rights of Persons with Disabilities Article 23 (3). CRC Committee General Comment No. 9 (2006) on the rights of children with disabilities, paragraph 41.

¹³⁹ Convention on the Rights of Persons with Disabilities Article 23 (2). CRC Committee General Comment No. 9 (2006) on the rights of children with disabilities, paragraph 43.

¹⁴⁰ Ex.: CRPD GC. 5 par. 87; CRC General Comment No. 14, par. 63.

agree that “there is significant evidence of poor outcomes for children in large long-term institutions, as well as in other forms of alternative care, such as fostering and small group care, albeit to a much lesser degree”¹⁴¹.

Likewise, both Committees have reiterated to States the obligation to “adopt clear and targeted strategies for deinstitutionalization, with specific time frames and adequate budgets, in order to eliminate all forms of isolation, segregation and institutionalization of persons with disabilities; special attention should be paid to persons with psychosocial and/or intellectual disabilities and children with disabilities currently in institutions”¹⁴². Additionally, “strategies for de-institutionalization of children with disabilities, replacing them with their families, extended families or foster care system. Parents and other extended family members should be provided with the necessary and systematic support/training for including their child back into their home environment”¹⁴³.

In what aspects, then, can we find the different opinions between both Committees? The fundamental difference is presented in the acceptance, or not, of the possibility of a residential care, which meets certain characteristics, as an exceptional situation of last resort.

The CRC Committee follows, in general terms, what is indicated in the *Guidelines for the Alternative Care of Children* adopted by the General Assembly of United Nations. According to the *Guidelines*, “the use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests”¹⁴⁴. And although it highlights that “in accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of 3 years, should be provided in family based settings”, even in this case it admits that “exceptions to this principle may be warranted in order to prevent the separation of siblings and in cases where the placement is of an emergency nature or is for a predetermined and very limited duration, with planned family reintegration or other appropriate long term care solution as its outcome”¹⁴⁵.

The conditions imposed on this type of care are strict. According to the *Guidelines*, “facilities providing residential care should be small and be organized around the rights and needs of the child, in a setting as close as possible to a family or small group situation. Their objective should generally be to provide temporary care and to contribute actively to the child’s family reintegration or, if this is not possible, to secure his/her stable care in an alternative family setting, including through adoption or *kafala* of Islamic law, where appropriate”¹⁴⁶. In addition, “States should ensure that there are sufficient carers in residential care settings to allow individualized attention and to give the child, where appropriate, the opportunity to bond with a specific carer. Carers should also be

141 CRC General Comment No. 20, par. 52. CRPD, General Comment No. 5, par. 16 c).

142 CRPD General Comment No. 5, par. 97 g). CRC, General Comment No. 9, par. 49.

143 CRC General Comment No. 9, par. 49.

144 *Guidelines for the Alternative Care of Children*, A/RES/64/142, par. 21.

145 *Ibid.*, par. 22.

146 *Ibid.*, par. 123.

deployed within the care setting in such a way as to implement effectively its aims and objectives and ensure child protection”¹⁴⁷.

It is true that it is stated in the *Guidelines* that “children with special needs, such as disabilities, should benefit from an appropriate support system, ensuring, inter alia, avoidance of unnecessary institutionalization”¹⁴⁸. Nevertheless, there are no exceptions made to the general rule for all children and, therefore, residential care in the described conditions for children with disabilities is also accepted as last resort, in cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests¹⁴⁹.

On the contrary, for the CRPD Committee, “large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. “Family-like” institutions are still institutions and are no substitute for care by a family”¹⁵⁰. In other words, the CRPD Committee considers that no child with or without disability should be in a residential care setting, no matter how big or small. The only alternative to living with the biological family is, for the CRPD, living with another family.

In addition, the CRPD Committee links institutionalisation with violence and discrimination. The CRPD Committee within its COBs for the States Parties consistently expresses its concern about violence against children with disabilities in institutions since an institution constitutes *per se* a form of discrimination which upholds a high level of risk of violence against children with disabilities. The CRPD Committee considers institution as a setting promoting violence, in conflict with the human rights standards¹⁵¹. Thus, for the CRPD Committee, according to its jurisprudence and practice, the institutionalisation of children with disabilities shall be fully eradicated.

What is the main reason for this difference between both Committees? The reason can be found, with regard to the CRPD Committee, in the fact that “the right to living independently in the community is intimately linked with the right to family for children with disabilities (art. 23)”¹⁵² and, therefore, “for children, the core of the right to live independently and be included in the community entails a right to grow up in a family”¹⁵³. In other words, for the CRPD Committee there is a “right to grow up in a family” implicit in article 23.3, which justifies that art. 23.5 of the CRPD explicitly establishes that “States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting”, without establishing an option for care in a

147 Ibid. par. 126.

148 Ibid., par. 132.

149 See, among many other examples: CRC General Comment No. 9, paragraph 47; CRC General Comment No. 21, paragraph 45; CRC General Comment No. 13, paragraph 47 (d) (iii).

150 CRPD, General Comment No. 5, par. 16 c).

151 Affirmations proposed by Jonas Ruskus

152 CRPD, General Comment 15, par. 87.

153 CRPD, General Comment 15, par. 37.

residential setting¹⁵⁴. For the CRPD Committee this idea seems to translate into the right to live in a family, not accepting any alternative solution.

Concerning the CRC Committee, in its GC 14 affirms: “The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children (preamble of the Convention). *The right of the child to family life* is protected under the Convention (art. 16). The term “family” must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom (art. 5)”¹⁵⁵. With this sentence, the CRC Committee seems to interpret that Article 16 of the CRC recognises a “right of the child to family life” but giving a broad meaning to the concept of “family life”.

