

‘SO...WHAT EXACTLY IS TO BE DONE?’: THE NATIONAL IMPLEMENTATION OF REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES ACCORDING TO THE UNITED NATIONS HUMAN RIGHTS SYSTEM

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Abstract: This article explores the specific measures that States should adopt for the national implementation of reasonable accommodations —a key feature of the UN Convention on the Rights of Persons with Disabilities and a critical tool in addressing disability equality and non-discrimination. It argues that the Convention itself offers limited guidance on this issue, suggesting that State Parties should turn to the practices of UN human right bodies for orientation, despite acknowledging challenges in doing so. The main finding highlights that the national implementation of reasonable accommodations demands a series of measures across different domains, emphasizing that mere incorporation into national legislation is necessary but not sufficient.

Keywords: Reasonable accommodations, disability human rights, disability discrimination, United Nations human rights system, international human rights bodies.

1. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: A NEW DAWN FOR REASONABLE ACCOMMODATIONS?

On 13 December 2006, the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities (CPRD), the first international human rights treaty which comprehensively addresses the rights of persons with disabilities. Since coming into force on 3 May 2008, specialized literature has pointed out that a distinctive feature of the CPRD is the explicit incorporation of reasonable accommodations for persons with disabilities (RAPD) in its text (e.g. Kayess and French 2008: 27; Lawson 2008b: 65; Quinn 2009: 92; Mégret and Msipa 2014: 253; Broderick 2015: 152–153; Degener 2020: 352). In this regard, the CPRD has been celebrated as a milestone, as it is the first binding instrument of international law to explicitly enshrine provisions on RAPD (e.g. Lawson 2008b: 80; Lord and Brown 2009: 273; Broderick 2015: 152–153; Cera 2017b: 167; Nilsson 2018: 76).

RAPD regulation within the text of the CPRD is deployed at different levels, which can be distinguished according to their greater or lesser degree of generality. The first level has the general definitions contained in Article 2 of the CPRD, which establishes what is understood for ‘discrimination on the basis of disability’ and ‘reasonable accommodation’

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for the purposes of this treaty. The second level has the provision found in Article 5.3 of the CRPD, which establishes States Parties’ obligation to adopt ‘all appropriate steps to ensure that reasonable accommodation is provided’. Finally, the third level has provisions which explicitly refer to RAPD application in relation to regulating certain specific rights.

Despite the various articles in the CRPD that refer to RAPD, the mere text of the treaty does not provide sufficient guidance to States Parties on how to implement these measures in their respective national jurisdictions. In this regard, although the treaty establishes in Article 5.3 that States Parties shall adopt all appropriate steps to ensure that RAPD is provided, the CRPD does not clarify what kind of measures should be taken to comply with this provision. Aware of the need to complement the gaps in the CRPD, several bodies of the United Nations human rights system (UNHRS) have developed guidelines for national RAPD implementation. However, due to the multiple bodies involved and the variety of documents providing such guidelines, there is no exhaustive and clear systematization regarding the specific measures that States Parties to the CRPD should adopt for the national implementation of RAPD.

It is essential to note that the need for guidance is not the same for all States Parties to the CRPD. Some national jurisdictions already had legal provisions and case law on RAPD before the CRPD was adopted and came into force. For example, prior to adopting the CRPD, most European countries already had legal provisions on the duty to provide RAPD in employment after transposing Council Directive 2000/78/EC (Employment Equality Directive) (see, e.g. Waddington 2007: 629–631). In these cases, the need for guidance is related to how to adapt or harmonize the existing legal framework following CRPD ratification. A substantially different situation exists for States Parties where RAPD incorporation took place precisely because of CRPD ratification. More guidance is needed in these cases, since these countries cannot rely on prior experience and these measures’ novelty means that it is not always clear what they consist of and how to apply them (see, for the case of Chile, Marchant 2023). Although these countries can learn from comparative experiences, it does not guarantee a national implementation that aligns with the international standards envisaged by the CRPD and developed by UNHRS bodies.

Given that RAPD is a critical tool to ensure that people with disabilities can enjoy human rights (see, e.g. de Asís 2016; Ferri 2018), the objective of this article is to identify, systematize, and critically analyze the measures which States Parties must adopt for national RAPD implementation, based on the text of the CRPD and the practices of UNHRS bodies. For this purpose, the article will be structured as follows. The next section will provide a general overview of RAPD regulation in the CRPD, aiming to identify and characterize the main normative basis that obliges States Parties to implement RAPD in their respective jurisdictions (2). Subsequently, the article will identify and systematize the guidelines provided by UNHRS bodies to implement RAPD in national jurisdictions (3). A critical analysis of these guidelines will then be conducted, highlighting three particularly relevant challenges for this case: the diversity of voices within the same forum, the lack of awareness, and the authority of interpretations by UNHRS bodies (4). The article will conclude with a synthesis of the main findings and arguments presented (5).

2. TOO MANY ARTICLES, TOO LITTLE SAID: THE REGULATION OF REASONABLE ACCOMMODATIONS IN THE CRPD

Given that some of the guidelines for RAPD implementation in national jurisdictions are directly derived from the CRPD provisions, it is essential to begin by clarifying the features of RAPD regulation in the treaty.

2.1. Definition of reasonable accommodation: article 2 CRPD

Article 2 CRPD defines reasonable accommodation as ‘necessary and appropriate modifications 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’. Based on this definition, the following essential characteristics of RAPD in the CRPD have been identified: i) the identification and removal of barriers that impact the enjoyment of human rights by persons with disabilities; ii) the necessity and appropriateness of modifications or adjustments to address specific barriers affecting a particular person with disabilities; iii) the adoption of modifications or adjustments that do not impose an undue or disproportionate burden on the duty-bearer; iv) the requirement to find a response or solution that accommodates the individual circumstances of the person with disabilities; and v) the essential objective of promoting equality and eliminating discrimination by enabling persons with disabilities to enjoy all human rights on an equal basis with others (Broderick 2015: 215).

Previous literature has argued that the discussion regarding the content and scope of the duty to provide RAPD was one of the main controversies concerning these measures during the CRPD negotiation process (Nilsson 2018: 66). Precisely on this matter, at least three aspects of RAPD need to be addressed: their material application scope, their personal application scope, and the criteria for determining when a particular modification or adjustment should be provided as RAPD.

The definition provided by Article 2 CRPD (which speaks of ensuring “all human rights and fundamental freedoms”) and its incorporation into the principles of equality and non-discrimination determine that RAPD have a very broad scope of material application (e.g. Lawson 2008a: 30; Quinlivan 2012: 80; Waddington and Broderick 2018). This means that, notwithstanding explicit RAPD references in the regulation of various substantive rights enshrined in the CRPD, the duty to provide RAPD extends to both civil and political rights, as well as economic, social, and cultural rights (Lawson 2008b: 67; Broderick 2015: 112; Cera 2017b: 170). Due to this particular breadth, it has been argued that, at least within the CRPD, the duty to provide RAPD acts as a catalyst for a more cohesive understanding of these two classes or categories of rights, which have traditionally been interpreted in separate compartments (Lawson 2009: 82).

