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COMMISSION ON HUMAN RIGHTS

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HUMAN RIGHTS ADVISORY ON THE ACCESSIBILITY AS A MATTER OF RIGHT OF PERSONS WITH DISABILITIES

A2019-005

Introduction

This advisory is issued under the authority of the Commission on Human Rights as national human rights institution to promote and protect the human rights of all persons, including persons with disabilities. Likewise, this advisory addressed the concerns raised during the Persons with Disabilities' first quarter meeting that the Economic, Social, and Cultural Rights (ESCR) Center - Human Rights Centers Management Office convened on 19 March 2019. It was attended by representatives from different government agencies and civil society organizations. The topic of the meeting was accessibility for persons with disabilities.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹ A person's disability exists "when a person's impairment creates difficulties in activities created by society."² Persons with disabilities make up 15% of the world's population.³ In the Philippines, a new perspective on disability emerges according to the results of the 2016 National Disability Prevalence Survey, whereby around 12% of Filipinos age 15 and older experienced severe disability.⁴

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) included accessibility as a general principle.⁵ Accessibility is "a way of thinking and talking about the rights of people with disabilities that contains a critique of the notion of disability itself."⁶ It includes not just responsibility and independence, but more importantly, "an assertion of the right to be different."⁷ Moreover, a fully accessible environment benefits not just those who are part of the sector, but also the society at large. Accessibility covers the "physical environment, to transportation, to information and communications, including information and communications

¹ Art. 1, par. 2, United Nations Convention on the Rights of Persons with disabilities

² Hanson, V. (2012). Inclusive Technologies. Leadership in Science and Technology: A Reference Handbook. Retrieved from http://sk.sagepub.com/reference/hdbk_leadershipscitech/n26.xml

³ Factsheet on Persons with Disabilities. Retrieved from <https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html>

⁴ Philippine Statistics Authority (3 May 2019). Disability Spares No One: A New Perspective. Retrieved from <https://psa.gov.ph/content/disability-spares-no-one-new-perspective>

⁵ Art. 3, United Nations Convention on the Rights of Persons with disabilities

⁶ Rodman, M. and Cooper, M. (1995). Accessibility as a Discourse of Space in Canadian Housing Cooperatives. *American Ethnologist*, 22(3), 589-601.

⁷ *Ibid.*

technologies and systems, and to other facilities and services open or provided to the public.”⁸

Accessibility is “a precondition for persons with disabilities to living independently and participate fully and equally in society.”⁹ Put simply, accessibility, as a “precondition,” is a fundamental prerequisite for persons with disabilities to fully realize their other human rights. Without accessibility, there will be no effective and equal enjoyment of civil, political, economic, social, and cultural rights by persons with disabilities. For example, without access to information, persons with disabilities will not be able to completely exercise their right to suffrage or enjoy their freedom of speech.

To illustrate further, accessibility has always been an issue in the exercise of the right to suffrage of persons with disabilities. Lack of accessible polling places makes “voting more difficult for people with disabilities, and indirectly by sending the message that people with disabilities are not expected to participate in the political sphere.”¹⁰ To address this, the Commission on Elections (COMELEC) had introduced the Emergency Accessible Polling Places (EAPP) in the recently concluded 2019 national elections. The EAPP were the designated areas for persons with disabilities, the elderly, and heavily pregnant women where they will cast their votes. While there are still issues that need to be addressed in terms of the implementation of the EAPP, several groups have “expressed satisfaction”¹¹ to its institutionalization.

Among all the marginalized groups, the sector of persons with disabilities is the most diverse.¹² Further, while disabilities are universal, “the experience of being disabled is largely shaped by the culture in which one lives.”¹³ Technical and environmental barriers that persons with disabilities encounter are mostly human-built.¹⁴ It is the duty of the State to identify and remove the barriers and guarantee inclusion of persons with disabilities.

Relevant Domestic and International Frameworks and Standards

The manner by which the State gives significance to the concept of accessibility is reflected in its policies. There has been slow transition from the charity and medical models of disability towards the rights-based approach, as shown in the following:

1. **Batas Pambansa Blg. 344 (BP 344 - 1982)** is an act enhancing the mobility of disabled persons by requiring buildings, institutions, establishments, and other public utilities to install facilities and other devices. This includes public and private buildings and related structures for public use, streets, highways, public utilities, public telephones, public transport vehicles, and public transport terminals. Violation of any provision of BP 344 or its implementing rules and regulations is penalized.

⁸ General Comment No. 2 on Article 9 - Accessibility, CRPD.

⁹ *Ibid.*

¹⁰ Schur, L., Ameri M., and Adya, M. (2017). Disability, Voter Turnout, and Polling Place Accessibility. *Social Science Quarterly*, 98(5), 1374-1390.

