



Republic of the Philippines
Commission on Human Rights
Regional Office X
Cagayan de Oro City

HUMAN RIGHTS BULLETIN ON THE RIGHT TO EQUAL OPPORTUNITY FOR EMPLOYMENT OF PERSONS WITH DISABILITY

The Philippine is a State-party to numerous Conventions and Treaties, one of which is the *United Nations Convention on the Rights of Persons with Disability* (UN CRPD) to which it ratified on 15 April 2008. Pursuant thereto, the Committee on the Rights of Persons with Disabilities (CRPD Committee) reviewed the Philippines' implementation of the UN CRPD during its 419th and 420th meetings in Geneva, Switzerland last 12 and 13 September 2018.¹

The Commission on Human Rights (CHR) is mandated among others, under the 1987 Philippine Constitution, to *[m]onitor the Philippine Government's compliance with international treaty obligations on human rights*.² On December 3, 2019, which is also the International Day of Persons with Disabilities, the Commission on Human Rights (CHR X) has conducted a community-based dialogue (CBD) with different stakeholders including representatives from the PWD sector to facilitate the dissemination and review of the Concluding Observations of the CRPD Committee and to foster a cooperative framework towards its implementation and monitoring noting that the fulfillment of the rights of persons with disabilities require progressive realization and continuous cooperation among all stakeholders. Moreover, it seeks to provide ways forward and areas for implementation and monitoring.

One of the areas of concern by the participants of the CBD is with regard to work and employment. The CHR X issues this Human Rights (HR) Bulletin as a way forward in promoting the right to work and employment of PWDs. This has also been identified as a concern by the CRPD Committee in the Concluding Observations on the initial report of the Philippines.³

Decent work and employment are essential for the well-being and dignity of all, including persons with disabilities. Being able to work has a positive impact on social inclusion and quality of life. Quality employment is also essential for the economic empowerment and thus for the independent living of persons with disabilities. Employment and decent work are the most effective means to break the vicious cycle of poverty and marginalization in which persons with disabilities may fall. The professional potential of persons with disabilities often remains untapped due to misconceptions about their working capacity, negative

¹ Committee on the Rights of Persons with Disabilities. Concluding observations on the initial report of the Philippines. United Nations Convention on the Rights of Persons with Disabilities, CRPD/C/PHL/CO/1. 16 October 2018. [hereinafter CRPD/C/PHL/CO/1].

² Sec 18 [7].

³ Adopted by the Committee at its twentieth session (27 August – 21 September 2018).

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societal attitudes and non-accessible workplaces, vocational skills centres and job services.⁴

The CRPD Committee has noted its concern in the Concluding Observations, to wit:⁵

- (a) The fact that legislation, policies, programmes and related activities, such as the Presidential Decree No. 442, otherwise known as the Labour Code, the Sustainable Livelihood Self-employment Assistance Kaunlaran programme, and the Likhang Persons with Disability (CRPD/C/PHL/1, see para. 210), to create employment and protect all workers from any form of discrimination regardless of disability have not been effective in creating employment opportunities for persons with disabilities;
- (b) The lack of sufficient implementation of the quota system for employment as it applies to different disability groups;
- (c) The continued stigmatization of persons with disabilities in the labour market, in particular, the assertion by employers that persons with disabilities lack the necessary knowledge, skills or abilities for jobs, and the notion that their recruitment would entail higher labour costs for training and improving facilities.

Based on the concerns stated above, the CRPD Committee recommends to the Philippine State the following:⁶

- (a) Adopt measures to ensure the effective implementation of Presidential Decree No. 442 and the 5 per cent employment quota system, and strengthen the structured orientation programme for potential employers to encourage the employment of persons with disabilities;
- (b) Adopt measures to provide for reasonable accommodation in job recruitment processes, ensure that these processes are inclusive of persons with disabilities, and issue guidelines for the provision of reasonable accommodation and accessibility at the workplace;
- (c) Uphold target 8.5 of the Sustainable Development Goals to achieve full and productive employment and decent work for all, including persons with disabilities, and equal pay for work of equal value.

