

Alliantie voor de Implementatie van het VN-verdrag

Reactie op het Besluit toegankelijkheid

Geen ambitie, slordig proces en gevaar voor waarmaken VN-verdrag

De voorliggende aanvullende maatregel van bestuur (AMvB) is door de Alliantie met verbijstering en ontgoocheling ontvangen. Verbijstering door het vage en vrijblijvende karakter van de AMvB en ontgoocheling door het gebrek aan ambitie, die bij de ratificatie nog duidelijk aanwezig was.

De Alliantie is ook teleurgesteld over het proces waarin deze AMvB tot stand is gekomen. De AMvB is niet met de Alliantiepartners besproken, terwijl die verwachting vooraf wel door VWS gewekt werd. In plaats daarvan heeft de AMvB van maart tot eind oktober dit jaar op zich laten wachten. Met als resultaat een te korte consultatieronde, onder druk van de naderende Tweede Kamer verkiezingen komend jaar. De datum van de verkiezingen was in maart ook al bekend...

De Alliantie moet nu op een te korte termijn reageren op een stuk dat dermate onder de maat is dat het zelfs een bedreiging vormt voor de implementatie van het VN-verdrag.

Wat beoogde de AMvB te bereiken?

Tijdens de behandeling van het VN-verdrag in de Tweede Kamer was er brede steun voor het amendement van Otwin van Dijk c.s. om in lijn met het VN Verdrag per 1 januari 2017 toegankelijkheid als norm te verklaren en ontoegankelijkheid de uitzondering. Tegelijkertijd werd geconstateerd dat met de uitbreiding van de Wet gelijke behandeling chronisch zieken/gehandicapten (Wgb h/cz) en het amendement van Otwin van Dijk c.s. onvoldoende rechtszekerheid geboden werd. SGP en CDA kwamen met een oplossing in de vorm van een AMvB, met daarin regels over wat toegankelijkheid is, waar het betrekking op heeft, wat redelijke invoeringstermijnen zijn en wat redelijkerwijs aan investeringen gevraagd kan worden. Met als doel het bevorderen van de rechtszekerheid voor alle betrokkenen. Het voorkomt dat mensen individueel naar de rechter moeten stappen om hun recht op toegankelijkheid af te dwingen en schept duidelijkheid voor degenen die de plicht hebben om toegankelijkheid te garanderen.

Waarom dit Besluit toegankelijkheid er in deze vorm niet kan en mag komen

Het Besluit toegankelijkheid beantwoordt aan geen van de beoogde doelen. Een concrete omschrijving van toegankelijkheid ontbreekt. Uitwerking van de afwegingskaders met betrekking tot de geleidelijkheid en de financiële inspanning, wordt niet gegeven. Duiding van de onderwerpen en de sectoren waar het VN-verdrag betrekking op heeft, ontbreekt volledig. Alle aandacht lijkt uit te gaan naar de uitzonderingen in plaats van naar de uitwerking van de norm. Ter verduidelijking van normen wordt verwezen naar bestaande wetgeving zoals het Bouwbesluit 2012 en de Kieswet, die nog niet in lijn zijn gebracht met de beginselen van het VN-verdrag. Zo ontbreekt in de AMvB een helder toetsingskader dat de betrokkenen houvast geeft. Dat betekent dat er vaker een beroep op de rechter moet worden gedaan om de noodzakelijke duidelijkheid te scheppen, wat tot extra druk op het rechterlijk apparaat leidt.

Verder missen we in de huidige AMvB verduidelijking van de manier waarop de AMvB aansluit bij en voldoet aan de eisen die het VN-verdrag aan de implementatie van toegankelijkheid stelt.

Met betrekking tot de geleidelijkheid onderschrijven wij dat dit een doorlopend proces is. Dat is echter geen excuus om niet een tijdspad te vragen en om piketpalen te slaan.

Het vrijblijvende karakter van deze AMvB wordt met onderstaande quote uit de toelichting geïllustreerd:

“Indien zelfregulering op bepaalde terreinen niet toereikend wordt geacht, kan dit leiden tot nadere uitwerking in aanvullende regelgeving.”

Deze AMvB stimuleert niet de beoogde actie en beweging. De AMvB zou juist de kaders voor deze zelfregulering moeten bieden. Als de AMvB in deze vorm wordt ingevoerd, wordt de hele beoogde werking van het VN-verdrag in gevaar gebracht. Daarmee is het Besluit dat nu voorligt onacceptabel voor de Alliantie VN-verdrag.

Wat we verwachten van een nieuwe AMvB

Het nu voorliggende Besluit toegankelijkheid is met de gehanteerde uitgangspunten niet om te bouwen tot een acceptabel stuk. Wij adviseren om met alle informatie die deze consultatieronde oplevert, opnieuw naar de tekentafel te gaan en een Besluit te maken dat recht doet aan de bedoeling van het VN-verdrag.

Betrek hier representatieve vertegenwoordigers van alle betrokken maatschappelijke hoeken bij. Gemeenten, bedrijfsleven en bovenal van de mensen voor wie het verdrag primair bedoeld is. Zo staat het immers omschreven in artikel 4 van het VN-verdrag: Niets over ons, zonder ons!