But, in the General Comment No. 23, the CRC Committee no longer speaks of “right of the child to family life”, but of the “right to protection of family life”¹⁵⁶. And in relation to this right, it considers that “States should comply with their international legal obligations in terms of maintaining family unity, including siblings, and preventing separation, which should be a primary focus, in accordance with the *Guidelines for the Alternative Care of Children*. Protection of the right to a family environment frequently requires that States not only refrain from actions which could result in family separation or other arbitrary interference in the right to family life, but also take positive measures to maintain the family unit, including the reunion of separated family members.”¹⁵⁷

154 However, it is important to note that, even though not established, it does not deny it either, since it ultimately obliges only to “undertake every effort”.

155 CRC/C/GC/14, par. 59 (emphasis added). In a similar sense the Declaration adopted by the Human Rights Council entitled *Empowering Children with Disabilities in the Enjoyment of their Human Rights*, can be interpreted: “Urges States to provide early and comprehensive information, services and support to children with disabilities and their families with a view to preventing concealment, abandonment, neglect and segregation and to ensuring they have equal rights with respect to family life, and in this regard encourages States to replace institutionalization with appropriate measures to support family and community-based services and, where the immediate family is unable to care for a child with disabilities, *undertake every effort to provide alternative care within the wider family and, failing that, within the community in a family setting, bearing in mind the best interests of the child and taking into account the child’s will and preferences*” (par. 16) (The underlining not in the original)

156 CRC, General Comment 23, paragraph 27.

157 Ibidem. In this sense, the CRC Committee has been very explicit in its General Comment No. 14 *on the right of the child to have his or her best interests taken as a primary consideration*, in which it demands very rigid requirements in the evaluation of the best interests of the child to the time to separate him from his parents: “Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires “that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child”[...] Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family’s capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents. The Guidelines for the Alternative Care of Children aims to ensure that children are not placed in alternative care unnecessarily; and that where alternative care is provided, it is delivered under appropriate conditions responding to the rights and best interests of the child. In particular, “financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental

It seems to follow from this that for the CRC Committee, the "right to family life" is compatible with the *Guidelines for the Alternative Care of Children*, and with that, unaccompanied migrant children in situations of migration can be placed in alternative care in some circumstances.

All this seems to show an incompatibility between the doctrine of the CRC Committee and the CRPD Committee. To try to help the search for a commitment in this regard, we will make some suggestions in the conclusions of this study.

IV. Working methods

Both Committees should incorporate cooperation with civil society in their working methods. The participation of the holders of the rights promoted, protected and guaranteed in both Conventions is inherent to the work of the treaty bodies. The CRC has included in its working methods the participation of children in all its activities. The CRPD has established similar working methods for the participation of Organizations of Persons with disabilities. To guarantee a full, effective and meaningful participation of children with disabilities in the activities of the CRC and the CRPD, it is necessary to establish procedures for the participation of those children, both directly and through organisations created by them and/or representing them. Both Committees should, accordingly, adapt their working methods to this end.

In this part of the study, we analyse, in the light of the working methods, procedures and practices of both Committees, the participation of children with disabilities (individually and through organisations created by them and/or that represent them) in the work of both Committees. CRC/C/GC/14, par. 59 This participation can occur in relation to:

- Alternative reports and pre-sessions;
- The choice of topics, design, organisation, realisation and conclusions of General Discussion Days;
- The proposal of topics and the consultations carried out for the drafting of General Comments;
- The processes up to the writing of the General Comments

care [...] but should be seen as a signal for the need to provide appropriate support to the family” (para. 15). Likewise, a child may not be separated from his or her parents on the grounds of a disability of either the child or his or her parents. Separation may be considered only in cases where the necessary assistance to the family to preserve the family unit is not effective enough to avoid a risk of neglect or abandonment of the child or a risk to the child’s safety. In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child’s best interests. When separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child’s best interests [...] Preservation of the family environment encompasses the preservation of the ties of the child in a wider sense. These ties apply to the extended family, such as grandparents, uncles/aunts as well friends, school and the wider environment.” (CRC/C/GC/14, pars. 60-65 and 70)

a) *General Principles*

The CRC Committee collects in its General Comment No. 12 on *The right of the child to be heard* the basic requirements that all processes and activities must fully ensure child participation for the implementation of the right of the child to be heard.¹⁵⁸

In accordance with these basic requirements, all processes in which a child or children are heard and participate, must be: (a) Transparent and informative; (b) Voluntary; (c) Respectful; (d) Relevant; (e) Child-friendly; (f) Inclusive; (g) Supported by training; (h) Safe and sensitive to risk; and (i) Accountable.

These general principles apply to the participation of all children, including children with disabilities. The CRC Committee even “welcomes the obligation of States parties in article 7 of the Convention on the Rights of Persons with Disabilities to ensure that children with disabilities are provided with the necessary assistance and equipment to enable them to freely express their views and for those views to be given due weight”¹⁵⁹.

The CRPD Committee, on the other hand, in its general *General Comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention*, although it does not carry out an identical systematisation, it gathers more or less the same principles and, in addition, makes plenty of quotations to the General Comment No. 12 of the CRC Committee.

In conclusion, we can consider that there is a convergence between both Committees in relation to the principles that should be applied to all processes in which a child or children with disability are heard and participate.

However, these general principles are declared for the processes of *participation of children with disabilities in the States*. We, in the next section, will analyse the working methods of both Committees, to check how they apply those principles to the participation of children with disabilities in the work of the Committees.

b) *The application of the general principles in the working methods of the Committees*

The CRC Committee has made the participation of children in their various activities a main priority. In this regard, the Committee's approval of two documents of special importance stands out: *The Working methods for the participation of children in the reporting process of the Committee on the Rights of the Child*¹⁶⁰; and the *Working*

158 CRC/C/GC/12 par. 134.

159 CRC/C/GC/12 par. 78.

160 CRC/C/66/2, adopted by the Committee at its sixty-sixth session (26 May–13 June 2014).

*methods for the participation of children in the days of general discussion of the Committee on the Rights of the Child*¹⁶¹.