⁴ Ibid, above n 4, 186-187.

⁵ CRPD/C/PHL/CO/1, above n 1, 11 [46].

⁶ CRPD/C/PHL/CO/1, above n 1, 11 [47].

During the conduct of the CBD, representatives from the PWDs shared that there is lack of response from the business sectors during the conduct of job fairs. The deaf are usually denied employment despite being issued with National Certificate II (NC II). Furthermore, they also noted that the quota system for employment is not strictly complied with among public and private sectors.

There are international and domestic instruments adopted that directly address PWDs right to work and employment which is explicitly enshrined in **Article 27 of the CRPD**. It is likewise incorporated under **Sustainable Development Goal (SDG) 8**, (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all) explicitly refers to persons with disabilities in its target 8.5 which aims to, by 2030, achieve full and productive employment and decent work for all women and men, including for persons with disabilities, and equal pay for work of equal value.⁷ The Human Rights Council's General Assembly adopted a resolution focused on employment and PWDs which calls on States Parties to ensure that PWDs can fully enjoy the right to work on an equal basis with others, and requests to take measures to do so by prohibiting discrimination, increasing employment, promote entrepreneurship, eliminating barriers that hinder job seekers from accessing the workplace, ensuring reasonable accommodation, amongst others.⁸ In addition, **the ILO Convention No. 159** provides for equality of opportunity and equality between men and women with disabilities.⁹

The **Republic Act No. 7277**, also known as the **Magna Carta for Persons with Disabilities**, identified employment as one of the rights and privileges of persons with disability. The said law provides for equal opportunity for employment for all including PWDs.

No disabled persons shall be denied access to opportunities for suitable employment. A qualified employee with disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able bodied person.¹⁰

The *Magna Carta for Persons with Disabilities* provides for a quota system of five percent (5%) of all casual, emergency and contractual positions in the Department of Social Welfare and Development (DSWD), Department of Health (DOH), Department of Education (DepEd), and other government agencies, offices or corporations engaged in social development shall be reserved for PWDs, subject to existing laws and regulations.¹¹ The above-stated quota system was expanded by Republic Act No. 10524¹² to include **at least one percent (1%) of all positions in all government agencies, offices or corporations**.¹³ Furthermore, **in the case of private corporations with more than one hundred (100) employees are encouraged to reserve at least one percent (1%) of all positions for PWDs**.¹⁴

⁷ Ibid, 187.

⁸ Ibid, citing Human Rights Council General Assembly resolution 22/3, The work and employment of persons with disabilities A/HRC/RES/22/3 (9 April 2013), available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/22/3

⁹ Ibid, above n 4.

¹⁰ RA 7277, as amended by RA No. 10524.

¹¹ RA 7277, Section 5.

¹² An Act Expanding the Positions Reserved for Persons with Disability, Amending for the Purpose Republic Act No. 7277, as Amended, Otherwise Known as the Magna Carta for Persons with Disability.

¹³ Ibid, Sec. 1.

¹⁴ Ibid.

To guide the public and private employment sectors with regard to the implementation of the right to equal opportunity for employment for PWDs, the Implementing Rules and Regulations of RA 7277, provides:¹⁵

1.1 Opportunity for suitable employment - Opportunity for suitable employment shall be open to all qualified disabled persons. Efforts shall be exerted to provide qualified disabled persons equal opportunity in the selection process based on qualification standards prescribed for an appointment to a position.

