



COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES

INPUTS ON ACCESS TO JUSTICE OF PERSONS WITH DISABILITIES IN THE PHILIPPINES

3 MAY 2017

1. The Commission on Human Rights of the Philippines (herewith the Commission)¹ submits to the Office of the High Commissioner for Human Rights (OHCHR), its inputs relative to access to justice of persons with disabilities in the Philippines.

2. This submission took into consideration local and international reports from government, civil society, the media, and international non-government organizations. This submission also utilized the Commission's own documentation of independent monitoring activities and statements on the rights of persons with disabilities, which were subjected to the internal deliberations of the Commission En Banc.

The Commission's responses to the OHCHR questionnaire on access to justice of persons with disabilities:

1. Does your country have laws, policies or guidelines on access to justice, at any level of government, which ensure persons with disabilities, particularly women and children with disabilities:

a. to participate in judicial and administrative proceedings on an equal basis with others in their role as witness, juror, complainant, defendant or other, including through the provision of procedural and age-appropriate accommodations (please identify and share the text of those provisions);

- Persons with disabilities in the judicial system are also equal in rights with others under existing legislation. The Philippine Constitution guarantees "full respect for human rights" and "equal protection of the laws" to all persons. These guarantee applies to all cases of discrimination and exclusion.

"The State values the dignity of every human person and guarantees full respect for human rights." (Philippine Constitution. Art. II Sec. 11)

¹ As the National Human Rights Institution (NHRI) of the Philippines, the Commission has the mandate vested by the 1987 Philippine Constitution and the Paris Principles to address, promote and protect the full range of human rights including civil and political rights, and economic, social and cultural rights. We have the mandate to regularly report on human rights situations and violations, and recommend steps on advancing the realization of human rights and dignity of all.

“No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” (Philippine Constitution, Art. III Sec. 1)

- The Philippine Constitution likewise provides for “Social Justice and Human Rights” and identifies the persons with disabilities as one of the groups to be given “priority” as regards the right to health,
- In 15 April 2008, the Philippines affirmed its commitment to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) by means of ratification. In compliance to the Constitution and the country’s treaty obligation, the state party, by virtue of Presidential Executive Order No. 709 issued on 26 February 2008, has redefined the National Council for the Welfare of Disabled Persons (NCWDP) and transformed it into the National Council on Disability Affairs (NCDA), which now serves as the lead agency tasked to steer the course of program development for persons with disabilities and the delivery of services to the sector, and to closely monitor and improve government action on implementation of laws and policies for persons with disabilities.

The State shall establish a special agency for disabled persons for their rehabilitation, self-development, and self-reliance, and their integration into the mainstream of society. (CONST. Art XIII, Sec. 13)

- In terms of national legislations, Philippine Congress has several statutes specifically on PWDs, the most important of which is the 1992 Magna Carta for Disabled Persons². The Magna Carta has been thrice amended to strengthen PWD protection.

b.to have individual legal standing in all administrative and judicial procedures, including the right to be heard as part of their right to fair trial;

- In a case decided by the Supreme Court of the Philippines, it was held that *“A deaf-mute is not incompetent as a witness. All persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. Deaf-mutes are competent witnesses where they (1) can understand and appreciate the sanctity of an oath; (2) can comprehend facts they are going to testify on; and (3) can communicate their ideas through a qualified interpreter.”* (People v. Tuangco, 399 Phil. 147, 162 (2000))
- Such ruling was culled from Rule 130 of the Rules of Admissibility which provides to wit:

² “An Act Providing for the Rehabilitation, Self-Development and Self Reliance of Disabled Persons and their Integration into the Mainstream of Society and for Other Purposes” (Republic Act 7277, or Magna Carta).