According to the provisions of the CRPD, the question of who can invoke the duty to provide RAPD and who is obliged to fulfill this duty can be clarified as follows. For the

first point, the automatic response would be that persons with disabilities are entitled to do so. However, the interesting issue to clarify lies in whether a person without a disability but who has a close relationship with a disabled person can invoke the duty to provide RAPD in their favor. The text of the CRPD does not explicitly resolve this question. Even an originalist interpretation of its text would support rejecting the extension of the duty to provide RAPD to persons without disabilities who are associated with disabled persons (Waddington 2013: 196). Nevertheless, it is widely understood that prohibiting discrimination on the basis of disability includes cases of discrimination by association (Quinn 2009: 67; Lord and Brown 2009: 305; Waddington 2013: 195–196; Cera 2017a: 112–113; Nilsson 2018: 73). Therefore, since the duty of non-discrimination also encompasses the duty to provide RAPD, it could be argued that a person without a disability but related to a disabled person can indeed invoke this duty in their favor. As for the duty bearers, given the broadness with which these measures are enshrined and the extensive scope of material application in which they can operate, it is understood that a wide range of entities can be subject to the duty to provide RAPD. This array of duty bearers would include the State, employers, and providers of education, healthcare, goods, and services, as well as private clubs and organizations (Lawson 2008b: 67; Lord and Brown 2009: 279; Broderick 2015: 106). The duty to provide RAPD thus encompasses actors and entities in both the public and private sectors; whether an entity is public or private is not a relevant factor in determining the applicability or non-applicability of the duty.

Beyond determining the material and personal scope of the duty to provide RAPD, one of the most significant difficulties involved in implementing this obligation is to determine when a specific modification or adaptation should be implemented as RAPD. For this purpose, despite certain terms used while defining RAPD in Article 2 ("necessary," "appropriate," "disproportionate or undue burden"), the CRPD text offers limited assistance. In this regard, CRPD scholars and commentators and UNHRS bodies have worked to add meaning to that part of the definition in Article 2 that refers to necessity, appropriateness, and the absence of undue or disproportionate burden (see, e.g., Mégret and Msipa 2014: 256–259; Broderick 2015: 158–175; de Asís 2016: 50–53; Cera 2017a: 114–116; Nilsson 2018: 80–82).

The absence of criteria or guidelines in the CRPD to determine when a specific accommodation should be provided has been particularly criticized in the literature, being regarded as the main flaw that can be attributed to RAPD regulation in this treaty (Gutiérrez 2019: 65). Other authors have also argued that the ambiguity of the CRPD in this regard impedes determination of the scope of the duty to provide RAPD, emphasizing the need for the Committee on the Rights of Persons with Disabilities to exercise its interpretative function in this regard (Biel Portero 2011: 323). Indeed, as the next section will discuss, both this body and other entities within the UNHRS have been aware of the necessity to provide criteria for determining when a specific accommodation is required, and a significant portion of their practice regarding RAPD has focused on this matter.

Finally, it is essential to highlight that in the normative framework of the CRPD, the notion of reasonableness incorporated into RAPD is not equivalent to the notion of proportionality. In the context of the CRPD, reasonableness and proportionality of an

accommodation measure are two distinct elements (Broderick 2015: 112; Corsi 2018: 164–165). Although both elements are part of the evaluation to determine when a specific accommodation shall be provided, reasonableness and proportionality differ in their content and address the interests of different parties to the duty to provide RAPD. Reasonableness is a reference to the relevance, appropriateness, and effectiveness of a particular accommodation to meet the requirements of the disabled person. Proportionality sets a limit on the pool of possible accommodations that the duty bearer would be required to provide, excluding those adaptations that would impose excessive or unjustifiable burden on the accommodating party (see Committee on the Rights of Persons with Disabilities 2018a: para. 25).

2.2. States Parties' duty to take measures ensuring reasonable accommodations: article 5 CRPD

Article 5 CRPD establishes a set of provisions regarding equality and non-discrimination. Particularly on RAPD, paragraph 3 of this article states that 'in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided'. This provision explicitly manifests the link between RAPD and equality for persons with disabilities, stating that these measures serve the specific purpose of promoting equality and eliminating discrimination.

Various authors have praised the incorporation of RAPD in Article 5 CRPD. It has been asserted that 'the incorporation of a State obligation to ensure that reasonable accommodations are made [...] is perhaps the most fundamental instrumental element of the convention' (Kayess and French 2008: 27). Shortly after its entry into force, it was also predicted that RAPD would become the most important legal concept of the CRPD (Kallehauge 2009: 211). Additionally, it has been stated that the state obligation to guarantee RAPD fulfillment is a crucial measure of substantive equality, as these measures help facilitate the exercise of rights by persons with disabilities (Cera 2017b: 169). Moreover, based on the incorporation of RAPD in Article 5.3, many authors have argued that the CRPD enshrines a 'right to reasonable accommodation' (eg. Biel Portero 2011: 322–323; Broderick 2015: 155; Cera 2017b: 167; Pyaneandee 2019: 31; Degener 2020: 352).

As Kayess and French stated, Article 5.3 CRPD imposes an obligation on States Parties to ensure the realization of RAPD in their domestic jurisdictions (2008: 27). The subsequent question is: What concrete and specific measures should States Parties take to fulfill this obligation? Once again, the CRPD text does not provide much guidance in this regard, merely stating that States Parties 'shall take all appropriate steps to ensure that reasonable accommodation is provided'. Although this matter will be addressed in-depth in the following section based on the practice of UNHRS bodies, it is worth highlighting certain scholarly contributions on this issue.

According to Lawson, under Article 5.3 CRPD, States Parties are obligated to incorporate a duty to provide RAPD into their national legislations, initiate awareness-raising campaigns, and provide subsidies and incentives to help implement these measures (2007: 599, 2008a: 32). In more detail, Broderick identifies several measures based on the

objectives that the CRPD assigns to RAPD, distinguishing between measures associated with promoting equality and measures associated with eliminating discrimination. Measures linked to the former point include: i) conducting campaigns to sensitize and educate the judiciary, legal practitioners, persons with disabilities, the general public, and private entities regarding RAPD and how its application contributes to the equality of persons with disabilities; and ii) developing codes of practice and guidelines on the duty to provide RAPD. On the other hand, measures associated with the latter point would include: i) ensuring that RAPD denial is included as a form of discrimination in national legislation and policies; ii) ensuring that national legislation and policies do not contain provisions impeding fulfillment of the duty to provide RAPD; iii) ensuring that private entities remove discriminatory barriers that lead to denying the right to receive RAPD; and iv) providing effective legal remedies for persons with disabilities who have been discriminated against due to RAPD denial (2015: 114–115).

