

Nature of State's positive obligations to prevent discrimination via reasonable accommodation

Source	Nature of obligation	Citation
CESCR	<p>Positive action, devotion of more resources</p> <p>“The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required”</p>	<p>Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 5, Persons with disabilities</i> (Eleventh session, 1994), U.N. Doc E/1995/22 at 19</p>
CRPD	<p>Reasonable accommodation defined as: “[N]ecessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”</p>	<p>Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2007) at art. 2</p>
CRPD	<p>Positive obligation to accommodate:</p> <p>“in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided”</p>	<p>Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2007) at art. 5.3</p>
CRPD	<p>Positive obligation to raise-awareness</p> <p>“1. States Parties undertake to adopt immediate, effective and appropriate measures:</p> <ol style="list-style-type: none"> a. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities; b. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life; c. To promote awareness of the capabilities and contributions of persons with disabilities.” 	<p>Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2007) at art. 8.</p>
CRPD	<p>Duty not to discriminate applies equally to ESCR and CPR</p>	<p>Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2007) at</p>

	“guarantee to persons with disabilities equal and effective legal protection against discrimination on <u>all grounds</u> ”	art. 5.2
Secondary	<p>Immediate obligation (no progressive realization)</p> <p>“States are therefore required to prohibit such failure [to provide reasonable accommodation] by Article 5(2) and to do so immediately as the right to be free from discrimination is a civil and political right to which the principle of progressive realization does not apply”</p>	Lawson, A. (2009). The UN convention on the rights of persons with disabilities and European disability law: A catalyst for cohesion? In O. Arnardottir & G. Quinn (Eds.), <i>The United Nations Convention on the Rights of Persons with Disabilities: European and Scandinavian perspectives</i> (pp. 320). Leiden: Martinus Nijhoff, 103.
	<p>Substantive equality framework requires positive action in 2 ways:</p> <ol style="list-style-type: none"> 1) in process – consultation, involvement of affected groups 2) in result- the positive measures must result in equal enjoyment of the right by all people 	Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2007) at art. 8.
SCTC	<p>Duty to accommodate (positive duty) only when the service is offered to the general public- once the service is offered then it must be administered in a non-discriminatory manner</p> <p>“It is also a cornerstone of human rights jurisprudence, of course, that the duty to take positive action to ensure that members of disadvantaged groups benefit equally from services offered to the general public is subject to the principle of reasonable accommodation. The obligation to make reasonable accommodation for those adversely affected by a facially neutral policy or rule extends only to the point of ‘<u>undue hardship</u>’... Reasonable accommodation, in this context, is generally equivalent to the concept of "reasonable limits". It should not be employed to restrict the ambit of s. 15(1).”</p>	<i>Eldridge v. British Columbia (Attorney General)</i> [1997] 3 SCR 624 at para 79.
Israeli High Court of Justice	<p>Equality- duty to accommodate minority (official) language, not an absolute duty</p> <p>“The decision explicitly interpreted linguistic rights as rights which impose positive duties. In other words, the State is obliged not only to allow minority groups their freedom to use the language of their choice and to refrain from intervening in this freedom; rather the State, as part of its obligation to help preserve a minority group's culture, also has a positive duty to help preserve that group's language...President Barak's</p>	<i>Adalah and Association for Civil Rights in Israel v Tel Aviv Municipality and Others</i> (2002), 56(5) PD 393, ILDC 13 (HCJ)

	<p>answer to this question was to the negative, as he distinguished between the language rights of a 'homeland (native) minority group' (which, in Israel consists mostly of the Arab population) and those of an 'immigrating minority group', arguing that the first group had a much stronger claim to having its language rights protected by the State in an affirmative manner"</p>	
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