Probeer niet het wiel opnieuw uit te vinden maar maak gebruik van wat er voor dit doel al ontwikkeld is. Zo kan nadere invulling worden gegeven door verwijzing naar reeds bestaande en goed doordachte Nederlandse normen en regels, zoals het ITS en het Handboek Toegankelijkheid voor gebouwen en de openbare ruimte.

Bovendien kan worden verwezen naar de uitwerking van de toegankelijkheidsnorm van artikel 9 van het VN verdrag door het Verdragscomité in het Algemeen Commentaar op dat artikel (General Comment on Article 9: Accessibility, CRPD/C/11/3). Dit 'General Comment' geeft een uitwerking van de in het VN-verdrag opgenomen verplichting tot toegankelijkheid en geeft aan hoe invulling moet worden gegeven aan de implementatie van het VN-verdrag goederen en diensten. Het bevat alle ingrediënten voor de uitwerking die met de AMvB beoogd is. Te beginnen met een uitgebreide beschrijving van het begrip toegankelijkheid, tot concrete uitwerking van normen en regels, per sector en per soort product en dienst. Enkele voorbeelden uit het General Comment:

Art.9 lid 13 beschrijft de normatieve kaders van toegankelijkheid: voor wie is het verdrag bedoeld, over welke onderwerpen en wie waarvoor aanspreekbaar is.

Art.9 lid 17 beschrijft alle sectoren die onder de werkingssfeer van het verdrag vallen.

Art.9 lid 18 beschrijft de monitoring van de implementatie op basis van vooraf geformuleerde minimale standaards.

Art.9 lid 19 beschrijft de inspanningen die gedaan moeten worden om de bewustwording over toegankelijkheid te vergroten: door training van betrokken partijen zoals architecten en ontwerpers maar ook producenten en leveranciers van goederen en diensten.

Art.9 lid 30 beschrijft tot in detail hoe tot minimale standaards voor toegankelijkheid te komen en naar welke normen verwezen kan worden.

Het General Comment artikel 9 is als bijlage bij onze reactie gevoegd. Een Nederlandse vertaling is helaas nog niet voorhanden.

Hoe nu verder?

Toegankelijkheid wordt per 1 januari 2017 de norm en ontoegankelijkheid de uitzondering. Dat gebeurt hoe dan ook. Het liefst met een nieuwe AMvB zoals hierboven beschreven. Als er nog geen nieuwe AMvB ligt, dan gaan we liever van start zonder AMvB. Met de wettelijk vastgestelde norm voor Algemene Toegankelijkheid als inspiratie en motor kunnen we dan in Nederland via jurisprudentie aan datgene werken waar het Kamerbesluit over het amendement en AMvB immers voor bedoeld waren: zorgvuldig werken aan een toegankelijk Nederland voor iedereen!

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Article 9: Accessibility

I. Introduction

1. Accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society. Without access to the physical environment, to transportation, to information and communication, including information and communications technologies and systems, and to other facilities and services open or provided to the public, persons with disabilities would not have equal opportunities for participation in their respective societies. It is no coincidence that accessibility is one of the principles on which the Convention on the Rights of Persons with Disabilities is based (art. 3 (f)). Historically, the persons with disabilities movement has argued that access to the physical environment and public transport for persons with disabilities is a precondition for freedom of movement, as guaranteed under article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights. Similarly, access to information and communication is seen as a precondition for freedom of opinion and expression, as guaranteed under article 19 of the Universal Declaration of Human Rights and article 19, paragraph 2, of the International Covenant on Civil and Political Rights.

2. Article 25 (c) of the International Covenant on Civil and Political Rights enshrines the right of every citizen to have access, on general terms of equality, to public service in his or her country. The provisions of this article could serve as a basis to incorporate the right of access into the core human rights treaties.

3. The International Convention on the Elimination of All Forms of Racial Discrimination guarantees everyone the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks (art. 5 (f)). Thus, a precedent has been established in the international human rights legal framework for viewing the right to access as a right per se. Admittedly, for members of different racial or ethnic groups, the barriers to free access to places and services open to the public were the result of prejudicial attitudes and a readiness to use force in preventing access to spaces that were physically accessible. However, persons with disabilities face technical and environmental — in most cases, human-built environmental — barriers such

as steps at the entrances of buildings, the absence of lifts in multi-floor buildings and a lack of information in accessible formats. The built environment always relates to social and cultural development as well as customs; therefore the built environment is under the full control of society. Such artificial barriers are often the result of a lack of information and technical know-how rather than a conscious will to prevent persons with disabilities from accessing places or services intended for use by the general public. In order to introduce policies that allow better accessibility for persons with disabilities, it is necessary to change attitudes towards persons with disabilities in order to fight against stigma and discrimination, through ongoing education efforts, awareness-raising, cultural campaigns and communication.

4. The International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination clearly establish the right of access as part of international human rights law. Accessibility should be viewed as a disability-specific reaffirmation of the social aspect of the right of access. The Convention on the Rights of Persons with Disabilities includes accessibility as one of its key underlying principles — a vital precondition for the effective and equal enjoyment of civil, political, economic, social and cultural rights by persons with disabilities. Accessibility should be viewed not only in the context of equality and non-discrimination, but also as a way of investing in society and as an integral part of the sustainable development agenda.