Sec. 20. Witnesses; their qualifications. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make their known perception to others, may be witnesses. Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be ground for disqualification. (Revised Rules of Evidence)

- The abovementioned provision entails that persons with disabilities, even those with sensory impairments, may testify as witnesses, provided they can “perceive and make known their perception to others.” For example, blind persons can hear, smell and taste and deaf persons can see and “make known their perceptions” through sign language interpreters.
- The Rules provide that witnesses must answer the questions “orally”, except when a “witness is incapacitated to speak, or the question calls for a different mode of answer.”
- Further, the Supreme Court, by virtue of a memorandum circular, has enjoined judges to provide PWDs convenient access to courtrooms. In some cases, this is done by holding sessions on the ground floor of court houses³

“Judges should take the proper measures to fully realize the policy set forth in the Accessibility Law or the B.P. 344 with the view of providing disabled persons convenient access to courtrooms holding sessions, if absolutely necessary, on the ground floor or court houses” (Philippine Supreme Court Circular No. 46-95)

- Despite legal provisions allowing persons with disabilities to validly testify in court proceedings, the problem lies with the appreciation or the weight of the litigant’s testimony. It should be taken into consideration that for instance, in cases of persons with psycho-social or sensory impairments, the weight of testimonies would depend solely on the presiding judge. The Rules of Court prescribe, under Rule 133, Weight and Sufficiency of Evidence, that what the judge may consider in weighing the testimony of a litigant are: *“the witnesses’ manner of testifying, their intelligence, their means and opportunity of knowing the facts to which there are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility”*
- In criminal cases, the test remains to be “moral certainty...in an unprejudiced mind”
- Given the abovementioned provisions of law, it may be inferred that physical or mental impairments largely affects the “probative value of the person’s testimony. This situation becomes all the more problematic if aggravated by the lack of training of judges in handling cases involving

³ Supreme Court Memorandum Circular 46-95 (1995).

persons with disabilities. Such case may result to misappreciation of circumstances leading to eventual miscarriage of justice as the case may be.

c. to have access to effective remedies that are appropriately proportional to the right(s) infringed and which are tailored to their specific situation; and

- Under Philippine laws, all persons, including those with disabilities, are allowed to participate in every phase of the judicial process and to seek for appropriate remedies following the procedure set forth under the Rules of Court⁴
 - For example, persons with disabilities shall follow the Rules on Civil Procedure or Criminal Procedure, as the case may be, to discontinue a discriminatory practice, nullify a discriminatory law, seek an award of damages for having suffered from discrimination or to punish persons who commit discriminatory acts.
- Whether or not a person with disability can testify as a witness in court is determined by the Revised Rules of Evidence, which set the qualifications for a person who wishes to offer testimony in a trial.

RULE 132 Section 1 - Examination to be done in open court. — The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the questions calls for a different mode of answer, the answers of the witness shall be given orally. (Revised Rules of Evidence)

In 2007, The Supreme Court has authorized trial court judges, through the Office of the Court Administrator (OCA), to engage the services of sign language interpreters, recognizing that there are “parties or witnesses who, to be fully understood and to prevent possible miscarriage of justice, may require a sign language interpreter.”⁵ Previously, such permission was available only from the Supreme Court itself. Following such authorization, OCA can directly authorize the trial court judge to hire the interpreter.

- As of 2012, over 2,000 court employees designated as Court Interpreters in trial courts throughout the country assist in communication needs for spoken languages in legal proceedings. However, there are no such counterparts for sign language interpreting, and specific institutional budget items for the compensation of such services. Since 2006, there had been lobbying and proposals for comprehensive guidelines from DPOs and NGOs on the hiring and compensation of qualified interpreters, as well as the conduct and ethics of sign language interpreting. Such efforts have remained unheeded by the Judiciary. Of 213 cases from 2006-2012 involving deaf parties, only 24% have appointed

⁴ A set of regulations laid down by the Supreme Court to govern how courts exercise their jurisdiction

⁵ Supreme Court Memorandum Order No. 59-2004 (2004); and Office of the Court Circular No. 104-2007 (2007).

court interpreters. Of 63 cases of unschooled deaf parties requiring deaf relay interpreters, 75% have no interpreter⁶