2.3. Reasonable accommodations in specific contexts: articles 14, 24 and 27 CRPD

Alongside Articles 2 and 5.3, the CRPD explicitly refers to RAPD in the regulation of three specific rights: Article 14 (freedom and security of the person), Article 24 (education), and Article 27 (employment).

The specific incorporation of RAPD in Articles 14, 24, and 27, however, does not imply that these are the only areas where RAPD applies. As previously mentioned when discussing the definition in Article 2 CRPD, these measures have an extensive scope of material application, and their operation is not limited to the situations described in Articles 14, 24, and 27. Nevertheless, the inclusion of RAPD in these articles serves a useful purpose in signaling or reinforcing certain aspects of the RAPD regulatory framework in the CRPD, such as: i) emphasizing that RAPD always operates at an individual level, based on the particular needs of a person with a disability (Article 24.2.c); ii) highlighting the role of RAPD as facilitators for the equal exercise of rights for persons with disabilities (articles 14.2; 24.5; 27.1.i); and iii) explicitly stating that when incorporating the obligation to provide RAPD in domestic jurisdictions, certain areas (detention and penitentiary facilities, education, and employment) are particularly relevant for RAPD application, and States Parties cannot exclude them from regulation (Lawson 2012: 846; Della Fina 2017: 460; Liisberg 2017: 502; Bantekas, Pennilas, and Trömel 2018: 766).

2.4. Denial of reasonable accommodation as discrimination on the basis of disability

The CRPD explicitly acknowledges the denial of RAPD as a form of discrimination on the basis of disability (Article 2 CRPD). Within the framework of the CRPD, the purpose of RAPD is to ensure equal conditions for individuals with disabilities, by eliminating a specific disadvantage they would face without implementing the adjustment measure (Lawson 2010: 12). In this context, by explicitly incorporating RAPD denial, CRPD commentators have consistently emphasized that this treaty extends the notion

of discrimination as previously addressed in other United Nations human rights treaties (Trömel 2009: 123; Graumann 2012: 87; Mégret and Msipa 2014: 253; Broderick 2015: 155; Degener 2016: 16; Cera 2017a: 113).

Delving further into the incorporation of RAPD within the definition of discrimination on the basis of disability, it has been asserted that the CRPD does not subsume the denial of RAPD within traditional categories like direct or indirect discrimination. Instead, it recognizes it as a distinct and independent form of discrimination (Lord and Brown 2009: 278; Grobbelaar-du Plessis and Nienaber 2014: 373; Waddington and Broderick 2018: 69). In this way, the CRPD takes a clear stance on a point that, both theoretically and in the context of national legislation, has lacked uniformity (Khaitan 2015: 76–79; Lawson 2010: 17). Within this lack of uniformity, the CRPD is unequivocal on this matter, and it has been noted that the treaty imposes on States Parties the obligation to ensure that RAPD denial is explicitly regarded as a form of discrimination (Lawson 2008b: 77; Waddington 2013: 191; Broderick 2015: 115).

According to Waddington, the classification of the denial of RAPD as a form of discrimination is relevant for both symbolic and practical reasons. Symbolically, designating RAPD denial as discrimination can lead to greater awareness of the importance of fulfilling the duty to provide RAPD for the enjoyment of rights by persons with disabilities and the seriousness of non-compliance (2013: 190). In the same vein, other authors have pointed out that including RAPD denial within the definition of discrimination on the basis of disability would strengthen the likelihood of compliance with the duty (Corsi 2018: 161). From a practical standpoint, classifying RAPD denial as discrimination could result in the complainant benefiting from an alteration of the burden of proof in legal disputes arising from non-compliance with this duty (Waddington 2013: 190). There may also be consequences in terms of sanctions and remedies for non-compliance with the duty to provide RAPD, as in cases of discrimination, ‘judges may be empowered or inclined to order more far-reaching sanctions and remedies’ (Waddington 2013: 190).

Lastly, another noteworthy aspect is that the definition in Article 2 CRPD uses the term ‘discrimination *on the basis of disability*’ (rather than, for example, ‘discrimination *against* persons with disabilities’). It has been argued that the protection against discrimination provided by the CRPD in this wording focuses on the discriminatory conduct and not on the victim of discrimination. This helps broaden the scope of the anti-discrimination norm, since disability discrimination may occur even in cases where discriminatory conduct does not directly or exclusively target persons with disabilities (Palacios and Bariffi 2007: 70; Quinn 2009: 102; Lord and Brown 2009: 305; Waddington 2013: 195–196; Cera 2017a: 112–113; Nilsson 2018: 73; Gutiérrez 2019: 60). For example, the protection offered by the CRPD would include situations of ‘discrimination by association,’ where the affected individual is a person without a disability but is placed in a disadvantaged situation due to their association with a disabled person (e.g. Palacios and Bariffi 2007: 70; Gutiérrez 2019: 60). This interpretation has consequences regarding the obligation to provide RAPD, since it expands its scope to include both persons with disabilities and individuals without disabilities associated with them.

3. FROM ‘ALL APPROPRIATE STEPS’ TO ‘THESE STEPS’: IMPLEMENTING REASONABLE ACCOMMODATIONS ACCORDING TO UNHRS BODIES

Having described in-depth the incorporation of RAPD in the CRPD provisions, this section will address the practice that different UNHRS bodies have developed concerning RAPD, based on the normative framework provided by this treaty. As we will see, the practice of these bodies contains significant inputs regarding the national implementation of RAPD, identifying specific measures that States should take to ensure that RAPD is provided and guidelines for RAPD application in concrete situations.

3.1. Measures to ensure that reasonable accommodation is provided

UNHRS bodies have noted the problems faced by States regarding protection against disability-based discrimination in general, and concerning RAPD in particular. In a 2016 report, the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities provided a detailed description of the issues experienced by States in dealing with RAPD, indicating that various domestic legislations: i) establish more restrictive definitions of RAPD than that set forth in Article 2 CRPD; ii) lack practical guidance on how to apply RAPD in specific cases; iii) lack practical guidance on how to assess cases of undue or disproportionate burden; and iv) do not provide for the allocation of specific funds and financing mechanisms for RAPD implementation (United Nations General Assembly 2016: para. 26). More generally, the problems faced by States concerning RAPD have also been noted by the Office of the United Nations High Commissioner for Human Rights, which states in a 2016 report that ‘reasonable accommodation is usually absent in legislation, or is misconstrued or confused with other concepts, such as accessibility’ (Human Rights Council 2016: para. 22).