5. While different people and organizations understand differently what information and communications technology (ICT) means, it is generally acknowledged that ICT is an umbrella term that includes any information and communication device or application and its content. Such a definition encompasses a wide range of access technologies, such as radio, television, satellite, mobile phones, fixed lines, computers, network hardware and software. The importance of ICT lies in its ability to open up a wide range of services, transform existing services and create greater demand for access to information and knowledge, particularly in underserved and excluded populations, such as persons with disabilities. Article 12 of the International Telecommunication Regulations (adopted in Dubai in 2012) enshrines the right for persons with disabilities to access international telecommunication services, taking into account the relevant International Telecommunication Union (ITU) recommendations. The provisions of that article could serve as a basis for reinforcing States parties' national legislative frameworks.

6. In its general comment No. 5 (1994) on persons with disabilities, the Committee on Economic, Social and Cultural Rights evoked the duty of States to implement the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities.¹ The Standard Rules highlight the significance of the accessibility of the physical environment, transport, information and communication for the equalization of opportunities for persons with disabilities. The concept is developed in rule 5, in which access to the physical environment, and access to information and communication are targeted as areas for priority action for States. The significance of accessibility can be derived also from general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health (para. 12). In its general comment No. 9 (2006) on the rights of children with disabilities, the Committee on the Rights of the Child emphasizes that the physical inaccessibility of public transportation and other facilities, including governmental buildings, shopping areas and recreational facilities, is a major factor in the marginalization and exclusion of children with disabilities

¹ General Assembly resolution 48/96, annex.

and markedly compromises their access to services, including health and education (para. 39). The importance of accessibility was reiterated by the Committee on the Rights of the Child in its general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts.

7. The *World Report on Disability Summary*, published in 2011 by the World Health Organization and the World Bank within the framework of the largest consultation ever and with the active involvement of hundreds of professionals in the field of disability, stresses that the built environment, transport systems and information and communication are often inaccessible to persons with disabilities (p. 10). Persons with disabilities are prevented from enjoying some of their basic rights, such as the right to seek employment or the right to health care, owing to a lack of accessible transport. The level of implementation of accessibility laws remains low in many countries and persons with disabilities are often denied their right to freedom of expression owing to the inaccessibility of information and communication. Even in countries where sign language interpretation services exist for deaf persons, the number of qualified interpreters is usually too low to meet the increasing demand for their services, and the fact that the interpreters have to travel individually to clients makes the use of their services too expensive. Persons with intellectual and psychosocial disabilities as well as deaf-blind persons face barriers when attempting to access information and communication owing to a lack of easy-to-read formats and augmentative and alternative modes of communication. They also face barriers when attempting to access services due to prejudices and a lack of adequate training of the staff providing those services.

8. The report, *Making Television Accessible*, published in 2011 by the International Telecommunication Union in cooperation with the Global Initiative for Inclusive Information and Communication Technologies, highlights that a significant proportion of the one billion people who live with some form of disability are unable to enjoy the audiovisual content of television. This is due to the inaccessibility of content, information and/or devices necessary for them to access those services.

9. Accessibility was recognized by the mainstream ICT community since the first phase of the World Summit on Information Society, held in Geneva in 2003. Introduced and driven by the disability community, the concept was incorporated in the Declaration of Principles adopted by the Summit, which in paragraph 25 state, “the sharing and strengthening of global knowledge for development can be enhanced by removing barriers to equitable access to information for economic, social, political, health, cultural, educational, and scientific activities and by facilitating access to public domain information, including by universal design and the use of assistive technologies”.²

10. The Committee on the Rights of Persons with Disabilities has considered accessibility as one of the key issues in each of the 10 interactive dialogues it has held with States parties during the consideration of their initial reports, prior to the drafting of the present general comment. The concluding observations on those reports all contain recommendations concerning accessibility. One common challenge has been the lack of an adequate monitoring mechanism to ensure the practical implementation of accessibility standards and relevant legislation. In some States parties, monitoring was the responsibility of local authorities that lacked the technical knowledge and the human and material

² See “Declaration of Principles: Building the Information Society: a global challenge in the new Millennium”, adopted by the World Summit on the Information Society at its first phase, held in Geneva in 2003 (WSIS-03/GENEVA/DOC/4-E), para. 25.

resources to ensure effective implementation. Another common challenge has been the lack of training provided to the relevant stakeholders and insufficient involvement of persons with disabilities and their representative organizations in the process of ensuring access to the physical environment, transport, information and communication.

11. The Committee on the Rights of Persons with Disabilities has also addressed the issue of accessibility in its jurisprudence. In the case of *Nyusti and Takács v. Hungary* (communication No. 1/2010, Views adopted on 16 April 2013), the Committee was of the view that all services open or provided to the public must be accessible in accordance with the provisions of article 9 of the Convention on the Rights of Persons with Disabilities. The State party was called upon to ensure that blind persons had access to automatic teller machines (ATMs). The Committee recommended, inter alia, that the State party establish “minimum standards for the accessibility of banking services provided by private financial institutions for persons with visual and other types of impairments; ... create a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private financial institutions of previously inaccessible banking services provided by them into accessible ones; ... and ensure that all newly procured ATMs and other banking services are fully accessible for persons with disabilities” (para. 10.2 (a)).

