Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 70/2019*

* Adopted by the Committee at its twenty-eighth session (6–24 March 2023).

** The following members of the Committee participated in the consideration of the communication: Muhammad Salah Al-Azzeh, Rosa Idalia Aldana Salguero, Rehab Mohammed Boresli, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Odelia Fitoussi, Laverne Jacobs, Samuel Njuguna Kabue, Rosemary Kayess, Kim Mi Yeon, Alfred Kouadio Kouassi, Abdelmajid Makni, Sir Robert Martin, Markus Schefer and Saowalak Thongkuay. Pursuant to rule 60 of the Committee’s rules of procedure, Amalia Eva Gamio Ríos did not participate in the consideration of the communication.

1.1 The author of the communication is Selene Militza García Vara, a national of Mexico born on 21 October 1980. She asserts that the State party violated her rights under articles 1, 2, 4, 5, 6, 8, 9 and 24 of the Convention by not guaranteeing accessibility of tertiary education for her and by failing to make the reasonable accommodation she needed on account of her disability during the admission process for the Bachelor of Visual Arts. The author is...

1.2 On 13 March 2020, the Committee, acting through its Special Rapporteur on Communications under the Optional Protocol, rejected the State party’s request that the admissibility of the communication be considered separately from its merits.

A. **Summary of the information and arguments submitted by the parties**

**Facts as submitted by the author**

2.1 The author notes that her disability stems from brain damage caused by difficulty breathing and crying at birth. At the age of 5 years and 10 months, she was diagnosed with delayed motor, perceptual and language development, which had apparently interfered with her learning processes. On 28 July 2000, she was definitively diagnosed by the Institute of Social Security and Social Services for State Employees with light to moderate intellectual retardation resulting from neurological damage caused by neonatal hypoxia. On 1 February 2008, the neuropsychology unit at the child rehabilitation centre in Cuernavaca drew up a neuropsychological profile of the author, according to which her development was much better than expected, notwithstanding some difficulty with comprehension of abstract concepts and verbal memory strategies. The report also highlighted other elements, such as her enthusiasm for teamwork, that might be conducive to her greater social and career development.

2.2 With the aim of ensuring her full inclusion in society, the author’s parents enrolled her in ordinary private schools, and she underwent several specialized treatments. The author received certificates issued by the Ministry of Education attesting to the fact that, having obtained good results, she had satisfactorily completed primary and secondary education. Furthermore, on 26 July 2006, the author obtained a certificate of technical vocational studies in fashion design from the Vocational School of Fashion Design, with an average grade of 7.5 out of 10.

2.3 On 14 March 2013, the author began to work two hours per day as a trainer at a school for persons with disabilities. However, her demonstrated interest in and talent for art led her to study fashion design in addition to taking classes and workshops on art-related topics at various institutions, including the Morelense Centre for the Arts. Since working only two hours per day did not enable her to be financially independent, the author decided that she needed a bachelor’s degree to aim for a better job.

2.4 In 2014, the author applied for a place on the Bachelor of Visual Arts at the Morelense Centre for the Arts. The author met all the requirements enumerated in the Centre’s call for applications. However, the author claims that the selection process was conducted using a formal model of equality, without any reasonable accommodation being made at the interview or practical test stages required to be selected for the bachelor’s programme.

2.5 When the results of the selection process were published on 18 July 2014, the author learned that she had not been admitted to the bachelor’s programme. Accompanied by her mother, she requested detailed information from the Dean of the Morelense Centre for the Arts about the selection criteria used in the admission process for the programme. The Dean informed them that there was no budget for admitting persons with intellectual disabilities and that the curricula were not designed for persons with disabilities. He also informed them that the candidates had been evaluated on the basis of the same standards so as to avoid differentiation and that others had submitted better work than the author had.

2.6 On 8 August 2014, the author brought indirect *amparo* suits against various authorities. Her suit against the Governor and the Ministry of Education of the State of Morelos concerned primarily the authorities’ failure to put in place measures, systems and public policies to promote, protect and encourage the integration of persons with disabilities and guarantee their access to tertiary education through inclusive programmes aimed at developing the human potential and sense of dignity and self-worth of persons with disabilities. The suit also concerned the failure to provide reasonable accommodation and to take the measures necessary to eliminate discrimination against persons with disabilities,
which resulted in her exclusion from tertiary education. An amparo suit was also brought against the Congress of the State of Morelos, chiefly on account of its failure to enact the measures necessary to eliminate discrimination against persons with disabilities in tertiary education.

2.7 A suit was also brought against the Governing Board of the Morelense Centre for the Arts, concerning primarily its failure to put in place measures, instruments and systems at the Centre aimed at eliminating discrimination against persons with disabilities in tertiary education and promoting tertiary education for all through an inclusive system designed to develop to the fullest extent possible the personality, talents and creativity of persons with disabilities and thus prevent their exclusion from the Bachelor of Arts programme. The suit also raised the lack of rules on reasonable accommodation at the Centre, which meant that she did not have access on an equal basis with others, thus leading to her exclusion from tertiary education.

2.8 Lastly, a suit was brought against the Dean and the academic secretariat of the Morelense Centre for the Arts concerning chiefly the author’s rejection from the Bachelor of Visual Arts due to discrimination against persons with disabilities – especially as evidenced by the failure to assess persons with disabilities for admission on an equal basis with others due to the lack of a framework for establishing equal conditions – which resulted in her exclusion from tertiary education. In addition, the author requested the Court to suspend the impugned decision so that she could continue the admission process for the bachelor’s programme; her request was denied.