In both documents, the CRC Committee gathers and adapts the general principles applicable of children's participation, both in the reporting process and in the participation of children in the days of general discussion. Both documents refer to all children, and not only to children with disabilities. But both documents gather and adapt the general principles of General Comment No. 12 and show a clear sensitivity towards the participation of children with disabilities, both in the access to the process, as well as in their representation, to the adoption of reasonable supports and accommodation, and the adaptation of all processes to make them accessible and friendly for children with disabilities.

In fact, in practice, these participation processes are already being developed usually in the work of the CRC Committee and it can be claimed that, in almost all the groups of children that have participated in the work of the CRC Committee, there has been representation of children with different disabilities who have subsequently made very positive evaluations of their participation¹⁶².

On the other hand, in the elaboration of the General Comments, the CRC Committee, especially from its General comment No. 19 (2016) on *public budgeting for the realization of children's rights*¹⁶³, onwards has adopted the practice of consulting with children. The methodology of these consultations has not been systematized in a document, and normally the consultation is entrusted to a group of experts external to the Committee who, in collaboration with civil society, carry out the consultation in a way that is representative and its results are comparable in all the States where it is carried out. But, in any case, it seems advisable that the CRC Committee also develop guidelines on these consultations so that the perspective of disability is always considered.

It should be noted that many of the advances and achievements of the CRC Committee in this area have been supported by children's organisations, especially the Child Rights Connect network, strongly committed to the processes of participation of children, including children with disabilities.

Regarding the CRPD Committee, it seems to have a significant gap in this issue. The General Comment No. 7 refers exclusively to the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention in the internal sphere of the State. Yet, it does not contain any reference to its application in the work of the Committee.

Regardless of a generic reference to the "particular value to the efforts to contribute to the Committee's work by organizations representing persons with disabilities, including organizations representing women and children with disabilities"

161 CRC/C/155, adopted by the Committee at its seventy-eighth session (14 May–1 June 2018).

162 The participation of children in the work of the CRC Committee is coordinated by the NGO Child Rights Connect network, which always carries out an evaluation by the children on their participation in the work of the CRC Committee.

163 CRC/C/GC/19.

in the *Guidelines on the Participation of Disabled Persons Organizations (DPOs) and Civil Society Organizations in the work of the Committee (2014)*¹⁶⁴, the main documents of the CRPD Committee on the participation of civil society in its work are the *Rules of Procedure*¹⁶⁵ and the *Working Methods of the Committee on the Rights of Persons with Disabilities*¹⁶⁶. Chapter VI of the first document is dedicated to rule the different methods of communication and types of languages used by the Committee and its Annex are developed the *Guidelines on independent monitoring frameworks and their participation in the work of the Committee on the Rights of Persons with Disabilities*, in which paragraph 6 we can read that “Article 33 (3) of the Convention, read in conjunction with article 4 (3), requires States parties to provide persons with disabilities and their representative organizations, including organizations of women with disabilities and organizations of children with disabilities, with appropriate funding and resources to enable the effective and meaningful participation of persons with disabilities in the monitoring framework”; but there is not a particular reference regarding the participation of children with disabilities in the working methods of CRPD Committee. And in the second document, in the section on participation of civil society, including non-governmental organisations in the work of the Committee¹⁶⁷, there is no reference to the possible participation of children (with or without disabilities) or organisations formed by (or representing) children with disabilities. No adaptations are planned to provide child-friendly information, nor is there any kind of childhood perspective.

The result of this situation is that, to date, the participation of children with disabilities in the work of the CRPD Committee has been almost non-existent, both in the reporting process, as well as in the days of general discussion or in the drafting of General Comments.

c) *The improvement of cooperation between the Committees for the better protection of the rights of children with disabilities*

The collaboration between the two Committees has gone through several stages. At first, that cooperation was almost non-existent, limited to the exchange of personnel of the Secretariats (which always helps to prepare the work with perspective of childhood with disability). Later, that cooperation became something specific and carried out personally by a member of the one of Committees, so that the cooperation could be described as informal. Finally, in the last year, a decisive step was taken for that cooperation with the formal creation of the Joint Working Group CRC / CRPD, composed of members of both Committees in order to formalise such cooperation.

164 CRPD/C/11/2, Annex II

165 CRPD/C/1/Rev.1.

166 CRPD/C/5/4, adopted at its fifth session (11-15 April 2011).

167 CRPD/C/5/4 pars. 41-53.

The clearest example to understand these steps has been in the cooperation in the writing of the General Comments. In the first General Comment of the CRPD Committee, cooperation was non-existent. In the writing of General Comment No. 4 on *inclusive education*, there were several contributions made by isolated members of the CRC Committee that were very much taken into account by the CRPD Committee, as well as the participation by a CRC Committee member in the day of general discussion of the CRPD Committee on art 24. Finally, in the drafting of General Comment No. 7 of CRPD *on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention*, the CRC Committee created a specific working group to carry out contributions to the CRPD Committee in the area of participation of children with disabilities. Without any doubt, that was enhanced by the agreement adopted at the meeting of the Chairpersons of the Treaty Bodies on the advisability of providing information to all the other Treaty Bodies when one of them is preparing a General Comment, with enough time to make contributions.

That good practice, initiated by both Committees, could be debated within the JWG CRC / CRPD in order to systematise cooperation in different areas in which the work of both Committees should reinforce each other to achieve better protection, guarantees and respect of the rights of children with disabilities.