Against this background, at least three UNHRS bodies have provided useful and relevant guidelines regarding specific measures that States should take to ensure RAPD provision: the Committee on the Rights of Persons with Disabilities (CRPD Committee), the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities (Special Rapporteur), and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

3.1.1. General guidelines

The *general guidelines* category includes those guidelines that are not directed at a specific area of national legislation and address aspects related to how to incorporate RAPD into domestic legal texts, the contents that such regulation should include or exclude, and what other measures States Parties should adopt beyond normative consecration to ensure RAPD fulfillment.

The Special Rapporteur has emphasized that a key element to establish a comprehensive framework of inclusive policies for persons with disabilities is the development of a non-discrimination framework to ensure the realization of RAPD (United Nations General Assembly 2016: paras. 18–22). RAPD implementation should

aim to ensure that persons with disabilities can enjoy ‘all human rights and fundamental freedoms’ on an equal basis with others (United Nations General Assembly 2016: para. 24). The duty to provide RAPD should also extend to ‘persons associated with a person with disabilities’ (United Nations General Assembly 2016: para. 24). For its part, the OHCHR recommendation is that when incorporating into domestic legislation ‘the duty to accommodate be expressed in an open format so as not to result in exclusion from protection’ (Human Rights Council 2009: para. 39).

The three UNHRS bodies under revision have emphasized that States must expressly establish in their legal and policy frameworks that RAPD denial constitutes discrimination on the basis of disability (Human Rights Council 2012: para. 40; United Nations General Assembly 2016: para. 24; Committee on the Rights of Persons with Disabilities 2018a: para. 67). The OHCHR has even suggested the possibility of providing for legal sanctions as a consequence of unjustified RAPD denial (Human Rights Council 2016: para. 69).

The OHCHR has indicated certain specific aspects or elements that should be included in the legislative incorporation of RAPD. In this regard, it has asserted that ‘rights, duties and time frames for each of the parties involved should be clearly stated’ (Human Rights Council 2016: para. 39). Regarding the personal scope of RAPD, it has pointed out that the subject of the obligation must be clearly identified by the legislation (Human Rights Council 2016: para. 39). On this topic, the UN Special Rapporteur has indicated that when incorporating the obligation to provide RAPD in their domestic jurisdictions, States Parties must ensure that it applies to both the public and private sectors (United Nations General Assembly 2016: para. 27). Regarding the material scope of RAPD, the OHCHR has stated that domestic regulations must address the ‘specific context of implementation’ of these measures (Human Rights Council 2016: para. 69). Finally, concerning the elements for concrete RAPD application, the OHCHR has asserted that national laws and norms should provide guidance on the criteria of feasibility, relevance, and proportionality. In this vein, the OHCHR has stated: i) the evaluation of relevance must be carried out by a competent authority, and the cost of this evaluation should not be borne by the requesting person; and ii) States must indicate appropriate criteria for assessing whether the requested adjustment entails an undue or disproportionate burden, ensuring a case-by-case approach (Human Rights Council 2016: paras. 39, 46, 79).

The OHCHR has also pointed out aspects and elements that should be excluded from the legal regulation of RAPD in domestic jurisdictions. In this regard, it has stated that the RAPD application should not be conditioned to any type of certification (Human Rights Council 2016: para. 46). The OHCHR has also devoted special attention to the factors provided for in national legislation for evaluating the proportionality criterion, stating that, in order to avoid arbitrariness and prevent discrimination, these factors should not be vague or ambiguous (such as those that refer to ‘the morale of other employees’, ‘any other factor affecting efficiency, productivity, success and competitiveness’ or ‘overall economic climate’) (Human Rights Council 2016: para. 49). In the same vein, it has demanded the repeal of discriminatory evaluation factors, understood as those that entail negative or disproportionate consequences for persons with disabilities (Human Rights Council 2016: para. 50).

Finally, the OHCHR has expressed that legal and policy frameworks should provide adequate mechanisms to monitor effective compliance with the duty to provide RAPD, establishing national monitoring bodies with investigative and sanctioning powers. As an alternative to judicial remedies, the establishment of mediation and conciliation mechanisms should also be considered to allow victims of disability-based discrimination to obtain effective and appropriate reparation (Human Rights Council 2016: paras. 71–72).

Moving beyond legal consecration, the OHCHR has pointed out several measures that States should adopt to ensure RAPD implementation. In this regard, it has asserted that promoting equality for persons with disabilities requires active collaboration with the non-state sector. In particular, the OHCHR suggests that this cooperation with the non-state sector should involve: i) developing normative guidelines, providing technical assistance, and organizing awareness-raising activities; ii) disseminating information about accessing public or private funding sources for RAPD implementation; and iii) allocating specific resources for managing and financing RAPD requests (Human Rights Council 2016: paras. 17, 59, 69, 79). The latter has also been stressed by the Special Rapporteur, who has highlighted the importance of allocating funds and establishing specific financing mechanisms for RAPD implementation by competent public institutions and providing training for public officials (United Nations General Assembly 2016: paras. 26, 78).

3.1.2. Guidelines for specific legislation areas

The practice developed by UNHRS bodies has also provided States with guidelines for RAPD implementation in specific areas of legislation, such as employment and education.

The OHCHR has expressed that States’ labor and employment legislation should: i) impose the obligation to provide RAPD; ii) clarify the elements of this obligation; iii) specify the factors to evaluate the reasonableness of RAPD; iv) expressly qualify RAPD denial as an act of discrimination (Human Rights Council 2009: para. 55, 2012: para. 69). It has also pointed out that the obligation to provide RAPD should apply to both public and private sector employers (Human Rights Council 2012: para. 31). In evaluating the proportionality criterion, OHCHR has drawn attention to the potentially discriminatory nature of ‘cost-benefit’ analyses, urging their avoidance (Human Rights Council 2016: para. 58). Besides enacting legislation and its content, OHCHR has indicated other measures to ensure RAPD implementation in employment as well. It has referred to the obligation of developing policies that promote and regulate flexible and alternative work arrangements to reasonably accommodate the needs of employees with disabilities (Human Rights Council 2012: para. 31), while also emphasizing that States are obligated to inform, raise awareness, and provide technical assistance to employers, unions, and persons with disabilities regarding the duty to provide RAPD (Human Rights Council 2012: para. 33). Lastly, OHCHR has addressed the need to implement subsidy policies to finance workplace RAPD implementation (Human Rights Council 2015: para. 38).

The CRPD Committee recently adopted its General comment No. 8, on the right of persons with disabilities to work and employment, which also provides valuable insights

regarding RAPD implementation in this field. According to the CRPD Committee, the national implementation of RAPD in the workplace involves several measures from States Parties, such as: i) providing funding; ii) providing technical and financial assistance to public and private employers; iii) expressly recognizing RAPD denial as discrimination; and iv) providing training on RAPD for employers (2022: paras. 35, 45, 64). The Committee also covered collective bargaining arrangements, stating that ‘when they specify working conditions, the arrangement must include a mechanism by which employees can seek reasonable accommodation’ (2022: para. 34).