2.9 On 25 August 2014, at the author’s request, the Dean of the Morelense Centre for the Arts officially informed her of the reasons why she had not been admitted to the bachelor’s programme, noting that she had failed most of the tests due to communication and comprehension difficulties in particular. The Dean also noted that the bachelor’s programme involves strong reading comprehension, transmission of ideas and verbal communication skills. On 11 September 2014, the author expanded the amparo suit because the Dean’s explicit statement that her communication and comprehension difficulties were the consequence of her disability implied that her rejection from the programme was a discriminatory act and demonstrated that reasonable accommodation would have been necessary during the assessment process.

2.10 On 4 May 2015, the Seventh District Court of the State of Morelos dismissed the amparo suit. In relation to the Governing Board, the Dean and the academic secretariat of the Morelense Centre for the Arts, the Court ruled that the grounds for dismissal in article 61 (XXIII), in conjunction with article 5 (II), of the Amparo Act applied, as the Centre was not the competent authority for the purposes of the amparo suit.1 The decision to reject the author’s application for the Bachelor of Visual Arts programme because she failed to obtain the requisite marks did not constitute an act by an authority subject to challenge through the remedy of amparo. Since the author did not have the status of student but was only a “candidate” and therefore had not acquired rights and obligations vis-à-vis the institution, the Centre was not in a subordinate relationship with her. In addition, the Court was of the view that the author was given the same opportunity to sit the entrance examination for the Bachelor of Visual Arts as the other candidates. As for the disputed acts committed by the other authorities, namely, the failure to take measures to eliminate discrimination against persons with disabilities, the Court ruled that the grounds for dismissal in article 61 (XXIII), in conjunction with article 73 of the Amparo Act and article 107 (II) of the Constitution on the principle of the relative application of judicial decisions in amparo proceedings, applied2

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1 “Article 61. The remedy of amparo is inadmissible: ... XXIII. In the other cases where inadmissibility flows from a provision of the Constitution or of the present Act.” “Article 5 (II). The following are parties to amparo proceedings: ... The competent authority, which, irrespective of its formal nature, shall be the authority that issues, orders, enforces or attempts to enforce an act creating, modifying or terminating legal situations in a unilateral and obligatory manner, or that omits an act which, if enforced, would create, modify or terminate these legal situations.”

2 “Article 73. Judgments in amparo cases shall apply only to the individuals or the legal persons, be they private or governmental, who brought the action and shall be limited to providing them with protection, where appropriate, in the specific case in relation to which the action was brought.”
because admitting the *amparo* in order to allow for the failures at the heart of the dispute to be remedied would imply that the final judgment would have general effects.

2.11 On 21 May 2015, the author filed an appeal before the Second Collegiate Court of the Eighteenth Circuit in Cuernavaca (Morelos State), in which she argued that the Seventh District Court had formulated the dispute incorrectly, as shown by its failure to take into consideration in its decision the fact that reasonable accommodation should have been made during the selection process to ensure equal conditions and non-discrimination in accessing the education system. She also argued that her suit should not be dismissed on the basis of the argument that she was not a student at the Centre because the violation of her rights lay precisely in the fact that she was denied admission on account of her disability. On 21 January 2016, the Second Collegiate Court of the Eighteenth Circuit upheld the decision of the Seventh District Court. The author notes that she applied to the Supreme Court to assume jurisdiction over the case, but her application was rejected.

**Complaint**

3.1 The author claims that the State party violated her rights under articles 1, 2, 4, 5, 6, 8, 9 and 24 of the Convention.

3.2 The author submits that the State party violated her rights under article 1 of the Convention by not promoting or ensuring the full enjoyment, on an equal basis with others, of her rights as a person with an intellectual disability, thus preventing her from fully and effectively participating in society, specifically in the tertiary education system.

3.3 The author claims that her rights under article 2 of the Convention were violated as a result of the differentiation, exclusion and restriction she faced in the Mexican tertiary education system on account of her intellectual disability, her discriminatory treatment by the Morelense Centre for the Arts, which failed to provide reasonable accommodation, and the federal judiciary’s failure to rule on the lack of reasonable accommodation.

3.4 The author also submits that the State party violated her rights under article 4 of the Convention by not adopting sufficient legislative, administrative and other measures, including judicial measures, to give effect to her rights, specifically her right of access to education on an equal basis with others and without discrimination based on her disability. The State party has not incorporated the protection and promotion of the human rights of persons with disabilities such as herself into its policies and programmes, in particular the Bachelor of Visual Arts programme at the Morelense Centre for the Arts. Furthermore, the State party failed to promote training for professionals at the Centre aimed at providing better assistance and services to persons with disabilities. If the staff at the Centre knew that the author had communication and comprehension difficulties due to her disability, they should have made reasonable accommodations so that she could access the education system.

3.5 The author also claims that the State party, through the Morelense Centre for the Arts and the federal judiciary, violated her rights under article 5 of the Convention, as both institutions, disregarding the obligation to provide reasonable accommodation, were of the opinion that taking part in the admission process for the bachelor’s programme under the same conditions as the other candidates did not amount to discrimination against the author. She further claims that the lack of reasonable accommodation was a form of discrimination on the part of the Morelense Centre for the Arts and that the judiciary also engaged in discriminatory behaviour by not guaranteeing her effective legal protection from that discrimination.