V. Final reflections and recommendations

A) On the terminological aspects and the necessary incorporation of the gender perspective

Reflections

It is clear that words help shape reality. This certainty acquires a special relevance concerning the groups of people who have traditionally suffered discrimination in our societies, as is the case, among others, of children, persons with disabilities and women.

Both Conventions have led to important paradigm shifts for the incorporation of the rights of children and people with disabilities into the human rights model. Thus, the terminology used to refer to these people and their respective rights has had to be transformed to adapt to the new paradigm and definitively overcome previous and still existing discrimination situations to a large extent. The change in terminology is, in this sense, especially important, since the terms used are the expression of different conceptions and the change of concepts requires changing terms.

In this regard, the good work done by both Committees must be highlighted. However, some problems persist in the terminology used, due both to the continuous evolution followed in the specific terminology that is being created to account for new perspectives of the rights of these groups, as well as to the problems arising from

translating such precise language to other languages, in which it is very difficult to find a term that means exactly the same.

On the other hand, it is necessary to pay special attention to the appropriate incorporation of the gender perspective in all the activities of both Committees. Understanding that the gender perspective is much broader than that which affects girls, important as it may be, it should be incorporated in the widest and most open way possible not only to issues that affect boys as such, but also to all existing options regarding sexual and gender identity.

Recommendations

It is recommended that both Committees establish the mechanisms of joint action that ensure that all the terminology they use is consistent with the paradigm incorporated by both Conventions, so a special effort by the CRPD will be required to assume the terminology of the rights of the child and by the CRC to assume the terminology of the rights of persons with disabilities.

Along these lines, it is also recommended that both Committees take into consideration the appropriate gender perspective, understood in the broadest possible sense, not only in regard to girls, but also boys and all children regardless of their sexual or gender identity. Concerning girls in particular, it would be important to establish channels of direct communication in this regard with CEDAW.

It is recommended that the Committees maintain a process of permanent collaboration with the official translators and supervise the final result, in order to ensure that the precise meanings for every term are faithfully translated.

This consultant considers essential that the agreed terminology be in writing. It is important that the new members that are incorporated into the Committees in their respective renovations, the staff of the Secretariats that assist the Committees in the drafting of their documents (and that also varies over time) and the staff of the translation services, have a reference document regarding the terminology to use (and avoid) in relation to the rights of children with disabilities. It should be a document open to new developments, which will be modified over time and that is accessible to all the actors mentioned.

In this regard, it is important to note that the CRPD Committee has been working closely with the UNOG language services, for more than a year, to address this issue. UNOG has organised periodic workshops on terminology related to disability and its translation, with the participation of persons with disabilities and the CRPD Secretariat. This is a good starting point that should be used to prepare the joint CRC / CRPD document on children with disabilities.

B) On the general principles of the CRC and CRPD

Reflections

The CRC Committee has repeatedly stated that there are four general principles in the Convention on the Rights of the Child that lay the foundations for the entire Convention and that are the essential basis for the adoption of the model of human rights for children: equality and non-discrimination (art. 2 CRC), the best interests of the child (art. 3.1 CRC), the right to life, survival and development (art. 6 CRC) and the right of the child to participate in all decision-making that affect them (art.12 CRC). These four principles shape the basic structure of the child's rights system according to the human rights model. Therefore, it is essential to apply these principles to the rights of children with disabilities. It is an obvious consideration, which does not admit possible discussion, because children with disabilities are children who are in a situation of special vulnerability because, due to the barriers that exist in societies, they cannot exercise their rights on equal terms with the rest of the children.

With regard to the CRPD, it also establishes eight principles in its article 3 that make up the human rights model of disability: a) Respect for inherent dignity, individual autonomy, including the freedom to make one's own decisions, and independence of people; b) Non-discrimination; c) Full and effective participation and inclusion in society; d) Respect towards difference and acceptance of persons with disabilities as part of human diversity and condition; e) Equal opportunities; f) Accessibility; g) Equality between men and women; h) Respect for the evolution of the faculties of children with disabilities and their right to preserve their identity.

Several of these principles coincide with the principles of the CRC. The only principle of the CRC that does not appear explicitly in this CRPD article is that referring to the best interests of the child; however, this principle is expressly cited in articles 7 and 23 of the CRPD. In any case, taking into account that all States that have ratified the CRPD have also ratified the CRC¹⁶⁸, the principles of the CRC (and, therefore, the model of child's rights in accordance with the human rights model) must be considered incorporated by reference to the CRPD under article 4.4 of the CRPD, according to which "nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in [...] international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in [...] conventions, regulations or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent."

Regarding the CRC, it is true that it was written with a medical conception of disability. However, taking into account that the great majority of States that have ratified the CRC have also ratified the CRPD, this conception must be considered surpassed by virtue of article 41 of the CRC, of content similar to art. 4.4 of the CRPD. In other words,

¹⁶⁸ Of the 196 States Parties to the CRC, in October 2019 there are 18 that have not ratified the CRPD (Bhutan, Botswana, Cameroon, Equatorial Guinea, Eritrea, Holy See, Lebanon, Liechtenstein, Niue, Salomon Island, Somalia, South Sudan, St. Kitts and Nevis, St. Lucia, Tajikistan, Timor-Leste, Tonga, and Uzbekistan). Of the 179 Parties that have ratified the CRPD there is 1 that has not ratified the CRC (European Union).

the human rights model of disability should be considered incorporated by reference in the CRC.

Along these lines, it can be affirmed that, in recent years, both Committees have acted in accordance with the principles of both Conventions, taking into account the need to guarantee the autonomy of children with disabilities in making decisions that affect them according to the development of their own abilities. Thus, for example, both Committees have demanded the guarantee of universal accessibility, understood in the broadest possible sense, as it is necessary so that all children, with or without disabilities, can exercise all their rights on equal terms.