12. Given these precedents and the fact that accessibility is indeed a vital precondition for persons with disabilities to participate fully and equally in society and enjoy effectively all their human rights and fundamental freedoms, the Committee finds it necessary to adopt a general comment on article 9 of the Convention on accessibility, in accordance with its rules of procedure and the established practice of the human rights treaty bodies.

II. Normative content

13. Article 9 of the Convention on the Rights of Persons with Disabilities stipulates that, “to enable persons with disabilities to live independently and participate fully in all aspects of life, States parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communication, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas”. It is important that accessibility is addressed in all its complexity, encompassing the physical environment, transportation, information and communication, and services. The focus is no longer on legal personality and the public or private nature of those who own buildings, transport infrastructure, vehicles, information and communication, and services. As long as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise. Persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner that ensures their effective and equal access and respects their dignity. This approach stems from the prohibition against discrimination; denial of access should be considered to constitute a discriminatory act, regardless of whether the perpetrator is a public or private entity. Accessibility should be provided to all persons with disabilities, regardless of the type of impairment, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, legal or social status, gender or age. Accessibility should especially take into account the gender and age perspectives for persons with disabilities.

14. Article 9 of the Convention clearly enshrines accessibility as the precondition for persons with disabilities to live independently, participate fully and equally in society, and have unrestricted enjoyment of all their human rights and fundamental freedoms on an

equal basis with others. Article 9 has roots in existing human rights treaties, such as article 25 (c) of the International Covenant on Civil and Political Rights on the right to equal access to public service, and article 5 (f) of the International Convention on the Elimination of All Forms of Racial Discrimination on the right of access to any place or service intended for public use. When those two core human rights treaties were adopted, the Internet, which has changed the world dramatically, did not exist. The Convention on the Rights of Persons with Disabilities is the first human rights treaty of the 21st century to address access to ICTs; and it does not create new rights in that regard for persons with disabilities. Furthermore, the notion of equality in international law has also changed over the past decades, with the conceptual shift from formal equality to substantive equality having an impact on the duties of States parties. States' obligation to provide accessibility is an essential part of the new duty to respect, protect and fulfil equality rights. Accessibility should therefore be considered in the context of the right to access from the specific perspective of disability. The right to access for persons with disabilities is ensured through strict implementation of accessibility standards. Barriers to access to existing objects, facilities, goods and services aimed at or open to the public shall be removed gradually in a systematic and, more importantly, continuously monitored manner, with the aim of achieving full accessibility.

15. The strict application of universal design to all new goods, products, facilities, technologies and services should ensure full, equal and unrestricted access for all potential consumers, including persons with disabilities, in a way that takes full account of their inherent dignity and diversity. It should contribute to the creation of an unrestricted chain of movement for an individual from one space to another, including movement inside particular spaces, with no barriers. Persons with disabilities and other users should be able to move in barrier-free streets, enter accessible low-floor vehicles, access information and communication, and enter and move inside universally designed buildings, using technical aids and live assistance where necessary. The application of universal design does not automatically eliminate the need for technical aids. Its application to a building from the initial design stage helps to make construction much less costly: making a building accessible from the outset might not increase the total cost of construction at all in many cases, or only minimally in some cases. On the other hand, the cost of subsequent adaptations in order to make a building accessible may be considerable in some cases, especially with regard to certain historical buildings. While the initial application of universal design is more economical, the potential cost of subsequent removal of barriers may not be used as an excuse to avoid the obligation to remove barriers to accessibility gradually. Accessibility of information and communication, including ICT, should also be achieved from the outset because subsequent adaptations to the Internet and ICT may increase costs. It is therefore more economical to incorporate mandatory ICT accessibility features from the earliest stages of design and production.

16. The application of universal design makes society accessible for all human beings, not only persons with disabilities. It is also significant that article 9 explicitly imposes on States parties the duty to ensure accessibility in both urban and rural areas. Evidence has shown that accessibility is usually better in bigger cities than in remote, less developed rural areas, although extensive urbanization can sometimes also create additional new barriers that prevent access for persons with disabilities, in particular to the built environment, transport and services, as well as more sophisticated information and communication services in heavily populated, bustling urban areas. In both urban and rural areas, access should be available for persons with disabilities to the natural and heritage parts of the physical environment that the public can enter and enjoy.

17. Article 9, paragraph 1, requires States parties to identify and eliminate obstacles and barriers to accessibility to, *inter alia*:

- (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- (b) Information, communications and other services, including electronic services and emergency services.

The other indoor and outdoor facilities, mentioned above, should include law enforcement agencies, tribunals, prisons, social institutions, areas for social interaction and recreation, cultural, religious, political and sports activities, and shopping establishments. Other services should include postal, banking, telecommunication and information services.

18. Article 9, paragraph 2, stipulates the measures States parties must take in order to develop, promulgate and monitor the implementation of minimum national standards for the accessibility of facilities and services open or provided to the public. Those standards shall be in accordance with the standards of other States parties in order to ensure interoperability with regard to free movement within the framework of liberty of movement and nationality (art. 18) of persons with disabilities. States parties are also required to take measures to ensure that private entities that offer facilities and services that are open or provided to the public take into account all aspects of accessibility for persons with disabilities (art. 9, para. 2 (b)).