3.6 The author submits that the State party violated her rights under article 6 of the Convention by not taking all the measures necessary to ensure her fullest development as a woman with a disability. Having access to tertiary education would have had an undisputed impact on her empowerment and the free development of her personality.

3.7 In addition, the author claims that the above-mentioned violations illustrate the fact that the State party has not combated stereotypes, prejudices and harmful practices relating to persons with disabilities in all spheres of life, particularly in education, in contradiction with its obligations under article 8 of the Convention. The State party has not managed through legislation to foster receptiveness to the rights of persons with disabilities.
3.8 Lastly, the author claims that the State party violated her rights under article 24 of the Convention by not guaranteeing her right to inclusive education, specifically tertiary education. The author was excluded from the general education system on grounds of disability. She repeats that the State party did not ensure the provision of reasonable accommodation for her individual needs or ensure that she could pursue vocational training without discrimination and on an equal basis with others. Moreover, the State party did not provide the author with an effective remedy for the violation. She notes that having access to tertiary education would have translated into better employment prospects for her.

3.9 Accordingly, the author requests the following reparation measures: (a) non-repetition of acts such as those she reported; (b) a public apology to herself, including acknowledgement of the events and the State party’s responsibility under international law; (c) payment of fair compensation for moral injury; (d) payment of fair compensation for the loss of opportunities stemming from the failure to guarantee her right to tertiary education; (e) the formulation and implementation of public policies on training in and monitoring of the human rights of persons with intellectual disabilities for all segments of society, in particular law enforcement officials and staff at all education institutions; and (f) the provision, in practice, of reasonable accommodation in all education centres to guarantee access to all levels of education for persons with intellectual disabilities.

State party’s observations on admissibility

4.1 On 16 December 2019, the State party submitted its observations on the admissibility of the communication. It requested that the communication be declared inadmissible under article 2 (e) of the Optional Protocol for lack of substantiation.

4.2 The State party argues that the author was a part of the student body of the Morelense Centre for the Arts in the past since she took classes there. In the State party’s view, this is evidence that the author was able to meet the relevant requirements and that the Centre’s entrance examination for its classes are conducted in an objective manner and under equal conditions.

4.3 The State party points out that, unlike the classes that she completed successfully, the author was unable to meet the requirements established in the curriculum for admission to the Bachelor of Visual Arts. It explains that the Centre held the tests necessary to confirm whether the candidates for the programme satisfied the profiles outlined in the curriculum. The marks that the author obtained in five of the six tests she sat as part of the selection process were disqualifying (see para. 6.5). This demonstrates that the Centre, having had the author sit the requisite tests, under equal conditions, determined that she did not meet the requirements of the curriculum in force at the time.

4.4 The State party concludes that the denial of admission to the Bachelor of Visual Arts offered by the Centre was not due to discriminatory actions but, rather, to the fact that, after holding the requisite tests, under equal conditions, to assess the minimum skills needed to take the course, it was determined that the author did not meet those requirements.

Author’s comments on the State party’s observations on admissibility

5.1 On 15 February 2020, the author submitted her comments on the State party’s observations on the admissibility of the communication.

5.2 The author is of the view that the State party’s arguments confirm the glaring violation of the right to non-discrimination, equality and access to tertiary education. She finds it incongruous that the State party would request that the communication be found inadmissible for being manifestly ill-founded or insufficiently substantiated. She notes that the State party is basing itself on the false premise that the Centre did not discriminate against her given that she took part in the selection process under conditions of formal equality.

5.3 The author is of the view that the State party is disregarding the fact that, given her intellectual disability, the provision of reasonable accommodation would have been the only way for her to be admitted to the Bachelor of Visual Arts on an equal basis with the other candidates. Her condition should never have been grounds for discrimination and exclusion on the part of the Centre. The failure to provide reasonable accommodation was a barrier to
her full and effective participation in society on an equal basis with others, specifically at an institution of higher learning to which she was denied admission because the curricular structure did not allow for the adaptations necessary to receive students such as herself.

5.4 The author contends that modifications or adaptations of the selection process for the Bachelor of Visual Arts, and of the curricular structure (plans and programmes), were necessary to safeguard her right to tertiary education and that the absence of such modifications and adaptations had repercussions for the free development of her personality. According to the author, the State party’s position would entail denying all persons with disabilities effective access to tertiary education.

State party’s observations on the merits

6.1 In its observations of 13 March 2020, the State party contends that it did not violate the author’s right to education. The State party ensured her access to basic and upper secondary education in ordinary schools not reserved for persons with disabilities. Regarding access to tertiary education, the State party notes that the author has not indicated that she faced any physical, linguistic, communication, financial or legal barriers during the selection process or that she encountered barriers resulting from the institution’s attitude.

6.2 The State party emphasizes that the author was given sufficient time to complete the tests, that no external factors hindered her concentration during the tests and that, having demonstrated her ability to sit the tests on her own, she did not require assistance from another person or technology of any kind. Furthermore, the author has not mentioned having been a victim of stereotypes, prejudices or harmful practices during the selection process for the bachelor’s programme.