¹¹ De Castro, R. and Galeon, A. (2019 May 13). Senior Citizens, PWDs Vote in Accessible Polling Places. Retrieved from <https://www.rappler.com/nation/politics/elections/2019/230454-photos-senior-citizens-pwds-vote-accessible-polling-place>

¹² Mates, B. (2010). Assistive. *American Libraries*. 41(10), 40-42

¹³ Groce, N. E. (2007). Disabled Communities. *Encyclopedia of Community: From the Village to the Virtual World*. Retrieved from <http://sk.sagepub.com/reference/community/n156.xml>

¹⁴ *Ibid.*

Nevertheless, in its 2018 concluding observations¹⁵, the Committee on the Rights of Persons With Disabilities expressed concern that measures such as BP 344 (and even Republic Act No. 7277) do not include the principles of accessibility through universal design as set forth in articles 2 and 9 of the UN Convention on the Rights of Persons with Disabilities.

2. The **1987 Philippine Constitution** articulates that the “State values the dignity of every human person and guarantees full respect for human rights.” This includes the dignity and the human rights of persons with disabilities. Nevertheless, Article XIII, Sections 11 and 13 on health was written as follows:

“The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the under-privileged, sick, elderly, **disabled**, women, and children. The State shall endeavor to provide free medical care to paupers.

The State shall establish a special agency for **disabled person** for their rehabilitation, self-development, and self-reliance, and their **integration into the mainstream of society.**” (Emphasis ours)

It gives the impression that persons with disabilities would need to adapt to mainstream society as indicated by the word “integration.” It apparently focused on the charity and medical models.

3. **Magna Carta for Persons with Disabilities (Republic Act No. 7277 - 1992)** defines persons with disabilities as those “suffering from restriction of different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being.”¹⁶ The Magna Carta outlines various benefits and privileges such as employment opportunities, priority lanes, and discounts in various goods and services, as well as penalizes discrimination against persons with disabilities on the basis of disability. The following are the acts punished under the Magna Carta:

- a. discrimination during elections;
- b. discrimination on transportation;
- c. discrimination on the use of public accommodations and services;
- d. discrimination on employment;
- e. public ridicule;
- f. vilification;
- g. violation of privileges and incentives of persons with disabilities; and
- h. violation of incentives of those caring for and living with a person with disability.

¹⁵ UN Treaty Body Database https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx (accessed 10 June 2019)

¹⁶ Republic Act No. 7277

The subsequent amendments¹⁷ to the Magna Carta provided more benefits in terms of discounts, tax exemptions, and opportunities for employment in the public and private sectors.

4. **Executive Order No. 417 (2005)** directs all national government agencies, including government owned and controlled corporations, to support and cooperate in the implementation of the economic independence program for persons with disabilities.
5. The **United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)** was adopted on 13 December 2006, and the Philippines ratified it on 15 April 2008. From being “objects of charity, medical treatment, and social protection,” the UNCRPD changed the perception on persons with disabilities to become “subjects with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.”¹⁸

As a human rights instrument, it laid down a broad categorization of persons with disabilities and reaffirmed that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It qualified how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

Two important terms were also defined in the UNCRPD: reasonable accommodation and universal design. **Reasonable accommodation** is defined as the “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” **Universal design** is defined as the “design of products, environments, programmes, and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design and it shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.”¹⁹

6. **General Comment No. 2 on Article 9 of the UNCRPD (22 May 2014)** was issued by the Committee on the Rights of Persons with Disabilities to expound on the concept accessibility as a vital precondition for persons with disabilities to participate fully and equally in the society. Further, it affirmed that equal access to all goods, products and services should be provided to ensure that the dignity of persons with disabilities will be respected. Lastly, it reiterated that the government must be able to respect the rights of persons with disabilities and provide them accessibility regardless of the type of impairment, their legal or social status, gender or age.
7. **Department of Information and Communications Technology Memorandum Circular No. 2017-004 (9 June 2017)** prescribes the Philippine Government policy on web accessibility and accessible ICT practices

¹⁷ Republic Act Nos. 9442 (2007); 10524 (2013); 10754 (2016); 11228 (2019)

¹⁸ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

¹⁹ Art. 2, United Nations Convention on the Rights of Persons with Disabilities

to make web content more accessible to a wider range of persons with disabilities.

Call for Proactive Collaboration and Advocacy

Keeping in mind the issues articulated by representatives of Disabled Persons' Organizations during the 19 March 2019 meeting and through the other consultations conducted by the ESCR Center, the Commission on Human Rights calls for proactive collaboration, as follows:

1. As the national government agency mandated to formulate policies and coordinate the activities of all agencies concerning disability, the **National Council on Disability Affairs (NCDA)** must be strategic in monitoring and documenting the implementation of relevant laws and programs to ensure the protection of persons with disabilities' rights relevant to accessibility. The gap that there is yet no national database on persons with disabilities should not derail its efforts to perform its mandates.
2. The **Bangko Sentral ng Pilipinas (BSP)** must ensure, pursuant to its mandate, an inclusive financial system by increasing access to financial services of all Filipinos, especially of the marginalized sectors such as persons with disabilities. Persons with visual impairment raised three salient issues, to wit:
 - a. a prohibitive approach by some banks in the application for individual accounts and are only allowed to open joint accounts with someone who is not blind;
 - b. difficulty in distinguishing the existing money bills and the newly-issued coins due to similarity in sizes; and
 - c. difficulty in using automated teller machines (ATMs) with no voice simulations and Braille guides.