19. Since a lack of accessibility is often the result of insufficient awareness and technical know-how, article 9 requires that States parties provide training to all stakeholders on accessibility for persons with disabilities (para. 2 (c)). Article 9 does not attempt to enumerate the relevant stakeholders; any exhaustive list should include the authorities that issue building permits, broadcasting boards and ICT licences, engineers, designers, architects, urban planners, transport authorities, service providers, members of the academic community and persons with disabilities and their organizations. Training should be provided not only to those designing goods, services and products, but also to those who actually produce them. In addition, strengthening the direct involvement of persons with disabilities in product development would improve the understanding of existing needs and the effectiveness of accessibility tests. Ultimately, it is the builders on the construction site who make a building accessible or not. It is important to put in place training and monitoring systems for all these groups in order to ensure the practical application of accessibility standards.

20. Movement and orientation in buildings and other places open to the public can be a challenge for some persons with disabilities if there is no adequate signage, accessible information and communication or support services. Article 9, paragraph 2 (d) and (e), therefore provides that buildings and other places open to the public should have signage in Braille and in easy-to-read and understand forms, and that live assistance and intermediaries, including guides, readers and professional sign-language interpreters should be provided to facilitate accessibility. Without such signage, accessible information and communication and support services, orientation and movement in and through buildings may become impossible for many persons with disabilities, especially those experiencing cognitive fatigue.

21. Without access to information and communication, enjoyment of freedom of thought and expression and many other basic rights and freedoms for persons with disabilities may be seriously undermined and restricted. Article 9, paragraph 2 (f) to (g), of the Convention therefore provide that States parties should promote live assistance and intermediaries, including guides, readers and professional sign language interpreters (para. 2 (e)), promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information, and promote access for persons with disabilities to new information and communications technologies and systems, including the Internet, through the application of mandatory accessibility standards. Information and communication should be

available in easy-to-read formats and augmentative and alternative modes and methods to persons with disabilities who use such formats, modes and methods.

22. New technologies can be used to promote the full and equal participation of persons with disabilities in society, but only if they are designed and produced in a way that ensures their accessibility. New investments, research and production should contribute to eliminating inequality, not creating new barriers. Article 9, paragraph 2 (h), therefore calls on States parties to promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost. The use of hearing enhancement systems, including ambient assistive systems to assist hearing aid and induction loop users, and passenger lifts pre-equipped to allow use by persons with disabilities during emergency building evacuations constitute just some of the examples of technological advancements in the service of accessibility.

23. Since accessibility is a precondition for persons with disabilities to live independently, as provided for in article 19 of the Convention, and to participate fully and equally in society, denial of access to the physical environment, transportation, information and communication technologies, and facilities and services open to the public should be viewed in the context of discrimination. Taking “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities” (art. 4, para. 1 (b)) constitutes the main general obligation for all States parties. “States parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds” (art. 5, para. 2). “In order to promote equality and eliminate discrimination, States parties shall take all appropriate steps to ensure that reasonable accommodation is provided” (art. 5, para. 3).

24. A clear distinction should be drawn between the obligation to ensure access to all newly designed, built or produced objects, infrastructure, goods, products and services and the obligation to remove barriers and ensure access to the existing physical environment and existing transportation, information and communication, and services open to the general public. Another of the States parties’ general obligations is to “undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines” (art. 4, para. 1 (f)). All new objects, infrastructure, facilities, goods, products and services have to be designed in a way that makes them fully accessible for persons with disabilities, in accordance with the principles of universal design. States parties are obliged to ensure that persons with disabilities have access to the existing physical environment, transportation, information and communication and services open to the general public. However, as this obligation is to be implemented gradually, States parties should establish definite time frames and allocate adequate resources for the removal of existing barriers. Furthermore, States parties should clearly prescribe the duties of the different authorities (including regional and local authorities) and entities (including private entities) that should be carried out in order to ensure accessibility. States parties should also prescribe effective monitoring mechanisms to ensure accessibility and monitor sanctions against anyone who fails to implement accessibility standards.

25. Accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an *ex ante* duty. States parties therefore have the duty to provide accessibility before receiving an individual request to enter or use a place or service. States parties need to set accessibility standards,

which must be adopted in consultation with organizations of persons with disabilities, and they need to be specified for service-providers, builders and other relevant stakeholders. Accessibility standards must be broad and standardized. In the case of individuals who have rare impairments that were not taken into account when the accessibility standards were developed or who do not use the modes, methods or means offered to achieve accessibility (not reading Braille, for example), even the application of accessibility standards may not be sufficient to ensure them access. In such cases, reasonable accommodation may apply. In accordance with the Convention, States parties are not allowed to use austerity measures as an excuse to avoid ensuring gradual accessibility for persons with disabilities. The obligation to implement accessibility is *unconditional*, i.e. the entity obliged to provide accessibility may not excuse the omission to do so by referring to the burden of providing access for persons with disabilities. The duty of reasonable accommodation, contrarily, exists only if implementation constitutes no undue burden on the entity.

26. The duty to provide reasonable accommodation is an *ex nunc* duty, which means that it is enforceable from the moment an individual with an impairment needs it in a given situation, for example, workplace or school, in order to enjoy her or his rights on an equal basis in a particular context. Here, accessibility standards can be an indicator, but may not be taken as prescriptive. Reasonable accommodation can be used as a means of ensuring accessibility for an individual with a disability in a particular situation. Reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination or equality is assured, taking the dignity, autonomy and choices of the individual into account. Thus, a person with a rare impairment might ask for accommodation that falls outside the scope of any accessibility standard.