There can therefore be no discrimination that prevents or hinders the exercise of rights on equal terms, neither because of their disability, nor for any other consideration. And again, special attention must be given to the gender perspective in order to effectively eradicate the discrimination suffered by girls and other boys in particular because of their gender identity. In any case, one must be particularly active in identifying and eradicating intersectional discriminations and multiple discriminations.

Thus, it is urgent that both Committees collaborate in identifying and eradicating the existing barriers faced by children with disabilities, both because they are children and because they are people with disabilities. And, in this sense, the adequate understanding of the scope of the best interests of the child is an adequate guide for this, while it aims at “ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child” (CRC / C / GC / 14, par 4). And this must be done from the human rights model of disability.

Recommendations

It is recommended that both Committees collaborate closely in identifying and eradicating the barriers that prevent children with disabilities from exercising their rights on an equal basis with others, which will require the proper interpretation and application of the four basic principles of CRC in the perspective of the human rights model of disability.

It is recommended that, following the line indicated in the previous paragraph, both Committees work in coordination to make a joint General Comment on the rights of children with disabilities (which will consequently entail the revision of the current General Comment No. 9 of the CRC).

C) On situations of vulnerability and vulneration of rights that affect in a particularly intense way children with disabilities

Reflections

The identification and eradication of barriers that prevent or hinder children with disabilities from exercising their rights on equal terms with others, requires that both

Committees establish a common doctrine for this in relation to the recognition and protection of their different rights.

In this sense, some problems have been identified that especially affect children with disabilities and whose solution requires the joint work of both Committees. However, in the study presented in the month of July, the difference between those issues in which there is greater harmony between the two Committees—which is in the great majority of cases—and those in which there is still a more common doctrine shared by both Committees cannot be pointed out. Thus, these last issues are the ones that require greater dialogue between the two Committees, in order to formulate and use a consistent common doctrine and action.

Thus, a common criterion of both Committees is observed when demanding from the States the obligation, expressly established in articles 4 of both Conventions, to adopt the “General measures of implementation” to make effective the rights recognised in both Conventions. Both Committees highlight the decisive importance of States making a systematic and adequate collection of data, with the necessary disaggregations, to have an accurate knowledge of the reality experienced by children with disabilities and, thus, to be able to take the different measures that guarantee the effectiveness of their rights. Both Committees require that States parties take the necessary measures to end any form of violence, abuse or exploitation against children with disabilities, as well as any harmful practices that are exercised against them—such as forced sterilisation—, against to which children with disabilities are in a situation of special vulnerability, suffering them, therefore, to a greater extent. Or, finally, both Committees demand the effective recognition and protection of the right to inclusive education, following an evolution in the doctrine of the CRC Committee that has ended with the assumption of the CRPD Committee's proposals and, thus, the configuration of a common doctrine.

On the other hand, it is also observed that there are issues regarding which both Committees do not yet have a clear common doctrine (either because they have not traditionally given due attention to children with disabilities, or because they have not considered them from the same perspective), but concerning which, it can be understood without doubt that both committees will find a common doctrine. Thus, although the CRC Committee has not yet referred to the forms of indirect discrimination, by association or for lack of reasonable accommodation, it is understood that the doctrine of the CRPD Committee in this regard will be easily assumed by the CRC Committee; and although both Committees have not yet established a common doctrine regarding such relevant issues as the practice of coercive abortions exercised on girls with disabilities, issues related to access to abortion practice for girls with disabilities, the rights of children with disability in street situation or in conflict with the law: if the references made by one or another of the Committees regarding these issues are addressed, it should be understood that it will not be difficult for both Committees to establish a common doctrine in relation to these issues.

Finally, it should also be understood that the attainment of a common doctrine by both Committees will also be relatively easy to achieve with respect to some issues in

which differences of criteria have been raised that respond to the different evolution followed in terms of understanding the rights of the child and persons with disabilities, in general, and the rights of children with disabilities, in particular. Thus, some recommendations of the CRC Committee can be identified in which the so-called eugenic abortion is treated inappropriately, by accepting the malformation of the fetus as one of the specific assumptions to allow abortion. However, it seems that it will be easy for the CRC Committee to make it explicit that it assumes as its own the doctrine already established by the CRPD Committee in this regard, similar to how it has been previously stated that the CRC Committee has evolved in its way of understanding the right to inclusive education having assumed the CRPD Committee doctrine in this regard.

Recommendations

It is recommended that the Committees work to seek and apply a common doctrine and action in all areas that affect the rights of children with disabilities; and in an especially intense way to find that common doctrine and coordination with which to face the different problems that affect children with disabilities on which currently there is no such common doctrine. This search for the doctrine and joint action should be done through the correct interpretation and application of the four basic principles of the CRC within the human rights model of disability. In this line it is recommended that both Committees always keep in mind the situation of children with disabilities in relation to each right; of the rights recognised in the CRC for all children and of the rights recognised in the CRPD for all persons with disabilities.

It is especially important to pay attention to the evolution that occurs in both Committees in the understanding of new dimensions of rights over which they have a specific specialisation: the rights of the child and the rights of persons with disabilities. Thus, for example, the specialisation in childhood of the CRC Committee allows a specific development of respect for the rights of children with disabilities in the context of juvenile justice or children in street situations, which is not easy to achieve individually to the CRPD Committee. Concerning the CRPD Committee, its specialisation in disability allows a specification of the rights of children with disabilities in the field of inclusion, accessibility and discrimination due to lack of reasonable accommodation, which is not easy to reach individually to the CRC Committee. It is in this sense that the joint work of both Committees is fundamental, since the evolution in the understanding of the rights by each Committee will be essential for the elaboration of the necessary common doctrine.