- Taking note of this concern, legislators have been pushing for the passage of the Filipino Sign Language Act since 2016. The passage of this act would result to the mandatory use of Filipino sign language and an official directive mandating courts, quasi-judicial agencies and other tribunals to ensure the availability of Filipino sign language interpreting in all proceedings involving the deaf. The act likewise mandates the Supreme Court and other agencies to promote appropriate training for those working in the administration of justice including court personnel and police and prison staff.⁷

2. Do you have examples from your country on:

a. how procedural and age-appropriate accommodations are provided and applied, including protocols or other guidelines;

- As regards the examination of child witnesses, courts may be guided by the *Rule on Examination of a Child Witness* (Child Witness Rule)⁸ which governs the examination of child witnesses who are “victims of crime, accused of a crime, and witnesses to crime.” Section 4 of the said rules provide that in child abuse cases, a “child” includes one who is over eighteen years but is found by the court as unable to fully take care of himself from abuse, neglect, cruelty, exploitation, or discrimination because of a *physical or mental disability* or condition.
- The rules further provide that the judge shall ensure that child witness is asked only “developmentally appropriate questions.”

Sec. 6.e. *Developmentally appropriate questions.* — The questions asked at the competency examination shall be appropriate to the age and developmental level of the child; shall not be related to the issues at trial; and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.

Sec. 19. *Mode of questioning.* - The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth; (2) *ensure that questions are stated in a form appropriate to the developmental level of the child*; (3) protect children from

⁶ Philippine Coalition on the Convention on the Rights of Persons with Disabilities, *Universal Periodic Review 2nd Cycle Parallel report* (2013)
http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS5_UPR_PHL_S13_2012_JointSubmission5_E.pdf (last accessed on 30 April 2017)

⁷ Senate Bill No. 966 – An Act Declaring Filipino Sign Language as the National Sign Language of the Filipino Deaf and the Official Language of the Government in all Transactions Involving the Deaf, and Mandates Its Use in Schools, Broadcast Media and Workplaces (2016)
<https://www.senate.gov.ph/lisdata/2452421106!.pdf> (last accessed on 30 April 2017)

⁸ Supreme Court, A.M. No. 004-07-S (2000).

harassment or undue embarrassment; and (4) avoid waste of time.
(Child Witness Rule)

- In order to promote the utmost honesty in terms of testimonies offered by the child witness, the Child Witness Rules aims “to create and maintain an environment that will allow children *to give reliable and complete evidence, minimize trauma to children, encourage children to testify* in legal proceedings, and *facilitate the ascertainment of truth.*” (Sec. 2) It holds the presumption that “every child is presumed to be qualified to be a witness” (Sec. 6), and the burden falls upon the adverse party to rebut that presumption (Sec. 6.b).

b. training programmes on the right of access to justice for persons with disabilities for judges, lawyers, prosecutors, police, social workers, language and sign language interpreters, legal aid centres, other judicial and administrative bodies intervening in judicial or quasi-judicial instances;

- Since the signing of the Incheon Strategy in November 2013, The Department of Justice (DOJ), in partnership with the National Council on Disability Affairs (NCDA) has spearheaded “Disability Awareness and Sensitivity Workshops on Access to Justice for Persons with Disabilities”. The workshops were participated mostly by public attorneys and prosecutors committed to support the advocacy on “Make the Right Real for Persons with Disabilities” and ensure protection of their right in accessing justice.⁹ Civil society organizations such as the Autism Society Philippines (ASP) likewise implement similar activities hand in hand with the National Council for Disability Affairs (NCDA).

c. education programmes on the right of access to justice for persons with disabilities for law students as well as in schools of social work, sign language interpretation, forensic science, psychiatry and psychology, among other relevant faculties; and

- Civil society organizations continue to exert efforts as regards the dissemination information as well as the conduct of training and education programs on the right to access of justice for persons with disabilities, however, to date, such issue is yet to be widely popularized in educational institutions.

d. legal aid programmes, public and/or private, which include the right of access to justice for persons with disabilities in their practices, including the availability of support and liaison services for courts or other judicial or quasi-judicial instances.