III. Obligations of States parties

27. Even though ensuring access to the physical environment, transportation, information and communication, and services open to the public is often a precondition for the effective enjoyment of various civil and political rights by persons with disabilities, States parties can ensure that access is achieved through gradual implementation when necessary as well as through the use of international cooperation. An analysis of the situation to identify the obstacles and barriers that need to be removed can be carried out in an efficient manner and within a short- to mid-term framework. Barriers should be removed in a continuous and systematic way, gradually yet steadily.

28. States parties are obliged to adopt, promulgate and monitor national accessibility standards. If no relevant legislation is in place, adopting a suitable legal framework is the first step. States parties should undertake a comprehensive review of the laws on accessibility in order to identify, monitor and address gaps in legislation and implementation. Disability laws often fail to include ICT in their definition of accessibility, and disability rights laws concerned with non-discriminatory access in areas such as procurement, employment and education often fail to include access to ICT and the many goods and services central to modern society that are offered through ICT. It is important that the review and adoption of these laws and regulations are carried out in close consultation with persons with disabilities and their representative organizations (art. 4, para. 3), as well as all other relevant stakeholders, including members of the academic community and expert associations of architects, urban planners, engineers and designers. Legislation should incorporate and be based on the principle of universal design, as required by the Convention (art. 4, para. 1 (f)). It should provide for the mandatory application of accessibility standards and for sanctions, including fines, for those who fail to apply them.

29. It is helpful to mainstream accessibility standards that prescribe various areas that have to be accessible, such as the physical environment in laws on construction and planning, transportation in laws on public aerial, railway, road and water transport, information and communication, and services open to the public. However, accessibility should be encompassed in general and specific laws on equal opportunities, equality and participation in the context of the prohibition of disability-based discrimination. Denial of access should be clearly defined as a prohibited act of discrimination. Persons with disabilities who have been denied access to the physical environment, transportation, information and communication, or services open to the public should have effective legal remedies at their disposal. When defining accessibility standards, States parties have to take into account the diversity of persons with disabilities and ensure that accessibility is provided to persons of any gender and of all ages and types of disability. Part of the task of encompassing the diversity of persons with disabilities in the provision of accessibility is recognizing that some persons with disabilities need human or animal assistance in order to enjoy full accessibility (such as personal assistance, sign language interpretation, tactile sign language interpretation or guide dogs). It must be stipulated, for example, that banning guide dogs from entering a particular building or open space would constitute a prohibited act of disability-based discrimination.

30. It is necessary to establish minimum standards for the accessibility of different services provided by public and private enterprises for persons with different types of impairments. Reference tools such as the ITU-T recommendation Telecommunications Accessibility Checklist for standardization activities (2006) and the Telecommunications accessibility guidelines for older persons and persons with disabilities (ITU-T recommendation F.790) should be mainstreamed whenever a new ICT-related standard is developed. That would allow the generalization of universal design in the development of standards. States parties should establish a legislative framework with specific, enforceable, time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private entities of their previously inaccessible services into accessible ones. States parties should also ensure that all newly procured goods and services are fully accessible for persons with disabilities. Minimum standards must be developed in close consultation with persons with disabilities and their representative organizations, in accordance with article 4, paragraph 3, of the Convention. The standards can also be developed in collaboration with other States parties and international organizations and agencies through international cooperation, in accordance with article 32 of the Convention. States parties are encouraged to join ITU study groups in the radiocommunication, standardization and development sectors of the Union, which actively work at mainstreaming accessibility in the development of international telecommunications and ICT standards and at raising industry's and governments' awareness of the need to increase access to ICT for persons with disabilities. Such cooperation can be useful in developing and promoting international standards that contribute to the interoperability of goods and services. In the field of communication-related services, States parties must ensure at least a minimum quality of services, especially for the relatively new types of services, such as personal assistance, sign language interpretation and tactile signing, aiming at their standardization.

31. When reviewing their accessibility legislation, States parties must consider and, where necessary, amend their laws to prohibit discrimination on the basis of disability. As a minimum, the following situations in which lack of accessibility has prevented a person with disabilities from accessing a service or facility open to the public should be considered as prohibited acts of disability-based discrimination:

(a) Where the service or facility was established after relevant accessibility standards were introduced;

(b) Where access could have been granted to the facility or service (when it came into existence) through reasonable accommodation.

32. As part of their review of accessibility legislation, States parties must also consider their laws on public procurement to ensure that their public procurement procedures incorporate accessibility requirements. It is unacceptable to use public funds to create or perpetuate the inequality that inevitably results from inaccessible services and facilities. Public procurements should be used to implement affirmative action in line with the provisions of article 5, paragraph 4, of the Convention in order to ensure accessibility and de facto equality for persons with disabilities.

33. States parties should adopt action plans and strategies to identify existing barriers to accessibility, set time frames with specific deadlines and provide both the human and material resources necessary to remove the barriers. Once adopted, such action plans and strategies should be strictly implemented. States parties should also strengthen their monitoring mechanisms in order to ensure accessibility and they should continue providing sufficient funds to remove barriers to accessibility and train monitoring staff. As accessibility standards are often implemented locally, continuous capacity-building of the local authorities responsible for monitoring implementation of the standards is of paramount importance. States parties are under an obligation to develop an effective monitoring framework and set up efficient monitoring bodies with adequate capacity and appropriate mandates to make sure that plans, strategies and standardization are implemented and enforced.