6.3 The State party notes that the Bachelor of Visual Arts requires dedication, time and specialized knowledge of the arts and, potentially, the use and mastery of specialized tools, including presses, photography and printing chemicals and kilns. It is also essential to master reading comprehension, text analysis, reading and writing skills and to have knowledge of art and cultural history. Furthermore, the programme requires the ability to assemble works and create complex projects. The State party notes that the Bachelor of Visual Arts offered by the Morelense Centre for the Arts is an academic programme based on an instruction model that fosters the development of creative, multidisciplinary processes aimed at the production of quality visual arts creations melding art world and social context. Therefore, the requirements are different from those for admission to the Centre’s free classes and workshops, as the purpose of the latter is to initiate participants to the arts, not to provide them with professional qualifications.

6.4 The State party notes that, given the above, the Morelense Centre for the Arts decided that candidates for the Bachelor of Visual Arts must meet the following requirements set out in the curriculum: (a) be at least 18 years of age (requirement met by the author); (b) demonstrate a clear interest in the profession (which the author has expressed); (c) possess creative qualities and human values (requirement partially met by the author); (d) submit a portfolio and/or documentary evidence of artwork (requirement met by the author); (e) pass the selection process consisting of an individual interview and tests (requirement not met by the author); and (f) attend the induction class (requirement met by the author).

6.5 The State party explains that, to be successful in the selection process, candidates were required to attend an individual interview and to pass tests on materials and expression, drawing and painting, photography, three-dimensional creation and art-related essay writing. The author obtained five failing grades of 5 out of 10. The exception was the 6 out of 10 that she obtained on the materials and expression test. In this connection, the State party stresses that article 26 of the rules governing fees and the selection, admission, retention and graduation of students at the Morelense Centre for the Arts establishes that “assessments are scored on a scale from 5 to 10 ... where the minimum qualifying grade is: I. For bachelor’s degrees and programmes up to this level: 6 or above.” The State party notes that admission to the bachelor’s programme is dependent on the fulfilment of minimum requirements, which are assessed through an equal and fair process. The State party notes that the Centre’s evaluators were flexible when grading the author.
6.6 The State party notes that the requirements for admission to the Bachelor of Visual Arts are potentially achievable by the author; in order to pass the tests, it would have been sufficient for her to prepare appropriately before sitting them. In this regard, the State party highlights the fact that the author passed the materials and expression test as part of the admission process. It can reasonably be assumed therefore that preparing for the other tests would have yielded greater chances of success.

6.7 The State party notes that the Centre has the necessary facilities to be accessible for persons with disabilities and that its faculty and student body include persons with disabilities who also had to go through an admission process. The State party submits that, although the Morelense Centre for the Arts is not a school that specifically caters for persons with disabilities, it takes steps to ensure equal opportunities for them. The State party stresses that reasonable accommodation varies, as the various bachelor’s programmes and classes offered at the Centre require the students to have different skills.

6.8 The State party notes that the Bachelor of Visual Arts requires candidates to show creative observation skills, critical thinking and an understanding of visual arts and their context. This was brought to the author’s attention on 4 and 25 August 2014 when she was informed that the Centre is a place for the honing of artistic processes and techniques where students engage in debate and theoretical discussion about art history and it is therefore necessary that candidates demonstrate strong reading comprehension, idea transmission and verbal communication skills. It was explained to the author that, during the tests, she was unable to show that she met the requirements set in the bachelor’s programme curriculum. The State party respectfully notes that, as described in the assessment by neuropsychology experts at the child rehabilitation centre in Cuernavaca, the author’s neuropsychological profile drawn from her diagnostic report shows a lack of understanding of abstract concepts and difficulties with verbal memory strategies. The State party is of the view that this is inconsistent with the skills expected from candidates for the Bachelor of Visual Arts.

Author’s comments on the State party’s observations on the merits

7.1 On 14 October 2020, the author submitted her comments on the State party’s observations on the merits of the communication, reiterating that the State party violated her rights under articles 1, 2, 4, 5, 6, 8, 9 and 24 of the Convention.

7.2 According to the author, it can be inferred from the State party’s observations that it accepts an education model that is utterly contrary to the universal model of inclusive education characterized by the inclusion of persons with disabilities in all academic institutions. When the State party notes that, “although the Morelense Centre for the Arts is not a school that specifically caters for persons with disabilities, it takes steps to ensure equal opportunities”, it is referring to an education structure that distinguishes between persons without and those with disabilities, which illustrates that education facilities segregate and discriminate against persons with disabilities. The author notes that this statement shows that the State party intended for her to attend an academic institution reserved for persons with disabilities rather than the Centre, which provides regular education. She also notes that this stance is a violation of the principles of the Convention, as it denies persons with disabilities the right to full and effective participation and inclusion in society, as well as equal opportunities and access to education facilities.

7.3 The author notes the State party’s statements that admission to the Bachelor of Visual Arts requires candidates to demonstrate strong reading comprehension, idea transmission and verbal communication skills, which she was unable to demonstrate, as her condition affects her ability to understand abstract concepts and to form verbal memory strategies. She is of the view that this statement is an acknowledgement by the State party that the admission process did not ensure accessible conditions and reasonable accommodation.