- During the term of former Justice Secretary Leila De Lima, the DOJ’s Action Center was established to ensure legal accessibility especially to persons with disabilities.
- One of the responsibilities of the DOJ is the monitoring of prosecutors to assess whether they are sensitized to the needs of persons with disabilities,

⁹ Disability Awareness and Sensitivity Workshop On Access to Justice for Persons with Disabilities Held. <http://www.ncda.gov.ph/2014/08/disability-awareness-and-sensitivity-workshop-on-access-to-justice-for-persons-with-disabilities-held/> (last accessed on April 17, 2017)

especially in terms of conveying information and facilitative communication.
10

- A 2008 study by the Commission on Human Rights stated that PWDs had difficulty accessing the legal system due to the fact that not all legal practitioners are able to communicate with persons with disabilities. Lack of adequate interpretation facilities hinder these persons from receiving adequate protection from the law. In response to this challenge, the Department of Justice launched a PWD Legal Assistance Desk at the Quezon City Prosecutors office, which has a manual on disability sensitivity for public attorneys and prosecutors. The Public Attorneys' Office also has PWD-friendly public attorneys who will handle complaints from PWDs.¹¹

3. Does your country have laws, policies and strategies to ensure the participation of persons with disabilities on an equal basis with others in the judiciary or other judicial or quasi-judicial instances, including in their role as judges, witnesses, jurors, lawyers or any other active party to judicial or quasi-judicial procedures?

- Article III Section 1 of the Philippine Constitution provides that “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” Likewise, Articles 37-39 of the Civil Code of the Philippines (R.A. No. 386) States that legal capacity is inherent in every natural person and instances of disabilities are mere restrictions on the person’s capacity to act.
- In the country, the Public Attorney’s Office, an independent office attached to the Department of Justice, was created by virtue Republic Act No. 9406 to serve citizens, including PWDs through assistance in legal proceedings, and extending free legal assistance to citizens in criminal, civil, labor, administrative and other quasi-judicial cases.
- Under civil laws of the Philippines and jurisprudence, legal protection is granted to persons with disabilities on the acquisition and disposition of property.¹²
- In 2012, the Department of Social Welfare and Development (DSWD) in partnership with the National Council for Disability Affairs (NCDA, the Public Attorney’s Office (PAO) launched a Free Legal Assistance program for persons with disabilities. Civil society organizations took the program as ironic due to the fact that the PAO is already mandated under the Philippine Constitution to provide free legal services and representation to all.

¹⁰ Access to Justice: A Manual for PWD Rights Advocates. University of the Philippines.
<file:///F:/PWD%20materials/vol1accesstojusticeofpersonswithdisabilities-140705060600-phpapp01.pdf>
(last accessed: 28 April 2017)

¹¹ Christine Joyce Andres, *2 Things the PWD Community Needs from All of Us*. Lifelifters, 29 January 2016. <http://lifelifters.net/category/uncategorized/> (last accessed: 28 April 2017)

¹² Philippine Coalition on the Convention on the Rights of Persons with Disabilities, *Universal Periodic Review 2nd Cycle Parallel report (2012)*

- Another modality considered to ensure participation of persons with disabilities in the legal process is the provision of sign language interpreters for deaf litigants which is still a problematic area due to “lack of funds”.