Regarding education, the OHCHR has asserted that one of the components of the transition towards an inclusive education system is the implementation of the duty to provide RAPD (Human Rights Council 2013: para. 56), which should apply to both public and private educational institutions (Human Rights Council 2009: para. 52). It has also maintained that national legislations must establish sanctions for non-compliance with the duty to provide RAPD in education, and States should allocate funding for RAPD implementation in educational institutions (Human Rights Council 2013: paras. 41, 63, 71). The CRPD Committee, for its part, has stated that educational institutions (whether public or private) should not charge additional fees for RAPD provision (Committee on the Rights of Persons with Disabilities 2016b: paras. 17, 24, 76).

3.2. Guidelines for the application of reasonable accommodations in particular cases

The practice of the UNHRS bodies shows a concrete concern about the identification and provision of criteria to guide practical RAPD application. A clear example of this concern is the 2016 OHCHR report, which stated that although RAPD application in specific situations requires a contextual assessment to be addressed on a case-by-case basis, to date, there were no ‘globally accepted’ criteria for the implementation of these measures. Above all, it emphasized the lack of uniform criteria to determine when an adjustment is necessary and appropriate, and when it imposes an undue or disproportionate burden (Human Rights Council 2016: para. 37).

To counteract the lack of uniformity in the practical RAPD application criteria, both the CRPD Committee and the OHCHR have extensively addressed this issue. Based on these bodies’ practice, six different variables can be identified for RAPD application in particular cases: i) requesting reasonable accommodation; ii) dialogue; iii) feasibility; iv) relevance; v) proportionality; and vi) objective justification and communication of refusal to provide reasonable accommodation.

3.2.1. Requesting reasonable accommodations

Firstly, both the CRPD Committee and the OHCHR agree that the duty to provide RAPD is triggered from the moment a request is made (Committee on the Rights of Persons with Disabilities 2016b: para. 28; Human Rights Council 2016: para. 40). However, they have also downplayed the relevance of the RAPD request, indicating that it is not a strict prerequisite for these measures’ application. The CRPD Committee has

suggested scenarios where the existence of a prior request is not necessary, referring to cases where the duty bearer should have been aware of the need to implement RAPD (Committee on the Rights of Persons with Disabilities 2018a: para. 24, 2022: para. 19). The OHCHR has also highlighted it as a ‘good practice’ for States to implement RAPD without requiring a specific request (Human Rights Council 2016: para. 40). The OHCHR has stated that making an RAPD request can be done ‘orally or in writing, without further formal requirements’ (Human Rights Council 2016: para. 44) and further expressed that States should encourage entities that receive an RAPD request to maintain a record documenting such requests and their processing (Human Rights Council 2016: para. 41).

3.2.2. *Dialogue*

Secondly, according to UNHRS bodies under revision, effective RAPD implementation requires the establishment of instances of dialogue between the adaptation measure applicant and the request recipient (Committee on the Rights of Persons with Disabilities 2018a: paras. 24, 26; Human Rights Council 2016: para. 40). This idea of dialogic interaction has been concretized by the CRPD Committee, stating that ‘reasonable accommodation must be negotiated with the applicant(s)’ (2018a: para. 24, 2022: para. 19). The OHCHR, on its part, has asserted that once an RAPD request is made, ‘the person concerned and the entity responsible for its provision should engage in a dialogue to establish the person’s needs and the most appropriate response to them’ (Human Rights Council 2016: para. 45). An interesting aspect of how the OHCHR has shaped this dialogue process is that it has taken into consideration that the conditions for this interaction are variable. The conditions will be different, for example, if there is a pre-existing or long-term relationship between the requester and the recipient of the request, or if it is a transient or temporary relationship. In any case, the RAPD application always involves a process of reciprocal communication between the requester and the recipient of the request (Human Rights Council 2016: para. 45). The OHCHR has invested this dialogue process with certain requirements as well. In RAPD implementation, the corresponding dialogue process demands the satisfaction of a certain standard of conduct by those involved (‘both parties must act in good faith and provide for clear communication’), as well as safeguarding confidentiality and protecting requesters’ sensitive personal data (Human Rights Council 2016: paras. 41–42).

In the employment field, General comment N° 8 recently adopted by the CRPD Committee establishes a two-step approach to conduct the dialogic process between employer and employee for RAPD implementation. This approach centers the will and preferences of people with disabilities in the accommodation process. First, the employer must work with the individual to identify potential accommodations, including the one that it is preferred by the individual. Second, the employer must provide the preferred accommodation for the individual, unless it would impose an undue burden. In this scenario, the employer can decide between two alternative solutions: a) implement another effective accommodation that does not impose an undue burden; or b) implement the preferred accommodation for the individual to the extent possible without experiencing the undue burden (Committee on the Rights of Persons with Disabilities 2022: para. 45). According to the CRPD Committee, failure to comply with this two-step approach constitute denial of RAPD, and consequently, discrimination on the basis of disability (2022: para. 45).

3.2.3. *Feasibility*

Thirdly, according to the UNHRS bodies, a concrete accommodation is subject to a feasibility examination, referring to the legal and material possibilities of implementing the requested accommodation (Committee on the Rights of Persons with Disabilities 2018a: para. 26; Human Rights Council 2016: para. 38). The OHCHR has addressed legal feasibility by pointing out that RAPD measure implementation cannot involve a violation of the law. For material feasibility, it has asserted that the requested accommodation under RAPD must exist and be available (Human Rights Council 2016: paras. 51–52); and concerning the availability of the accommodation and recalling the standard of conduct that the involved parties must satisfy, the OHCHR has indicated that ‘those in charge should make good faith efforts to provide an accommodation’ (Human Rights Council 2016: para. 52).

3.2.4. *Relevance*

Fourthly, the application of a RAPD measure is subject to an examination of relevance, concerning the necessity and adequacy of the requested adjustment to ensure the enjoyment or exercise of the rights of the person with a disability involved. It must be noted that the terms which UNHRS bodies use to refer to this criterion are not uniform, sometimes referring to ‘relevance’ or ‘effectiveness’ of the requested accommodation (Committee on the Rights of Persons with Disabilities 2016b: para. 26; Human Rights Council 2016: para. 53). According to the OHCHR interpretation, the relevance criterion includes two sub-criteria: necessity, aimed at eliminating barriers, and adequacy, which considers the exercise of rights (Human Rights Council 2016: para. 53). In line with this, it has argued that the relevance of an accommodation should not be based solely on medical information but on functionality criteria that address existing needs and obstacles (Human Rights Council 2016: para. 46).

In its adoptions of views on individual communications, the CRPD Committee has operationalized the relevance criterion in employment contexts, stating that the accommodation process should be oriented towards selecting adaptations that are effective for the person with a disability to perform the ‘key duties’ of the position they hold or apply for (e.g. Committee on the Rights of Persons with Disabilities 2019: para. 8.7, 2020: para. 9.7).