7.4 The author recognizes that admission to the bachelor’s programme must be contingent on certain conditions and requirements. However, these should have been secondary to the provision of accessibility measures and reasonable accommodation to the author as the only way of realizing her right to education and the only indicator of equality in the assessment process.
7.5 The author reiterates that her inability to understand certain cognitive aspects due to her intellectual disability should not have been grounds to exclude her from tertiary education. When the State party restricted her admissibility to the bachelor’s programme on the basis of her communication and comprehension difficulties, it is obvious that it unduly conditioned her inclusion on the extent of her potential. It should have shown flexibility in its assessment rather than expect her to fit into a standardized assessment system. Reasonable adjustments should have been made to the policies and plans regarding admission to the bachelor’s programme to accommodate her needs without those needs becoming a disproportionate burden on the institution. For example, the tests could have been marked on the basis of her abilities rather than on the basis of criteria designed for people without an intellectual disability, or the author could have been provided with the assistance of an expert in psychology or human communication who could have made the entrance examinations easier to understand.

7.6 The author notes that the Centre was aware of her intellectual disability and her cognitive and linguistic difficulties since she had previously taken other classes there and that it was therefore obvious that she would be at a clear disadvantage in the selection process for the bachelor’s programme compared to other candidates. Moreover, the author is of the opinion that the State party tacitly recognized the oral statements by the Dean of the Centre in which he informed the author and her mother that there was no budget for the admission of persons with intellectual disabilities, that the curricula were not designed for these persons and that other candidates were assessed using the same standards to avoid differentiation.

7.7 The author submits that, contrary to the State party’s assertions, she has always pointed out that the lack of accessibility measures prior to and the lack of reasonable accommodation during the selection process constitute in themselves a barrier to her ability to take part in the admission process for the bachelor’s programme on an equal basis.

7.8 The author considers that the State party’s assertion that she had sufficient time and had shown that she had the ability to sit the exams on her own is nothing more than a subjective assessment and lacks foundation. Only an expert used to working with persons with disabilities could determine whether, in her case, the time allotted for the examination was sufficient given her intellectual disability, whether there were any external factors that disrupted her concentration during the examination and whether she needed the help of another person or had the ability to sit the examination on her own. The State party has not provided any means of confirming its assertions, which should therefore be disregarded. In making these arguments, the State party fails to take into account that having an intellectual disability means that her cognitive abilities are lower, thus affecting her perception and even her focus.

7.9 In addition, the author is of the opinion that the State party has not provided any evidence to support its statement that the Centre’s evaluators showed flexibility when assessing the author. On the contrary, the State party emphasizes in its observations that there was no support of any kind for the design of the examination and that it was graded equally for all the candidates without any distinction whatsoever, even though her case called for a distinction to be made in the form of reasonable accommodation.

7.10 According to the author, the State party’s statement that she did not claim to have been a victim of stereotypes, prejudices and harmful practices during the admission process for the bachelor’s programme is untrue. The author has repeatedly stated that the lack of accessibility measures and reasonable accommodation during the selection process was the determining factor in her exclusion from the tertiary education system; it is evident that circumstances such as these translate into a harmful practice. While the author explicitly acknowledges that she has not claimed to have been a victim of stereotypes and prejudices relating to her disability, the fact that the State party has repeatedly pointed out the mismatch between her lack of understanding of abstract concepts and her difficulties with verbal memory strategies and the skills required from candidates for the bachelor’s programme demonstrates that she has been the victim of prejudices and stereotypes. The determination that the author’s disability prevented her from meeting the admissibility requirements for the bachelor’s programme was deliberately made, without first conducting an individualized assessment of her actual situation involving the analysis, recognition and development of her abilities. In addition, reiterating the discrimination she faced, the author emphasizes that the
State party is basing itself on a stereotype and prejudice whereby she, as a person with a disability, is incapable of writing, presenting and defending projects, assembling works and creating complex projects.

7.11 Furthermore, the author is of the view that, when the State party states categorically that she failed to gain admission to the programme because she did not properly prepare for, and therefore failed, the examinations, it is basing itself on subjective appraisals without providing any supporting evidence for its claim. Thus, the State party makes clear its perception that persons with disabilities do not prepare for entry into the education system and are responsible for their failure to gain admission, without allowing for the fact that it is the lack of accessibility and reasonable accommodation that prevents their admission. The author notes that the State party is once again contradicting its earlier assertion that the inability to understand abstract concepts and difficulties with verbal memory strategies are inconsistent with the skills that candidates for the bachelor’s programme are required to have.

7.12 Lastly, the author notes that the State party does not provide any evidence to support its assertion that there are students and teachers with disabilities at the Centre.

Third-party intervention

8.1 On 12 February 2021, the Autonomous Technical Institute of Mexico submitted a third-party intervention. The Institute notes that the present case is representative of the repeated violation of the rights of persons with disabilities committed by tertiary education institutions in the State party. The State party’s statement that the Centre “is not a school … for persons with disabilities” attests to the educational segregation of students with disabilities. The Institute submits that the State party should, inter alia, ensure that the Centre adopts administrative and regulatory measures, provides training to its staff, establishes protocols and makes adjustments to the admission process.

8.2 On 1 March 2021, the Federal Public Defender Service submitted a third-party intervention. It states that the facts reported in the present communication are not isolated but are repeated time and again throughout the territory of the State party. It notes that many persons with learning or intellectual disabilities in Mexico have seen their career development prospects curtailed by the failure to develop a system based on universal design and provide reasonable accommodation enabling them to pursue tertiary education. This failure limits their employment prospects to jobs in trades, which are markedly less well paid than professional jobs. The Federal Public Defender Service submits that even the Supreme Court has stated that the special education model under the General Education Act, specifically the provisions that segregate persons with disabilities and create two separate education systems, is unconstitutional on the grounds that it violates the right to inclusive education enshrined in article 24 (1) of the Convention.

B. Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

9.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been examined by the Committee, and that it has not been, nor is it being, examined under another procedure of international investigation or settlement.

9.3 The Committee notes the author’s claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that regard, the Committee considers that the requirements of article 2 (d) of the Optional Protocol have been met.

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3 Supreme Court, Second Chamber, amparo appeal No. 714/2017, 3 October 2018, p. 37 et seq.
9.4 The Committee notes the State party’s submission that the communication should be declared inadmissible under article 2 (e) of the Optional Protocol for being manifestly ill-founded. The State party is of the opinion that conditions of equality were met during the selection process for admission to the Bachelor of Visual Arts in which the author took part; therefore, there was no discrimination nor a violation of her right to tertiary education. However, the Committee also notes the author’s claims that the State party: (a) has not taken the measures necessary to guarantee the accessibility of tertiary education for persons with intellectual disabilities such as herself; (b) did not guarantee conditions of substantive equality during the selection process for admission to the Bachelor of Visual Arts insofar as the reasonable accommodation needed on account of her intellectual disability was not provided, negatively impacting her personal development and her access to better employment opportunities; and (c) did not provide her with an effective remedy to obtain reparations for the alleged violations. The Committee further notes the author’s argument that her treatment by the Morelense Centre for the Arts shows that the State party has not taken the actions necessary to combat stereotypes, prejudices and harmful practices with regard to persons with intellectual disabilities. In the light of the foregoing, the Committee considers that the author has sufficiently substantiated her allegations for the purposes of admissibility.

9.5 The Committee is of the opinion, however, that articles 1 and 2 of the Convention, being of a general nature, cannot, in principle, be the subject of stand-alone claims under the Convention. They may only be invoked in the context of individual communications under the Optional Protocol in conjunction with other substantive rights enshrined in the Convention. In the circumstances of the present communication, the Committee considers that this part of the communication is inadmissible under article 2 (e) of the Optional Protocol.

9.6 The Committee also notes the author’s claim that the State party violated her rights under article 6 of the Convention by not taking the measures necessary to ensure her fullest development as a woman with disabilities. However, the Committee considers that this claim has not been sufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 (e) of the Optional Protocol.

9.7 Consequently, and in the absence of any other obstacles to admissibility, the Committee finds the communication admissible under article 2 of the Optional Protocol as regards the authors’ claims of the violation of articles 5 and 24, read alone and in conjunction with articles 4, 8 and 9 of the Convention, and proceeds to its consideration of the merits.

Consideration of the merits

10.1 The Committee has considered the present communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of the rules of procedure.

10.2 As regards the author’s claims under articles 5 and 24, read alone and in conjunction with articles 4 and 9 of the Convention, the matter before the Committee is whether the State party violated her right to inclusive tertiary education by failing to guarantee accessible tertiary education and provide reasonable accommodation for her situation as a person with an intellectual disability during the entrance examination for the Bachelor of Visual Arts, thus also violating her right to equality and non-discrimination and adversely affecting her personal development and her access to better employment opportunities.

10.3 As for the alleged lack of accessibility of tertiary education, the Committee notes in particular the author’s statement that the State party did not take sufficient legislative, administrative and other measures, including the provision of training to staff of the Morelense Centre for the Arts, to realize her right to tertiary education under equal conditions. In this regard, the Committee notes the State party’s statement that the Morelense Centre for the Arts has the necessary facilities to ensure accessibility for persons with disabilities, both teachers and students, and that it takes steps to ensure equal opportunities for persons with disabilities. However, the Committee notes that the State party’s statements are general in nature and that it has not provided detailed information to illustrate how the Centre ensures

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accessibility for students with intellectual disabilities in practice. The Committee also notes the author’s claim, which the State party has not refuted, that no information or document proving that there are students or teachers with intellectual disabilities at the Centre has been provided. It further notes that, according to the information submitted by the author, which the State party has not refuted, the Dean of the Centre told her that the Centre did not have a budget to admit persons with intellectual disabilities and that the curricula were not designed for these persons. Lastly, the Committee notes that the State party has not provided any additional information on other measures taken to ensure the accessibility of tertiary education for persons who, like the author, have an intellectual disability.

10.4 In this regard, the Committee recalls that “in accordance with article 24 (1), States parties must ensure the realization of the right of persons with disabilities to education through an inclusive education system at all levels, including preschool, primary, secondary and tertiary education, vocational training and lifelong learning, extracurricular and social activities, and for all students, including persons with disabilities, without discrimination and on an equal basis with others.” The Committee also recalls that “consistent with article 9 of the Convention and with the Committee’s general comment No. 2 (2014) on accessibility, educational institutions and programmes must be accessible to everyone, without discrimination. The entire education system must be accessible, including buildings, information and communications tools ... the curriculum, educational materials, teaching methods, assessments and language and support services.” The Committee further recalls that “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.”