1.2 Discrimination in employment - No individual or entity, whether public or private, shall discriminate against a qualified disabled person by reason of disability in regard to job application procedures; the hiring, promotion, or discharge of employees, employee compensation, job training, and other terms and conditions of employment. The following constitute acts of discrimination:

a) Limiting, segregating or classifying a disabled job applicant in such manner that adversely affects his work opportunities;

b) Using qualification standards, employment tests or others selection criteria that rule out or tend to rule out a disabled person unless such standards, tests or other selection criteria are shown to be job-related for the position in question and are consistent with business necessity;

c) Utilizing standards, criteria or methods of administration that:

1. Have the effect of discrimination on the basis of disability; or

2. Perpetuate the discrimination of others who are subject to common administrative control;

d) Providing a lower compensation, salary, wage or other forms of remuneration and fringe benefits to a qualified disabled employee by reason of his disability as compared to a worker performing the same type and amount of work but who is not disabled;

e) Favoring a non-disabled employee over a qualified disabled employee with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability.

f) Re-assigning or transferring a disabled employee to a job or position he cannot perform by reason of his disability;

g) Dismissing or terminating the services of the disabled employee by reason of his disability unless the employer can prove that the satisfactory performance of the work involved is impaired by reason of the disability to the prejudice of the business entity; Provided,

¹⁵ Implementing Rules and Regulations of the Magna Carta for Disabled Persons, Rule II, Section 1. [hereinafter IRR].

however, that the employer has first exerted effort to provide reasonable accommodations for the disabled worker;

h) Failing to select or administer in the most effective manner employment tests which accurately reflect or measure the skills, aptitude or positive traits of the disabled applicant or employee rather than the impaired sensory, manual or speaking capabilities of such applicant or employee, if any; and

i) Excluding disabled persons from membership in labor unions or similar organizations.¹⁶

In conjunction with the right to work and employment is the concern on the lack of registry for PWDs and lack of disaggregated data pertaining to PWDs. The CRPD Committee sees it as a concern that there is lack of disaggregated data on women, children, PWDs, persons living in poverty and indigenous peoples, among other disaggregated by type of impairment, gender, age, geographical location and other appropriate variable.¹⁷ It is imperative that there should be a disaggregated data on the different disabilities of PWDs. It was reported in the 2018 United Nations Flagship Report on Disability and development that:

[T]he **SDG target 17.18** calls for enhanced capacity-building support to increase significantly the availability of high-quality, timely and reliable data disaggregated, inter alia, by disability. This section provides an overview of international normative frameworks on data and statistics related to disability and presents tools that have been developed for the measurement of disability in data collection. This is followed by an overview of recent country level in data collection on disability, as well as on-going activities by various stakeholders at the international level to strengthen national capacity for official statistics on disability. The section concludes with the identification of strategies to enhance national capacity to meet data demands for disability inclusive development in the context of the Sustainable Development Goals.¹⁸

The revised guidelines of the **United Nations Principles and Guidelines for the Development of Disability Statistics** are intended to assist countries to better meet demands for good quality data for measuring and monitoring progress towards inclusion of persons with disabilities in development programmes while taking into account the context of the Convention on the Rights of Persons with Disabilities and the 2030 Agenda for Sustainable Development. (emphasis supplied)

In order to increase the availability of data disaggregated by disability, there is a need to:

¹⁶ IRR, above n 8.

¹⁷ CRPD/C/PHL/CO/1, above n 1, 13 [56].

¹⁸ United Nations Department of Economic and Social Affairs. Realization of the Sustainable Development Goals by, for and with Persons with Disabilities, UN Flagship Report on Disability and Development 2018.

<https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2018/12/UN-Flagship-Report-Disability.pdf>

1) Continue building capacity in countries to collect, process, analyse and disseminate data disaggregated by disability. This will require all relevant stakeholders at the international level working closely with their counterparts from the United Nations Regional Commissions and other regional entities to better serve the priorities of the different regions and countries therein.

2) Regularly update international guidelines on the production of data disaggregated by disability. The methodology for collecting disability data has been evolving. Regularly updated international guidelines assist all stakeholders involved in the collection and production of data.