Although many of these issues could be addressed in the joint General Comment referred to in the previous section, I do not believe that the General Comment will be prepared in the short term, in light of the current limitations of both Committees under the 2020 process. Therefore, it would be convenient to agree on certain common positions to facilitate the work of both Committees as soon as possible. In this regard, it is recommended that both Committees work on the elaboration of joint documents in which they make explicit their common doctrine on different issues that directly affect the rights

of children with disabilities, especially on those issues that could still be perceived as a lack of clarity about the unification of their doctrines. These documents would provide sufficient clarity on these issues and greater strength to the decisions taken. Such joint documents could take the form of Joint Statements or Joint Decisions.

Finally, it is recommended that in the joint work of both Committees specific attention should be given to monitoring the effectiveness of the measures that are adopted, in order to end the most important violations of the rights of children with disabilities, such as they are, among others, those derived from any form of violence, abuse or exploitation against them, or the denial of the right to inclusive education.

D) On the special issue related to the right of children to live in a family

Reflections

In the development of the consultancy, a specific problem has been identified that affects children, with and without disabilities, and regarding which it has been found that there is a difference in the criteria on how to deal with it by both Committees and, above all, by some relevant civil organisations that represent the rights of children, on the one hand, and the rights of persons with disabilities, on the other. The problem affects children who, for very different reasons, cannot, in principle, live within their biological family or their extended family. Given this situation, the two antagonistic positions refer to open the possibility that, in exceptional situations, these children can develop their lives in the options that arise in a residential care system —such as small group homes— or close that possibility, admitting only family life for all children, regardless of their conditions and circumstances.

It is the responsibility of both Committees to reach an adequate harmonisation of a common doctrine in this area. It is not permissible for the same States to receive conflicting recommendations for the same situations. It is not permissible for each Committee to consider that it interprets the convention it serves regardless of the other human rights treaties. The human rights conventions are interdependent and the treaty bodies have the responsibility to harmonise their interpreting doctrine, since the States must protect, respect and guarantee the rights of children with disabilities without contemplating one or the other convention, but rather all the treaties.

In order to achieve the adequate harmonisation of a common doctrine, it is necessary to address some relevant basic issues:

First of all, it must be recognised that, in fact, both Committees share a common vision on transcendental aspects of this issue. Among these common aspects we highlight, on the one hand, the consideration of the family as the ideal environment for the holistic development of the child, so that all children, with or without disabilities, must always be able to exercise their right to live in a family on equal terms with others, the public authorities must take all measures and guarantee all necessary support so that such equality of conditions is a reality. Both Committees agree (as indicated by both Conventions) that a child will only be separated from the family in which they are

developing their life, if the competent authorities decide, after a judicial procedure, that it is in the best interests of the child such separation, that is, if it is adequate for the respect of their rights and their holistic development. Both Committees agree on the obligation of the State to adopt all appropriate measures to provide assistance to parents and legal representatives for the performance of their duties with regard to the upbringing of the child and that no child may be separated from his or her parents by cause of disability, of the child or their parents. On the other hand, both Committees share the understanding of the need to ensure that no group of children can be harmed in determining where they live. And both Committees understand that the institutionalisation system must be urgently terminated, given the serious and permanent damage that children have to live in institutions; sharing the deep concern that the institutionalisation system punishes children with disabilities in a special way.

Secondly, it must be ensured that the solution offered by both Committees is consistent both with the social and human rights model of disability, and with the four general principles of the CRC that shape the basic structure of the model of children's rights according to the human rights model.

But once affirmed these coincidences, there are still discrepancies when it comes to concrete them. In the opinion of this consultant, and as revealed in the meeting with experts on September 14, many of these discrepancies have their origin in the different sense given to the use of the same terms, or similar, for both conceptions. This consultant thinks that the points of coincidence predominate and that the key is to use the terms with the same meaning.

With the sole purpose of helping the debate to reach a consensus, it seems appropriate to ask three questions that, in our opinion, could be the key to reaching agreements: (1) What should we understand by family? (2) What does it mean to recognise and safeguard this right to live as a family? And (3) How should we assess the best interests of the child in the search for alternatives when they lack a family environment?

(1) In the Preamble of the CRC it is recognised that "for the full and harmonious development of his or her personality, [the child] should grow up in a family environment, in an atmosphere of happiness, love and understanding". However, it is clear that the concept of family is very diverse in different cultures, which also evolve over time. While it seems clear that the family unit consisting of a couple and their children constitutes a family, the CRC Committee has referred in that context to community members as provided by local customs, and article 23.5 of the CRPD explicitly considers the option that, when it is not possible to provide alternative care within the extended family, care shall be provided to the child "within the community and in a family environment."

In other words, although both Committees indicate the existence of different types of families, it is not clear what identifies the "family environment" and what types of structures can be considered included within that expression of "family environment". And yet, both the Conventions and the two Committees underline the enormous

importance of living in a family environment for the development of the child, so that it must even be recognised as a right of all children.

Thus, we can understand that when both Committees affirm that the child must live in a family environment, they do not refer to a specific organisational structure, but to a type of human relationships that are understood as those that best guarantee the holistic development of the child. This explains why both Committees agree on the fact that the "institutionalisation" of children must be eradicated, as it has been shown to be seriously detrimental to the holistic development of children.

Along these lines, the rejection of the CRPD Committee to small group homes (or other structures that claim to have a structure similar to that of a family) could be interpreted to mean that these options also constitute small institutions¹⁶⁹.

However, a "family environment" is not an organisational structure, but the content of the relationships within it. Biological parents can reproduce "institutionalisation" structures in their home if they establish rigid rules of discipline, restrict the freedom of movement of their children by preventing them from leaving the house, dispense with any sign of love, force them to dress evenly, etc.