10.5 The Committee notes the statement by third parties that the alleged violations in the present case are not isolated but, rather, are representative of the challenges that persons with intellectual disabilities face in accessing inclusive tertiary education in the State party. In this connection, the Committee recalls that in its previous concluding observations regarding the State party, it expressed its concern about the persistence of special education, the lack of a strategy covering all levels of the State party aimed at ensuring inclusive education for all children with disabilities, and the widespread exclusion of women and girls with disabilities from educational settings in both early and tertiary education due to, inter alia, their disability and gender, a lack of accessibility and reasonable accommodation and a lack of knowledge about the needs of students with disabilities.

10.6 For these reasons, and in the light of the information in the case file, the Committee is of the view that the State party has not demonstrated that it has taken the legislative, administrative and other measures, including the adoption of policies on reasonable accommodation and the training of staff at tertiary education institutions, to ensure the accessibility of inclusive tertiary education for the author, as a person with an intellectual disability. Specifically, it has not ensured the accessibility of the Bachelor of Visual Arts at the Morelense Centre for the Arts, including the accessibility of entrance examinations, information and communications tools, curricula, educational materials, teaching methods, assessments and language and support services, on an equal basis with others and without discrimination, in violation of articles 5 and 24, read alone and in conjunction with articles 4 and 9 of the Convention.

10.7 As for the author’s claims concerning the lack of reasonable accommodation during the admission process for the bachelor’s programme, the Committee notes the State party’s arguments that it did not violate the author’s right to tertiary education or discriminate against her on account of her disability inasmuch as her failure to gain admission to the Bachelor of Visual Arts was due not to discriminatory reasons but to the fact that she did not pass the entrance examinations sat by all the candidates under equal conditions. The Committee notes

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5 General comment No. 4 (2016), para. 8.
6 Ibid., para. 22.
7 General comment No. 2 (2014), para. 25.
8 CRPD/C/MEX/CO/2-3, para. 54.
9 General comment No. 4 (2016), para. 22.
that the State party believes that the author had sufficient time to complete the tests, which she had shown herself able to sit on her own, and that she should have better prepared for them. The Committee also notes the State party’s arguments that the Bachelor of Visual Arts requires certain skills, such as reading comprehension, text analysis and the creation of complex projects, and that candidates had to demonstrate strong reading comprehension, idea transmission and verbal communication skills, which the author was unable to do during the entrance examination. The Committee further notes that the State party relies on the author’s diagnosis by the child rehabilitation centre in Cuernavaca, which found that she had difficulty understanding abstract concepts and forming verbal memory strategies, to conclude that her profile is inconsistent with the skills required of candidates for admission to the Bachelor of Visual Arts. In this regard, the Committee notes the author’s arguments according to which: (a) although it knew about her intellectual disability since she had taken other classes there in the past, the Centre did not make any reasonable accommodation for her as a candidate with an intellectual disability during the admission process; (b) the absence of reasonable accommodation was discriminatory since it meant that she could not take part in the process under conditions of substantive equality with the rest of the candidates and that she was excluded from the tertiary education system as a result; (c) limiting her admissibility for the bachelor’s programme because of her comprehension difficulties made her inclusion unduly conditional on the extent of her potential; (d) the State party’s claims that the author had sufficient time to complete the examinations, thus proving her ability to sit them on her own, and that she should have better prepared are subjective, do not take account of her intellectual disability and contradict the State party’s statement that the author lacked the skills required for the bachelor’s programme because she had difficulty understanding abstract concepts and forming verbal memory strategies; and (e) there were no effective remedies available to the author to obtain reparation for the alleged violations of her rights, as her amparo suit was dismissed without the Court ruling on her claims concerning the lack of reasonable accommodation in the selection process.

10.8 The Committee recalls that States parties have a general obligation, under article 5 of the Convention, to ensure the right of persons with disabilities to equality and non-discrimination. The Committee also recalls that article 5 refers to the denial of reasonable accommodation as a prohibited form of discrimination. The Committee further recalls that reasonable accommodation is an *ex nunc* duty, meaning that accommodation must be provided from the moment that a person with a disability requires access to non-accessible situations or environments, or wants to exercise his or her rights. For this to happen, the guarantor of these rights must initiate a dialogue with the person with disabilities. The duty to provide reasonable accommodation is not limited to situations where a person with disabilities has requested an accommodation or where it can be proven that the guarantor of the rights in question was aware that the person had a disability. The duty also arises when the potential guarantor of the rights should have realized that the person concerned had a disability that might require accommodation to be made for the person to overcome barriers to the exercise of his or her rights.

10.9 In addition, the Committee recalls that, under article 24 (5) of the Convention, States parties should ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States parties should ensure that reasonable accommodation is provided to persons with disabilities. The Committee also recalls that “for article 24 (2) (a) to be implemented, the exclusion of persons with disabilities from the general education system should be prohibited, including through any legislative or regulatory provisions that limit their inclusion on the basis of their impairment or the degree of that impairment, such as by conditioning inclusion on the extent of the potential of the individual or by alleging a disproportionate and undue burden to evade the obligation to provide reasonable accommodation. ... Indirect exclusion would be imposing a requirement to pass a common test as a condition for school entry without reasonable accommodations and support.”