4. Does your country monitor and collect disaggregated data with respect to access to judicial or quasi-judicial procedures concerning:

a. the participation of persons with disabilities in judicial or quasi-judicial procedures, including the number of complaints submitted, nature of complaints and outcomes;

- The Supreme Court of the Philippines is consistently monitoring cases of persons with disabilities. Data on cases involving the deaf have been gathered from Supreme Court records as early as the 1920s.¹³
- Aside from monitoring made by the Supreme Court, civil society organizations such as the Philippine Deaf Resource Center regularly reports data in relation to cases of persons with disabilities with corresponding recommendation on how to better administer justice while taking into consideration the special needs of the said litigants.
- Despite the presence of efforts from the government and civil society organizations to provide monitoring mechanisms and disaggregated data pertaining to persons with disabilities, data has not been sufficiently gathered nationwide. In 2013, the Philippine Coalition on the U.N Convention of the Rights of Persons with Disabilities (PCCRPD) noted as an example that reported rape cases of persons with disabilities and all other women have largely been documented only for the National Capital Region. Currently, there is no way to systematically secure information about cases in trial courts except for those which have reached the Supreme Court. Request for assistance by civil society from the Supreme Court – Office of the Court Administrator to track and follow-up cases involving deaf parties for instance, have yielded only a few responses from the lower courts.
- Without information on the status of cases involving persons with disabilities, or effective mechanisms to secure these information, the pursuit of justice by such persons become very difficult thus pushing them even deeper into marginalization.

b. persons with disabilities obtaining remedies and the nature of those remedies, whether they are adequate, effective, prompt and appropriate, responding to their specific situation;

- In 2012, the Philippine Deaf Resource Center presented data on over 346 cases involving deaf parties in 15 regions from 2006 to 2012. For cases of deaf respondents, the most common type of charge was rape, followed by theft. In

¹³ Philippine Deaf Resource Center, *Access to Justice: Case monitoring by the Philippine Deaf Resource Center (2006-2012)*. http://www.phildeafres.org/files/PDRC_Case_Monitoring_2006-2012.pdf (last accessed on 28 April 2017)

about a quarter of cases (26%), the deaf respondents were below 18 years old. Deaf parties who filed cases are primarily female (75%). Deaf minors who file cases are also predominantly female (84% of cases).¹⁴

- Roughly one quarter each of cases with known data have ongoing trials, have been decided, or dismissed. Of 11 cases with known data, the majority were decided in favor of the complainant.¹⁵
- The abovementioned data gathered revolves only around persons hard of hearing or who are deaf. There remains to be little information or none at all as regards the other forms of disabilities. Such manifestation depicts a blatant inadequateness in terms of mechanisms for disaggregation of data regarding persons with disabilities in the aspect of access to justice.

c. persons with disabilities being convicted, the nature of their sentence, and whether they benefitted from safeguards of the right to fair trial on an equal basis with others; and

- From 2008 to mid-2012, 126 cases involving persons with disabilities which have reached the Supreme Court mostly revolve around the following areas:
 1. Gender-based violence
 2. Labor disputes on disability benefits
 3. Cases on psychological incapacity in nullity of marriages
- Of these Supreme Court cases, 92 cases (or 73%) were decided in favor of the party who is a person with disability.¹⁶
- The legal system is still lacking in terms of providing adequate safeguards on the right to fair trial of persons with disabilities. This is reflected in the failure of courts to provide sensitized court personnel as well as well-trained interpreters to assist the litigants through the process. Consequently, persons with disabilities tend to be discouraged to seek redress and bring proper legal actions.

d. the opening and conduct of impartial and independent investigations of human rights violations of persons with disabilities, particularly those relating to the right to life, liberty and security of the person, freedom from violence, abuse and exploitation, and freedom from torture or cruel, inhuman or degrading treatment or punishment.

- The Commission on Human Rights has continuously been in the forefront of the conduct of impartial and independent investigations as National Human Rights Institution vested with investigatory functions.
- In a working paper developed by the Commission in 2008, it expressed its commitment to continuously develop a disaggregated and comprehensive databank which would reflect the necessary data to improve responsiveness of

¹⁴ Idem.

¹⁵ Idem.

¹⁶ Idem.

duty bearers towards the needs to persons with disabilities in relation to access to justice.¹⁷

¹⁷ Commission on Human Rights of the Philippines, *CHRP WORKING PAPER Rights of Persons with Disabilities in Accessing the Justice System*. (2007)
http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/FINAL%20fullPWDreport.pdf
(last accessed on 28 April 2017)