3) Invest in an international repository of disability data, compiling disability data at the country level. A United Nations Disability Statistics Data Portal 990 has been recently developed to disseminate country data on disability. This repository needs to be continuously updated and expanded to provide the necessary policy-relevant information to monitor progress towards the SDGs for persons with disabilities.¹⁹

Guided by the above provisions on the right to work and employment both from international and domestic legal frameworks in order to achieve its **SDG particularly target 8.5**, we recommend that the Philippines has to keep and update its Philippine Registry for PWDs. Thus, collection of disaggregated data is necessary. The Philippine Registry for PWD should be enhanced to cover education, skills mapping, profession, livelihood, employment and unemployment status of PWDs. Based on the Registry for PWDs we recommend a more vigilant matching of PWDs to livelihood opportunities and suitable employers, explore local incentives to employers for hiring PWDs to comply with the SDG success indicators, and close monitoring of indicators for the reduction of unemployed PWDs in the local PWD Registry.

Persons with disabilities are human beings and are entitled to the same human rights as enjoyed by all. We encourage all, both from the public and private sectors, to look at the concerns of the PWDs with human rights based approach and do away with charity approach.

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.

Mere charity is not enough from a human rights perspective. Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law. This helps to promote the sustainability of development work, empowering people themselves—especially the most marginalized—to participate in policy formulation and hold accountable those who have a duty to act.

¹⁹ Ibid.

While there's no universal recipe for a human rights-based approach, United Nations agencies have nonetheless agreed a number of essential attributes:

- As development policies and programmes are formulated, the main objective should be to fulfil human rights.
- A human rights-based approach identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations, and works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.
- Principles and standards derived from international human rights treaties should guide all development cooperation and programming in all sectors and in all phases of the programming process.²⁰

We remind the government, who has the duty to respect, protect, and fulfill human rights, to comply with the obligations as set by laws, treaties and conventions with regards to the right to equal opportunity for employment. Our law specifically provides for a quota reserved for PWDs who would want to work in the government.

We encouraged the private sectors to respect, protect, and promote the human rights of the PWDs. As job recruitments are happening, we encouraged the private employment sectors to reasonably accommodate²¹ the PWDs who are qualified and are seeking employment to be part of their working force.

We reiterate that one of the Sustainable Development Goals (SDGs) to which the Philippine aims to achieve by 2030 is to "*achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.*"²²

In order for the Philippines to meet the SDGs by 2030, there is a need to prioritize inclusive development both from international and national development programmes. In particular, concrete action is needed to make persons with disabilities and their situations visible in policymaking and to build just and inclusive societies. This action should focus on four fronts:²³

- (1) addressing fundamental barriers causing exclusion of persons with disabilities;
- (2) mainstreaming disability in the implementation of the SDGs;

²⁰ UN Practitioners' Portal on Human Rights Based Approach to Programming, HRBA Portal. <https://hrbaportal.org/faq/what-is-a-human-rights-based-approach>

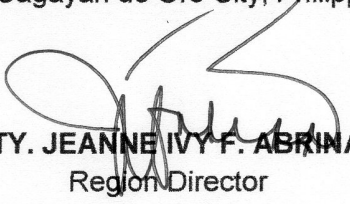
²¹ "Reasonable accommodation" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaption or specialized design (UN RPD). Reasonable Accommodations includes 1) improvement of existing facilities used any employees in order to render these readily accessible to and usable by disabled persons; and 2) modification of work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustments or modifications of examinations, training materials or company policies, rules and regulations, the provision of auxiliary aids and services, and other similar accommodations for disabled persons (RA 7277)

²² Sustainable Development Goals, Target 8.5. <https://www.unodc.org/southeastasiaandpacific/en/sustainable-development-goals.html>

²³ Ibid, above n 4.

- (3) investing in monitoring and evaluation of progress towards the SDGs for persons with disabilities; and
- (4) strengthening the means of implementation of the SDGs for persons with disabilities.

Done this 26th day of December 2019 in Cagayan de Oro City, Philippines.



ATTY. JEANNE IVY F. ABRINA
Region Director