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10 General comment No. 6 (2018), para. 24 (b).
11 Ibid., para. 26 (a).
12 General comment No. 4 (2016), para. 18.
directly or indirectly exclude students with disabilities are discriminatory and in contravention of articles 5 and 24.””\(^{13}\)

10.10 The Committee further recalls that States parties have an obligation to “establish accessible and effective redress mechanisms and ensure access to justice, on an equal basis with others, for victims of discrimination based on disability. This encompasses access by all persons with disabilities to effective judicial and/or administrative procedures, including effective and accessible complaint mechanisms, and to appropriate and – where applicable and subject to statutory test of means and merits – affordable quality legal aid.””\(^{14}\)

10.11 The Committee is of the view that, while it is necessary to have criteria concerning the knowledge and skills needed to gain admission to tertiary education, these criteria must take into account the special requirements of candidates with disabilities. In the present case, the Committee notes that, although the Morelense Centre for the Arts was aware of the author’s intellectual disability when she applied for the Bachelor of Visual Arts, it did not initiate a dialogue with her to determine what reasonable accommodation was needed for her to take part in the assessments common to all candidates, such as granting her extra time to complete them and providing her with the support of a specialized professional to ensure that she correctly understood test expectations. The Committee therefore considers that, by not making the necessary reasonable accommodation during the admission process for the Bachelor of Visual Arts, the Centre did not ensure the author’s participation on an equal basis with other candidates who did not have disabilities, resulting in her exclusion from tertiary education. The Committee also considers that the author did not have access to an effective remedy through which to obtain reparation for the alleged violations of her rights. In view of the foregoing, the Committee is of the opinion that the State party violated the author’s rights under articles 5 and 24, read alone and in conjunction with articles 4 and 9 of the Convention.\(^{15}\)

10.12 Lastly, the Committee notes the author’s claim that the infringement of her rights arising from the lack of accessibility to tertiary education and the absence of reasonable accommodation during the admission process for the Bachelor of Visual Arts illustrate that the State party has not fulfilled its obligation to combat stereotypes, prejudices and harmful practices regarding persons with intellectual disabilities in all spheres of life, particularly in education, in violation of its obligations under article 8 of the Convention. In this regard, the Committee notes the State party’s statement that the author did not claim to have been a victim of stereotypes, prejudices and harmful practices during the admission process for the bachelor’s programme. However, the Committee notes the author’s argument that, although she did not explicitly claim to have been a victim of stereotypes and prejudices related to her disability, the fact that she was deemed not to meet the admissibility criteria for the bachelor’s programme due to her lack of comprehension and difficulties with verbal memory – even though her abilities were neither recognized nor strengthened and no reasonable accommodation was made – demonstrates that she was the victim of prejudices and stereotypes. The Committee also notes the author’s point that the State party was basing itself on a stereotype and prejudice when it considered that the author, as a person with an intellectual disability, did not have the ability to carry out and submit complex projects. The Committee further notes that the State party has not provided any information on the measures taken to combat stereotypes, prejudices and harmful practices regarding persons with intellectual disabilities in the sphere of education. In the light of the above, the Committee concludes that the State party has failed to fulfil its obligations under article 24, read alone and in conjunction with articles 4 and 8 of the Convention.

10.13 The Committee recalls that, pursuant to article 4 of the Convention, States parties have the general obligation to take all necessary measures to ensure and promote the full realization of all human rights and fundamental freedoms of persons with disabilities. Thus, in the light of the arguments set forth in the preceding paragraphs, the Committee finds that

\(^{13}\) General comment No. 6 (2018), para. 64.  
\(^{14}\) Ibid., para. 73 (h).  
the State party failed to discharge its obligations under articles 5 and 24, read alone and in conjunction with articles 4, 8 and 9 of the Convention.

C. Conclusion and recommendations

11. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under articles 5 and 24 of the Convention, read alone and in conjunction with articles 4, 8 and 9. The Committee therefore makes the following recommendations to the State party:

(a) Concerning the author, the State party is under an obligation to:

(i) Provide her with an effective remedy, including reimbursement of any legal costs she has incurred, together with appropriate compensation for the harm suffered, taking into account the loss of employment opportunities stemming from her being denied her right to tertiary education;

(ii) Should it remain the author’s wish, guarantee her right to tertiary education by ensuring the accessibility of the admission process at an educational institution of her choosing, including through the provision of any necessary reasonable accommodation;

(iii) Publicly acknowledge, pursuant to the present Views, the violation of the author’s right to inclusive tertiary education;

(iv) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In this regard, the Committee refers to the recommendations contained in its concluding observations16 and requests the State party, in close consultation with persons with disabilities and the organizations that represent them, to:

(i) Establish, in law and policy, an inclusive education system at all levels – primary, secondary, post-secondary and life-long learning – including support measures, the provision of reasonable accommodation, adequate funding and training for educational staff. The State party should develop indicators to monitor the measures adopted;

(ii) Establish complaints mechanisms and legal remedies that are independent, effective, accessible, transparent, safe and applicable to cases of violations of the right to education,17 ensure that justice officials receive training and that information on the right to education and how to challenge the denial or violation of this right is widely disseminated among persons with disabilities through their representative organizations;

(iii) Take measures to raise awareness and challenge stereotypes, prejudices and harmful practices relating to persons with disabilities, targeting in particular practices affecting women and girls with disabilities, persons with intellectual disabilities and persons with intensive support requirements.18

12. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee’s rules of procedure, the State party should submit to the Committee, within six months, a written response, including information on any action taken in the light of the present Views and recommendations of the Committee.

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16 CRPD/C/MEX/CO/2-3, paras. 18 and 55
17 General comment No. 4 (2016), para. 65.
18 Ibid., para. 48.