3.2.5. *Proportionality*

Fifthly, the application of a RAPD measure is subject to an examination of proportionality, which refers to ensuring that the implementation of the requested accommodation does not impose an undue or disproportionate burden on the RAPD request recipient. This criterion is probably one of the most controversial issues in RAPD application, specifically regarding which factors, variables, or indicators determine whether an RAPD measure satisfies the proportionality criterion. On this point, the practice of the OHCHR and the CRPD Committee is quite similar, although not identical. Without claiming to be exhaustive, the CRPD Committee has identified the following

factors to determine whether a particular RAPD imposes an undue or disproportionate burden: financial costs, available resources (including access to public subsidies), the size of the entity receiving the request, the effects of implementing the adjustment for the recipient entity and for third parties, and reasonable health and safety factors (2018a: para. 26). According to the OHCHR, the proportionality criterion operates based on a case-by-case analysis, involving a balancing exercise between the means employed for RAPD implementation and the objective it pursues (Human Rights Council 2016: para. 55). In terms of the means employed, the OHCHR has considered various factors provided for national jurisdictions, such as the time required to implement the accommodation, the cost of its implementation (financial and economic), the duration or frequency of its use, and the effects or benefits derived from applying the adjustment (both for the parties involved and for third parties) (Human Rights Council 2016: paras. 55–58).

Among the aforementioned factors, the OHCHR has particularly focused on the implementation costs, differentiating between financial viability and economic viability of the RAPD request. Financial viability relates to the liquidity situation of the party required to handle implementing the requested adjustment, considering the possibility of external financial support, such as ‘loans, subsidies and grants from either public or private sources’ (Human Rights Council 2016: para. 59). Economic viability entails a broader analysis than financial viability, involving an examination of the overall assets of the party required, i.e., the set of goods constituting their assets (Human Rights Council 2016: para. 60).

In another aspect related to the criterion of proportionality, the CRPD Committee has been clear in stating that the burden of proving that the requested adjustment imposes a disproportionate or undue burden lies with the recipient relying on such defense, and not with the requesting party (Committee on the Rights of Persons with Disabilities 2018a: para. 26). This position has been ratified and further specified in its adoption of views on individual communications, stating that to satisfy its burden of proof, the RAPD request recipient must present arguments, data, and analysis demonstrating the disproportionality of the requested accommodation (e.g. Committee on the Rights of Persons with Disabilities 2016a: para. 8.5, 2018b: para. 7.5). Therefore, RAPD request refusal without a detailed proportionality analysis of the concrete accommodation constitutes discrimination on the basis of disability (e.g. Committee on the Rights of Persons with Disabilities 2016a: para. 8.5, 2018b: para. 7.5).

3.2.6. Objective justification and communication of refusal to provide reasonable accommodations

Finally, UNHRS bodies have stated that the refusal to provide RAPD, along with the reasons justifying it, must be communicated promptly to the person with a disability involved (Committee on the Rights of Persons with Disabilities 2018a: para. 27; Human Rights Council 2016: para. 47). The CRPD Committee has emphasized that the justification for denying a reasonable accommodation must be based on objective criteria (2018a: para. 27). The OHCHR, on the other hand, has specified three distinct reasons for

justifiably rejecting a RAPD request: i) the adjustment is not feasible; ii) the adjustment is not relevant; or iii) the adjustment is not proportionate. Demonstrating any of these three reasons is sufficient to justify the refusal to provide RAPD and avoid committing discrimination on the basis of disability (Human Rights Council 2016: paras. 47–48).

4. CRITICAL ANALYSIS

Given that the two previous sections have a primarily descriptive focus, this section will provide a critical analysis of their contents. A synthesis exercise will be conducted to begin, including the measures that States should take regarding national RAPD implementation according to the UNHRS. Due to the relevance of their guidelines for national RAPD implementation, certain problems and challenges in dealing with UNHRS bodies' practice will subsequently be addressed.

4.1. Legal recognition is not enough: the demanding national implementation of reasonable accommodations in accordance with the UNHRS

The beginning of this article presented a question about what measures the States Parties of the CRPD should adopt for RAPD implementation in their respective national jurisdictions. Sections 2 and 3 indicate that certain answers to this question can be derived from the text of the CRPD itself, but they are mainly found in the practice of the UNHRS bodies under revision.

Starting with the answers that can be derived from the text of the CRPD, the definitions in Article 2 make it clear that national jurisdictions must: i) identify and establish that denial of RAPD constitutes discrimination on the basis of disability; ii) establish a broad scope of material application for RAPD; and iii) as a result, establish a broad scope of personal application regarding affected subjects. However, the CRPD text leaves unanswered, or does not fully resolve, several aspects that seem to be critical for national RAPD implementation. In this regard, although efforts have been made from academia to address these topics, the text of the CRPD does not resolve the following topics: i) the extent of the personal scope of RAPD (who exactly is entitled to request RAPD?); ii) the criteria to determine when RAPD ought to be provided in a specific case; iii) the question of what specific and concrete measures States Parties must adopt in accordance with the obligation enshrined in Article 5.3 CRPD.

Given this scenario, it could be argued that the gaps in the CRPD regarding RAPD are not a specific characteristic of this treaty alone. Instead, this appears to be a common feature of human rights provisions in general, and it would be naïve to expect an international legal instrument to provide precise answers and solutions for all possible scenarios (Wheatley 2013: 85). The indeterminate nature of international human rights instruments is a result of arduous negotiations among numerous and heterogeneous state and non-state delegations during the drafting process. When pursuing necessary consensus, the natural outcome is the formulation of highly indeterminate provisions granting certain discretionary margins of action to different states for their implementation at the national level.

On the other hand, the practice of the UNHRS bodies under review provides a wide range of responses regarding RAPD implementation in national jurisdictions. These bodies’ practice includes guidelines on the kind of measures that should be adopted to ensure the provision of RAPD at the domestic level, along with guidelines for RAPD application in particular cases.