IV. Relationship with other articles of the Convention

34. The duty of States parties to ensure access to the physical environment, transportation, information and communication, and services open to the public for persons with disabilities should be seen from the perspective of equality and non-discrimination. Denial of access to the physical environment, transportation, information and communication, and services open to the public constitutes an act of disability-based discrimination that is prohibited by article 5 of the Convention. Ensuring accessibility *pro futuro* should be viewed in the context of implementing the general obligation to develop universally designed goods, services, equipment and facilities (art. 4, para. 1 (f)).

35. Awareness-raising is one of the preconditions for the effective implementation of the Convention on the Rights of Persons with Disabilities. Since accessibility is often viewed narrowly, as accessibility to the built environment (which is significant, but only one aspect of access for persons with disabilities), States parties should strive systematically and continuously to raise awareness about accessibility among all relevant stakeholders. The all-encompassing nature of accessibility should be addressed, providing for access to the physical environment, transportation, information and communication, and services. Awareness-raising should also stress that the duty to observe accessibility standards applies equally to the public and to the private sector. It should promote the application of universal design and the idea that designing and building in an accessible way from the earliest stages is cost-effective and economical. Awareness-raising should be carried out in cooperation with persons with disabilities, their representative organizations and technical experts. Special attention should be paid to capacity-building for the application and monitoring of the implementation of accessibility standards. The media should not only take into account the accessibility of their own programmes and services for persons with disabilities, but should also take an active role in promoting accessibility and contributing to awareness-raising.

36. Ensuring full access to the physical environment, transportation, information and communication, and services open to the public is indeed a vital precondition for the effective enjoyment of many rights covered by the Convention. In situations of risk, natural disasters and armed conflict, the emergency services must be accessible to persons with disabilities, or their lives cannot be saved or their well-being protected (art. 11). Accessibility must be incorporated as a priority in post-disaster reconstruction efforts. Therefore, disaster risk reduction must be accessible and disability-inclusive.

37. There can be no effective access to justice if the buildings in which law-enforcement agencies and the judiciary are located are not physically accessible, or if the services, information and communication they provide are not accessible to persons with disabilities (art. 13). Safe houses, support services and procedures must all be accessible in order to provide effective and meaningful protection from violence, abuse and exploitation to persons with disabilities, especially women and children (art. 16). Accessible environment, transportation, information and communication, and services are a precondition for the inclusion of persons with disabilities in their respective local communities and for them to have an independent life (art. 19).

38. Articles 9 and 21 intersect on the issue of information and communication. Article 21 provides that States parties “shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice”. It goes on to describe in detail how the accessibility of information and communication can be ensured in practice. It requires that States parties “provide information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities” (art. 21 (a)). Furthermore, it provides for “facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions” (art. 21 (b)). Private entities that provide services to the general public, including through the Internet, are urged to provide information and services in accessible and usable formats for persons with disabilities (art. 21 (c)) and the mass media, including providers of information through the Internet, are encouraged to make their services accessible to persons with disabilities (art. 21 (d)). Article 21 also requires States parties to recognize and promote the use of sign languages, in accordance with articles 24, 27, 29 and 30 of the Convention.

39. Without accessible transport to schools, accessible school buildings, and accessible information and communication, persons with disabilities would not have the opportunity to exercise their right to education (art. 24 of the Convention). Thus schools have to be accessible, as is explicitly indicated in article 9, paragraph 1 (a), of the Convention. However, it is the entire process of inclusive education that must be accessible, not just buildings, but all information and communication, including ambient or FM assistive systems, support services and reasonable accommodation in schools. In order to foster accessibility, education as well as the content of school curricula should promote and be conducted in sign language, Braille, alternative script, and augmentative and alternative modes, means and formats of communication and orientation (art. 24, para. 3 (a)), with special attention to the appropriate languages and modes and means of communication used by blind, deaf and deaf-blind students. Modes and means of teaching should be accessible and should be conducted in accessible environments. The whole environment of students with disabilities must be designed in a way that fosters inclusion and guarantees their equality in the entire process of their education. Full implementation of article 24 of the Convention should be considered in conjunction with the other core human rights instruments as well as the provisions of the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization.

40. Health care and social protection would remain unattainable for persons with disabilities without access to the premises where those services are provided. Even if the buildings where the health-care and social protection services are provided are themselves accessible, without accessible transportation, persons with disabilities are unable to travel to the places where the services are being provided. All information and communication pertaining to the provision of health care should be accessible through sign language, Braille, accessible electronic formats, alternative script, and augmentative and alternative modes, means and formats of communication. It is especially important to take into account the gender dimension of accessibility when providing health care, particularly reproductive health care for women and girls with disabilities, including gynaecological and obstetric services.