On the contrary, a reduced structure in which there is an adult person of reference, whose relationships are based on love, in which the personality and freedom of each of the children who constitute it develops in accordance with the evolution of their capacities, in which freedom and the right to be heard and to participate are respected, may be considered quite possibly a "family environment", even if there are no "blood ties" among its members.

Thus, something important would be, on the one hand, to identify the harmful environments for the holistic development of children, whose prototype are the institutions of the traditional institutional system, to eradicate them; and, on the other hand, to identify the most appropriate environments for the holistic development of children, whose prototype is the family of parents and their children, to promote them. Both the Conventions and the Committees have given us some clues to identify both environments¹⁷⁰.

¹⁶⁹ In this sense, the CRPD Committee claims: "Policies of deinstitutionalization therefore require implementation of structural reforms which go beyond the closure of institutional settings. Large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. "Family-like" institutions are still institutions and are no substitute for care by a family" (CRPD, General Comment No. 5 on Right to independent living, par. 16 c)

¹⁷⁰ See for instance CRPD GC No 5: "Although institutionalized settings can differ in size, name and set-up, there are certain defining elements, such as obligatory sharing of assistants with others and no or limited influence over whom one has to accept assistance from; isolation and segregation from independent life within the community; lack of control over day-to-day decisions; lack of choice over whom to live with; rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority; a paternalistic approach in service provision; supervision of living arrangements; and usually also a disproportion in the number of persons with disabilities living in the same environment. Institutional settings may offer persons with disabilities a certain degree of choice and control; however, these choices are limited to specific areas of life and do not change the segregating character of institutions." (CRPD/C/GC/5, par. 16 c)

(2) Regarding the second question (what does it mean to recognise and safeguard the right to live as a family?), the answer will be determined by the answer we give to the previous question. Hence, it could be understood that this right presupposes the right of every child to live in a family environment. This implies, on the one hand, the prohibition of living in an institutionalised environment. On the other hand, it would imply the obligation of the public authorities to guarantee —with the use of all the necessary resources— that all children can, on equal terms, live in family with their parents and siblings; and, when this is not possible, within the different human groups that are considered to provide the appropriate "family environment", always trying to provide the child with the environment that, as far as possible, provides everything that is deemed necessary for its holistic and harmonic development, being understood as the guarantee of their best interests.

(3) This leads us to the third question posed: how to assess the best interests of the child in the search for alternatives when a family is lacking or is not adequate?

The CRPD Committee seems to start from the fact that it can never be in the best interests of the child that he or she does not live in a family, in its strict sense (be it the biological family, the extended family or a foster or adoptive family).

While, on the other hand, the CRC Committee notes that "assessing the child's best interests is a unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general. These circumstances relate to the individual characteristics of the child or children concerned, such as, *inter alia*, age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc."¹⁷¹. Moreover, within the framework of that unique activity that must be carried out in each individual case, in the light of the specific circumstances of each child, a special element that must be taken into account is, on the one hand, that "there is no hierarchy of rights in the Convention; all the rights provided for therein are in the "child's best interests" and no right could be compromised by a negative interpretation of the child's best interests."¹⁷²

On the other hand, it is essential to keep in mind that one of the four general principles of the children's human rights model that is established from the CRC is the right of the child to participate in a real way in all decision making that affect him or her. In this sense, it is necessary that the child be heard and that their wishes and interests be taken into account when making a decision as to where and with whom to live.

¹⁷¹ CRC/C/GC/14, par. 48

¹⁷² Ibidem, par. 4

Based on this reasoning, the CRC Committee, in line with the *Guidelines for the Alternative Care of Children*, considers that there may be exceptional situations, based on the circumstances of the case and never on the child's condition, which may lead to consideration, in a concrete case, that the best interest of the child is —provided that certain circumstances and conditions are met— that the child be in a foster care or appropriate residential care, including group homes and other supervised living arrangements, always trying to make this situation as short as possible. In any case, it seems that the key lies in what elements should be assessed when determining the best interests of the child and the weight that should be given to their wishes and opinions, depending on the specific circumstances of the case.

In the opinion of this consultant, the positions of both Committees (and specialised civil society, both in the rights of persons with disabilities and in the rights of the child) are strongly influenced by their own experiences. The CRPD Committee is particularly concerned about the traditional institutionalisation of children with disabilities and fears that any door that opens to possible acceptance of residential care, even in small centers, with a family environment and adults of reference, is a way of perpetuating this institutionalisation. With regards to the Committee on the Rights of the Child, it contemplates the principles of the best interests of the child and the right of the child to be heard and that their opinion be taken into consideration, as basic principles that must govern, together with non-discrimination and right to life and integral development of the child, in any decision that concerns them; and it is especially concerned about the different situations that many children, with or without disabilities, who do not have, in fact, a family to live in (such as, among other situations, that of street children, migrant children unaccompanied or those who are temporarily without family after an emergency or humanitarian catastrophe). It is understood that, in these situations, many children would be left without the necessary protection of their rights if the possibility of providing adequate residential care measures were ruled out, until the child could re-develop his or her life in a family.

This consultant considers that exposing the diversity of the existing reality is the correct option, which facilitates the necessary debate on the best way to safeguard the rights of the child, always with full respect for the best interests of the child and their right to participate in the decision making that affects them, seeking the holistic and harmonious development of the child's own personality at the highest possible level. In this regard, the interpretation of the CRC by the Committee must take into consideration the special situation of vulnerability of children with disabilities in this area. For its part, the interpretation of the CRPD by the Committee must also take into account, when interpreting article 19 regarding the right to live independently and to be included in the community, among other issues, age and diversity of situations in which children can find themselves.