As a summary, the following table (Table 1) presents the main measures that States Parties should adopt regarding national RAPD implementation, considering the provisions of the CRPD and the practice developed by the UNHRS bodies:

Table 1. Measures for national RAPD implementation

MEASURE	CLASSIFICATION	SOURCE
M1. To establish that RAPD denial constitutes discrimination on the basis of disability	Legal qualification on denial of RAPD	CRPD
M2. To establish a broad material scope of the duty to provide RAPD	Scope of the duty to provide RAPD	CRPD
M3. To establish a broad range of duty bearers regarding the duty to provide RAPD	Scope of the duty to provide RAPD	CRPD
M4. To establish a broad personal scope of the duty to provide RAPD, including persons with disabilities and persons without disabilities associated with them	Scope of the duty to provide RAPD	Special Rapporteur
M5. To clearly identify the duty bearer (encompassing both the public and the private sectors) and the context of application of the duty to provide RAPD	Scope of the duty to provide RAPD	OHCHR
M6. To provide practical guidance regarding the application of RAPD in concrete cases	Application of RAPD in concrete cases	CRPD Committee Special Rapporteur OHCHR
M7. To establish legal sanctions as a consequence of unjustified refusal to provide RAPD	Legal consequences in case of non-compliance	OHCHR
M8. To establish monitoring systems regarding compliance with the duty to provide RAPD	Institutional design	CRPD Committee OHCHR
M9. To establish mediation and conciliation systems, as alternatives to judicial remedies, for the reparation of victims of discrimination on the basis of disability	Institutional design	CRPD Committee OHCHR
M10. To allocate specific resources and funding for RAPD implementation	Resources and funding	CRPD Committee Special Rapporteur OHCHR
M11. To actively collaborate with the non-state sector to fulfill the duty to provide RAPD	Collaboration with the non-state sector	CRPD Committee OHCHR

*Source: Author

Table T1 clearly shows that, according to the CRPD and the practice of the UNHRS bodies, nationwide RAPD implementation involves several measures and encompasses different areas of action. The national implementation of RAPD, as per the CRPD and the UNHRS bodies, requires much more than the mere normative incorporation of the duty to provide RAPD in domestic legislation. The measures listed in the table also refer to: i) the scope to be given to the duty to provide RAPD (M2, M3, M4, M5); ii) the legal qualification of RAPD denial (M1); iii) the legal consequences arising from non-compliance with the duty to provide RAPD (M7); iv) the development of a specific institutional design associated with practical RAPD application (M8, M9); vi) the regulation of guidelines and practical orientations to guide RAPD application in particular cases (M6); vii) the provision of resources and funding specifically intended for RAPD (M10); and viii) State cooperation with the non-state sector (M11).

Table T1 also clearly shows that the main source of guidelines on the measures to be adopted for national RAPD implementation come from UNHRS bodies' practice. Consequently, to have a more accurate and precise understanding of the types of measures required to ensure the provision of RAPD in their respective jurisdictions, States Parties must necessarily pay attention to and be aware of the practice developed by UNHRS bodies on this matter. The need to consider the practice of UNHRS bodies is not free from complications, though, and involves significant challenges.

4.2. Diversity, awareness and authority: the challenges of addressing UNHRS bodies' practice

The need to consider UNHRS bodies' practice to obtain guidance on RAPD implementation in national jurisdictions poses at least three significant challenges.

The first of these challenges can be characterized as the problem of diversity of voices within the same forum. Within the UNHRS, there are several bodies (treaty bodies, special procedures, and other entities) that have incorporated the international legal treatment of the duty to provide RAPD into their practice. This diversity of voices regarding the same subject opens the possibility of expressing contradictory or divergent views. If UNHRS bodies hold divergent interpretations regarding RAPD, what interpretation should be preferred and based on what kind of criteria? Fortunately, in the case of the duty to provide RAPD, UNHRS bodies' practice does not present a problem of divergence. Instead, the practices developed by these different bodies complement each other. Although the practice developed by the CRPD Committee, Special Rapporteur, and OHCHR regarding RAPD is not expressed in identical terms, they are not mutually exclusive either. This finding is consistent with prior literature, which has asserted the complementarity of the work of United Nations treaty bodies with the work of the special procedures from the Human Rights Council regarding human rights protection issues (Rodley 2012: 355). Indeed, while the CRPD Committee has been explicitly concerned with deepening the understanding and application of the duty to provide RAPD, the Special Rapporteur and the OHCHR in particular have dedicated special attention to providing guidance on specific actions and measures to be taken for RAPD implementation at the national level. Even in those aspects where different UNHRS bodies' practice overlaps,

there are no major divergences or incompatibilities. Where one body provides generic interpretations, the other provides more specific interpretations. This is particularly evident in the RAPD application guidelines in particular cases, where the general guidelines of the CRPD Committee have been complemented by the more specific guidelines provided by OHCHR.

The second challenge, somewhat related to the diversity of voices within the UNHRS, involves the lack of awareness among relevant stakeholders. To what extent are the different stakeholders (governments, civil society organizations, disability rights advocates, and others) aware of the practice developed by the CRPD Committee, Special Rapporteur, and OHCHR regarding RAPD? It has been stated that one of the major problems of the UN treaty body system in this issue, to which the CRPD Committee belongs, lies in the lack of widespread knowledge beyond the circle of human rights professionals about these bodies’ existence and work (Bernaz 2013: 719; Ulfstein 2018: 294). From this perspective, national RAPD implementation in line with UNHRS standards requires that relevant stakeholders, such as legislative bodies, policymakers, and judicial bodies, be aware of the existence of these various international human rights bodies and become familiar with the practice they have developed in this matter.

The fact that the practice developed by UNHRS bodies provides useful guidance for national RAPD implementation highlights a third significant challenge: What is the value of the products resulting from these bodies’ interpretative activity? Providing a precise and comprehensive account on this issue lies well beyond the scope of this article. Therefore, in a more modest approach, by bringing this issue to the table, the aim is to highlight certain elements that are useful for analyzing the interpretative work carried out by the UNHRS bodies.

As a starting point, it should be noted that the authority of human rights monitoring bodies and expert mechanisms is a highly controversial issue in national practices, international contexts, and academic literature (see e.g. Mechlem 2009; Çalı 2013; Jiménez 2019; Cardona 2019; Azaria 2020). Nevertheless, it seems relatively undisputed that the products of these entities’ interpretative work are not legally binding on States or other international bodies (O’Flaherty 2006: 33; Keller and Ulfstein 2012: 422–423; van Alebeek and Nollkaemper 2012: 402–413; Rodley 2013: 639; Bernaz 2013: 720–721; Connors 2019: 387; Escobar 2019: 246). States would thus not be legally required to follow or act in accordance with the interpretations provided by these bodies. However, this does not imply that these products have no value or effect in shaping or influencing treaty provisions’ national implementation. For instance, in the case of treaty bodies such as the CRPD Committee, it has been suggested that the level of acceptability or resistance to their interpretative work is directly related to their forms of exercise. Specifically, it has been argued that resistance to such interpretations is less likely when they are perceived as being closely aligned with the literal text of the treaty being interpreted. Conversely, in the case of ‘more creative’ interpretations, the probability of resistance increases as they are perceived as imposing obligations, limitations, or restrictions not consented to by the States Parties to the treaty in question (Schlütter 2012: 311; Wheatley 2013: 94). It is worth noting that given the limited normative content of the CRPD regarding RAPD, this thesis

would have a significant impact on acceptance or resistance to the practice developed by the UNHRS bodies. One potential solution to this problem could involve recognizing that the guidelines provided by UNHRS bodies for national RAPD implementation find their normative basis in Article 5.3 CRPD, which establishes States Parties' obligation to adopt 'all appropriate steps to ensure that reasonable accommodation is provided'.