41. Persons with disabilities cannot effectively enjoy their work and employment rights, as described in article 27 of the Convention, if the workplace itself is not accessible. Workplaces therefore have to be accessible, as is explicitly indicated in article 9, paragraph 1 (a). A refusal to adapt the workplace constitutes a prohibited act of disability-based discrimination. Besides the physical accessibility of the workplace, persons with disabilities need accessible transport and support services to get to their workplaces. All information pertaining to work, advertisements of job offers, selection processes and communication at the workplace that is part of the work process must be accessible through sign language, Braille, accessible electronic formats, alternative script, and augmentative and alternative modes, means and formats of communication. All trade union and labour rights must also be accessible, as must training opportunities and job qualifications. For example, foreign language or computer courses for employees and trainees must be conducted in an accessible environment in accessible forms, modes, means and formats.

42. Article 28 of the Convention addresses an adequate standard of living and social protection for persons with disabilities. States parties should take the necessary measures to ensure that both mainstream and disability-specific social protection measures and services are provided in an accessible manner, in accessible buildings, and that all information and communication pertaining to them is accessible through sign language, Braille, accessible electronic formats, alternative script, and augmentative and alternative modes, means and formats of communication. Social housing programmes should offer housing that is, *inter alia*, accessible for persons with disabilities and the elderly.

43. Article 29 of the Convention guarantees persons with disabilities the right to participate in political and public life, and to take part in running public affairs. Persons with disabilities would be unable to exercise those rights equally and effectively if States parties failed to ensure that voting procedures, facilities and materials were appropriate, accessible and easy to understand and use. It is also important that political meetings and materials used and produced by political parties or individual candidates participating in public elections are accessible. If not, persons with disabilities are deprived of their right to participate in the political process in an equal manner. Persons with disabilities who are elected to public office must have equal opportunities to carry out their mandate in a fully accessible manner.

44. Everyone has the right to enjoy the arts, take part in sports and go to hotels, restaurants and bars. However, wheelchair users cannot go to a concert if there are only stairs in the concert hall. Blind persons cannot enjoy a painting if there is no description of it they can hear in the gallery. Hard of hearing persons cannot enjoy a film if there are no subtitles. Deaf persons cannot enjoy a theatrical play if there is no sign language interpretation. Persons with intellectual disabilities cannot enjoy a book if there is no easy-to-read version or a version in augmentative and alternative modes. Article 30 of the Convention requires that States parties recognize the right of persons with disabilities to

take part in cultural life on an equal basis with others. States parties are required to take all appropriate measures to ensure that persons with disabilities:

- (a) Enjoy access to cultural materials in accessible formats;
- (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
- (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

The provision of access to cultural and historical monuments that are part of national heritage may indeed be a challenge in some circumstances. However, States parties are obliged to strive to provide access to these sites. Many monuments and sites of national cultural importance have been made accessible in a way that preserves their cultural and historical identity and uniqueness.

45. “States parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential” (art. 30, para. 2). “States parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials” (art. 30, para. 3). The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled of the World Intellectual Property Organization, adopted in June 2013, should ensure access to cultural material without unreasonable or discriminatory barriers for persons with disabilities, including people with disabilities living abroad or as a member of a minority in another country and who speak or use the same language or means of communication, especially those facing challenges accessing classic print materials. The Convention on the Rights of Persons with Disabilities provides that persons with disabilities are entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity. Article 30, paragraph 4, stresses the recognition of and support for sign languages and deaf culture.

46. Article 30, paragraph 5, of the Convention provides that, in order to enable persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States parties shall take appropriate measures:

- (a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- (b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
- (c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;
- (d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
- (e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

47. International cooperation, as described in article 32 of the Convention, should be a significant tool in the promotion of accessibility and universal design. The Committee

recommends that international development agencies recognize the significance of supporting projects aimed at improving ICT and other access infrastructure. All new investments made within the framework of international cooperation should be used to encourage the removal of existing barriers and prevent the creation of new barriers. It is unacceptable to use public funds to perpetuate new inequalities. All new objects, infrastructure, facilities, goods, products and services must be fully accessible for all persons with disabilities. International cooperation should be used not merely to invest in accessible goods, products and services, but also to foster the exchange of know-how and information on good practice in achieving accessibility in ways that will make tangible changes that can improve the lives of millions of persons with disabilities worldwide. International cooperation on standardization is also important, as is the fact that organizations of persons with disabilities must be supported so that they can participate in national and international processes to develop, implement and monitor accessibility standards. Accessibility must be an integral part of any sustainable development effort, especially in the context of the post-2015 development agenda.

48. The monitoring of accessibility is a crucial aspect of the national and international monitoring of the implementation of the Convention. Article 33 of the Convention requires States parties to designate focal points within their governments for matters relating to the implementation of the Convention, as well as to establish national frameworks to monitor implementation which include one or more independent mechanisms. Civil society should also be involved and should participate fully in the monitoring process. It is crucial that the bodies established further to article 33 are duly consulted when measures for the proper implementation of article 9 are considered. Those bodies should be provided with meaningful opportunities to, inter alia, take part in the drafting of national accessibility standards, comment on existing and draft legislation, submit proposals for draft legislation and policy regulation, and participate fully in awareness-raising and educational campaigns. The processes of national and international monitoring of the implementation of the Convention should be performed in an accessible manner that promotes and ensures the effective participation of persons with disabilities and their representative organizations. Article 49 of the Convention requires that the text of the Convention be made available in accessible formats. This is an innovation in an international human rights treaty and the Convention on the Rights of Persons with Disabilities should be seen as setting a precedent in that respect for all future treaties.