Therefore, in order to overcome this apparent contradiction, it is necessary that the dialogue between the two Committees be produced, so that the different situations are understood and a consensus is reached on the acceptable alternatives and the requirements that should be met so that full respect of the rights of all children (with and without

disabilities) is guaranteed. In this sense, it is very good news that the next General Discussion Day of the Committee on the Rights of the Child is dedicated to this topic.

Recommendations

It is recommended that a dialogue be initiated within the JWG CRC / CRPD dedicated exclusively to this topic, in order to be able to approve a not very extensive document that establishes the bases on which there is consensus. This document would be based on two basic pillars: the four general principles of the CRC and the human rights model of disability. Possible issues where no consensus was reached would be left for further discussion. But the document would already send the message that the doctrine of the two Committees is mostly aligned on this issue.

It is recommended that, in the aforementioned document, it is emphasised, on the one hand, that there can never be institutionalisation of children because of their disability, and on the other hand, that children with disabilities, precisely because of their condition, in most of the cases need attention within a family to achieve its holistic development. This would imply that one of the essential elements for the evaluation of the best interests of the child would be his or her disability status, but not to opt for residential solutions, but quite the opposite. That is, the condition of disability would support the idea of a kind of positive discrimination in favor of family options in front of residential ones (which does not exclude that there are other characteristics of children without disabilities that they can carry, within the framework of the evaluation and determination of the best interests of the child and their participation in making the corresponding decisions that affect them, to the same result).

This document should also make explicit the obligations of the public authorities in this regard and the radical prohibition that the system that is established can harm any group of children, such as children with disabilities, with respect to the rest. The need to be vigilant about these aspects will require the establishment of a permanent monitoring system and, where appropriate, correction of the operation of the system.

In conclusion, it is recommended that the joint document make it clear that the system to follow must necessarily accommodate the human rights model of disability and the four basic principles of the model of children's rights. In other words, that in said system the decisions that are taken regarding where the children are to live are individualised, to always respond to their best interests, attending to the concrete situation in which the child lives; that is the answer that best guarantees the exercise of all their rights and their holistic development given their specific circumstances; that takes into account the age and holistic development of the child; that discrimination against other children never occurs; that all barriers that impede the exercise of the right on equal terms with others be removed; and that it is the result of a process in which the child's own decisions about where, how and with whom he or she wants to live have been given due prominence.

It is also recommended that the next General Discussion Day of the CRC Committee, dedicated to the rights of children without a family environment, be used to deepen this issue and hear the voice of experts and children, especially in those areas in which the doctrine of both Committees has not been fully harmonised. Taking into account that the CRC DGD will be held in September 2020 and that both Committees can be in session in Geneva on that date, it would be convenient for the agenda of the CRPD Committee session to be structured to allow the participation of the highest possible number of its members.

E) On the working methods of the committees

Reflections

The procedures for action are always determining, to a greater or lesser degree, for the results obtained. It is therefore necessary to establish mechanisms that guarantee the greatest effectiveness of the procedures of action, and to submit them to continuous revision for their correction and improvement.

In particular, it is important to determine how the Concluding Observations should be made to the different States parties to both Conventions and how to incorporate into them issues directly related to children with disabilities. Thus, for example, the incorporation of these issues under the heading of “health” (as it has been the practice in the Concluding Observations of the CRC until this month of September) was clearly negative, as it ultimately corresponded to a medical vision of the disability; and the incorporation of general issues within an epigraph dedicated to “children with disabilities” can also have negative consequences (such as those derived from incorporating issues related to inclusive education under that heading, which may facilitate the misunderstanding that inclusive education is a “proper” issue of children with disabilities, when it is a matter of the right to education, which belongs to each and every child). In this regard, it is especially important to highlight the agreement adopted by the CRC Committee, after the JWG CRC / CRPD meeting with a group of experts on September 14, 2019, to remove the “children with disabilities” section of the section on health, assigning it an autonomous section. This line of cooperation must continue if one wants to be effective in protecting the rights of children with disabilities.

On the other hand, the good evolution that has taken place around the collaboration between both Committees for the development of their respective tasks is observed. In this regard, it is worth mentioning the creation of the JWG CRC / CRPD, which gives its own and formal entity to the cooperation between the two Committees.

Finally, a reflection of each of the Committees is necessary to ensure the adequate participation of children with disabilities in their work. Although this task must be assumed individually by each Committee in the framework of the periodic review of its working methods, it would also be very convenient to maintain a dialogue in this regard within JWG CRC / CRPD, so that the disability perspective by the CRC Committee and childhood by the CRPD Committee are correctly adopted.

Recommendations

It is recommended that both Committees take into consideration how to make the Concluding Observations to the States in a way that is as effective as possible to achieve adequate recognition and protection of the rights of children with disabilities. Decisions in this regard must be taken jointly by both Committees. In this regard, it is particularly important to determine how to deal with issues related to children with disabilities in the drafting of these Concluding Observations; suggesting that there may be an epigraph of “children with disabilities”, but that the issues that affect them in relation to rights that have their own headings are addressed, where appropriate, in them.

It is recommended that communication channels and permanent cooperative work be promoted and stabilised between the members of both Committees and even with other Committees. The consolidation of the Joint Working Group would be a great step in this line of joint action.

It is recommended that in all decision-making processes and action practices of both Committees that affect children with disabilities, mechanisms for effective participation of children with disabilities themselves and the civil organisations that represent them be explicitly established. In particular, the development of guidelines for the participation of children with disabilities in the preparation of alternative reports submitted by children is recommended; and the establishment of guidelines for the participation of children with disabilities in the preparation of the General Observations and in the Days of General Debate. The corresponding participation mechanisms and action protocols should be agreed by both Committees and applied by them in their respective actions.