Recognizing the non-binding status of interpretations by treaty monitoring bodies and special procedures, some authors have indicated that these interpretations' effectiveness or impact depends on extralegal factors. These factors include technical quality, analytical-conceptual rigor, and argumentative coherence of the interpretation (Mechlem 2009: 909; van Alebeek and Nollkaemper 2012: 413; Borlini and Crema 2019: 31; Azaria 2020: 45–46). In fact, it has been stated that 'the authoritativeness of international expert bodies' pronouncements lies in the sound argumentation of their reasoning, their methodological rigor and persuasiveness of the views expressed' (Borlini and Crema 2019: 31). Therefore, when it comes to the authority of interpretations by UNHRS bodies, it appears that an interpretation that meets these factors to a greater extent is more likely to be followed than one that meets them to a lesser extent.

With these points in mind, to what extent does the practice developed by the UNHRS bodies regarding RAPD meet the standards of technical quality, analytical rigor, and argumentative coherence mentioned in scholarship? Although answering this question accurately would require a more comprehensive and exhaustive review and analysis of documents, the inputs from this article allow us to identify certain examples where the UNHRS bodies' practice regarding RAPD has some weaknesses concerning the consistency and soundness of their interpretations.

A first example concerns the evaluation of the relevance and proportionality criteria in the application of RAPD concrete cases. In its General Comment No. 6, the CRPD Committee has listed a series of factors to assess whether a specific RAPD satisfies the proportionality criterion, such as financial costs, resources available, the size of the accommodating party, the effect of the modification on the institution or business, third-party benefits, negative impacts on other people, and reasonable health and safety requirements (Committee on the Rights of Persons with Disabilities 2018a: para. 26). The same factors have also been enlisted in the adoption of views on individual communications, but with reference to the relevance criterion (e.g. Committee on the Rights of Persons with Disabilities 2019: para. 8.6, 2020: para. 9.6). Thus, the same UNHRS body, exercising different functions, has framed the same evaluation factors within different criteria. This inconsistency is striking since the practice of the CRPD Committee implies that each criterion focuses on different parties of the accommodation process. The relevance criterion is oriented towards people with disabilities, seeking to remove the concrete barrier that hinders the equal enjoyment of rights. The proportionality criterion is oriented to the duty bearer, excluding those accommodations that would impose an undue or disproportionate burden on this party (see Committee on the Rights of Persons with Disabilities 2018a: para. 25).

A second example is the reference to 'objective criteria' justifying the refusal to provide RAPD. According to the CRPD Committee, the justification for not providing

a requested RAPD must be based on objective criteria. However, the Committee has not explicitly or extensively clarified what those objective criteria are. This is relevant because determining whether a request for RAPD was legitimately rejected or not results in determining whether or not an act of discrimination based on disability occurred. In this sense, the reference to 'objective criteria' made by the CRPD Committee can be interpreted in two ways, both of which are present in the practice developed by the OHCHR. The first interpretation would be to understand that the reference to objective criteria refers to general guidelines for RAPD application in specific cases, especially the variables of feasibility, relevance, and proportionality. Thus, justifying the denial of an RAPD request based on objective criteria would mean rejecting the request because it involves a modification or adaptation that is not feasible, relevant, or proportionate. The second interpretation, not necessarily incompatible with the first, would be to understand that the reference to objective criteria refers to the exclusion of vague, ambiguous, or potentially discriminatory factors against persons with disabilities from the evaluation process. Both interpretations seem plausible, but the practice of the CRPD Committee has not clarified the issue.

A third example, this time from the practice developed by the OHCHR, concerns the regulation of the duty to provide RAPD in national legislation. The OHCHR has recommended that States incorporating RAPD into national legislation should enshrine this duty with an open-ended criterion 'so as not to result in exclusion from protection' (Human Rights Council 2009: para. 39). However, the OHCHR has not clarified what those exclusions of protection would be that could be avoided by incorporating RAPD with an open-ended criterion. Does it refer to the regulation of the personal scope of RAPD, the material scope, the criteria for determining when an accommodation ought to be provided, all these aspects, or some additional ones? OHCHR praxis does not provide answers to this question. Even more so, it is worth noting that the OHCHR itself has provided guidelines that, at first glance, seem to be contrary to a regulation of RAPD with an open-ended criterion. For example, the OHCHR has also argued that domestic State legislation must clearly identify the obligated party to provide RAPD and the specific context of application of these measures. This creates tension between, on the one hand, a regulation of RAPD expressed in broad terms (or with an 'open-ended criterion'), and on the other hand, a regulation of RAPD expressed in more specific terms.

5. CONCLUSIONS

This article has aimed to identify, systematize, and critically analyze the measures that, according to CRPD provisions and different UNHRS bodies, must be adopted by States to implement RAPD in their respective national jurisdictions.

Examining CRPD provisions reveals that, even though this treaty contains several articles related to RAPD, there are various aspects concerning the understanding, application, and implementation of these measures that the CRPD provisions does not resolve. The CRPD does not specify which measures or types of measures States Parties should adopt to ensure RAPD fulfillment in their respective national jurisdictions. In this scenario, different UNHRS bodies have sought to provide guidelines and orientations to

States regarding RAPD understanding and application in specific cases and have indicated concrete measures for RAPD implementation in national contexts.

Considering CPRD provisions and the practice developed by UNHRS practice, the main measures related to RAPD implementation in national jurisdictions have been synthesized. This synthesis has led to two main findings. Firstly, national RAPD implementation requires the adoption of diverse measures, which go beyond the mere normative incorporation of the duty to provide RAPD in national legislation. According to the CPRD and the practice of the UNHRS bodies, nationwide RAPD implementation also involves measures that address: the legal qualification of RAPD denial; the scope of the duty to provide RAPD and the legal consequences of non-compliance; RAPD application in specific cases; institutional design issues; resources and financing provision; and cooperation with the non-state sector.

Secondly, it has been confirmed that the guidelines for national RAPD implementation come mainly from the practice developed by the UNHRS bodies. The significance of the practice developed by these bodies highlights the need to address certain challenges. On the one hand, the diversity of voices within the same forum does not present a relevant obstacle concerning RAPD. The practices developed by the CPRD Committee, the UN Special Rapporteur, and the OHCHR are complementary; although they are not expressed in identical terms, they are not mutually exclusive. National RAPD implementation also requires that CPRD States Parties, as relevant interlocutors of the UNHRS bodies, are aware of and knowledgeable about the practice that these bodies have developed regarding RAPD. Finally, the non-binding nature of the interpretations provided by the UNHRS bodies suggests examining their authority based on extra-normative factors. From this perspective, certain examples have been identified that show inconsistencies and argumentative flaws in the practice of the SUPDH entities, which could negatively impact their degree of authority.

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