With this, the Commission on Human Rights calls the attention of BSP to General Comment No. 2 from the Committee on the Rights of Persons with Disabilities, which is of the view that all services open or provided to the public must be accessible in accordance with the provisions of article 9 of the Convention on the Rights of Persons with Disabilities. The State, in this case through the BSP, is called upon to ensure that blind persons had access to automatic teller machines (ATMs). It should establish minimum standards for the accessibility of banking services provided by both public and private financial institutions for persons with visual and other types of impairments; create a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private financial institutions of previously inaccessible banking services provided by them into accessible ones; and ensure that all newly procured ATMs and other banking services are fully accessible for persons with disabilities.

Bank personnel must be trained and well-equipped to provide assistance and accommodation at all times to persons with disabilities. Lastly, it has been suggested that money bills and coins must be of different sizes as it will be easier for those with visual impairment to distinguish one from the other.

3. As the agency primarily responsible for the development and provision of efficient, effective, and secure infrastructure in the transportation sectors, the **Department of Transportation (DOTr)** must ensure that persons with disabilities will be provided with reliable, efficient, secure, and accessible transportation services compliant with international standards.

With this, the Commission on Human Rights calls the attention of DOTr and its attached agencies to continue to safeguard the rights of persons with disabilities when it comes to transportation. Strict compliance in the designation of seats for persons with disabilities as well as their discount for public transportation must always be observed. DOTr together with its attached agencies must ensure that any and all forms of discrimination on the basis of disability in the full and equal enjoyment of the services including transportation, is explicitly prohibited under the Magna Carta for persons with disabilities.

The Transport Modernization Program must ensure the application of global accessibility standards to accommodate all citizens without discrimination. The following must be included in the design to ensure accessibility for persons with disabilities:

- a. ramps or lifts;
- b. spaces for wheelchairs with safety accessories (e.g. belts, clamps, and grab bars);
- c. audio and visual announcement systems;
- d. directional tactile in appropriate areas; and
- e. visible signages.

4. As the engineering and construction arm of the Government, the **Department of Public Works and Highways (DPWH)** must ensure the safety of all infrastructure facilities and secure for all public works and highways the highest efficiency and the most appropriate quality in construction. The diverse needs of persons with disabilities must be included in DPWH's planning, design, construction and maintenance of infrastructure. DPWH should amply demonstrate that it exerts efforts to abide by the principle of universal design in ensuring accessibility for the wider needs of the population, more particularly for persons with disabilities.²⁰
5. As the agency tasked to provide all Filipinos access to vital information and communications technology infrastructure and services, the **Department of Information and Communications Technology (DICT)** must strictly monitor compliance of all government instrumentalities to web accessibility for all.

The DICT has already issued a memorandum circular prescribing the web accessibility policy to all departments, bureaus, offices, and other agencies of the national government. When implemented properly, web accessibility will "revolutionize democratic participation and the delivery of government services for users."²¹ As such, DICT is expected to render the necessary technical assistance to the agencies.

²⁰ General Comment No. 2 on Article 9 - Accessibility, CRPD.

²¹ Jaeger, P. and Bertot, J. (2010). Designing, Implementing, and Evaluation User-Centered and Citizen-Centered E-Government. *International Journal of Electronic Government Research*, 6(2), 1-17.

Web accessibility encompasses all disabilities that affect access to the web, including visual, auditory, physical, speech, cognitive, and neurological disabilities.²² Easy-to-read formats and augmentative and alternative modes of communication must be available in government websites. These government websites are being used by people with various needs which “creates a number of challenges regarding the interaction with and use of e-government services and resources.”²³

6. As the country’s premier socioeconomic planning body, the **National Economic and Development Authority (NEDA)** must include persons with disabilities in its formulation of policies, plans, and programs to set the parameters for national and sub-national development. NEDA should take the lead in adopting the national plan of action that the Committee on the Rights of Persons with Disabilities recommended in order to develop accessibility to the physical environment, transportation, information, and communications of all persons with disabilities.
7. As the agencies primarily responsible for the education and training of all learners, the **Department of Education (DepEd)**, **Commission on Higher Education (CHED)**, and the **Technical Education and Skills Development Authority (TESDA)** must provide support services such as assistive devices and technology, sign language interpretation, specialized materials and equipment, augmentative and alternative modes of communications, and other support services to facilitate the effective education and training of all learners with special needs.
8. As the government’s principal law agency, the **Department of Justice (DOJ)** must ensure accessible redress mechanisms and ensure investigation and prosecution of violations of existing penal laws concerning accessibility and discrimination committed against persons with disabilities.
9. As the agency tasked with the general supervision over local governments and promotion of community empowerment, the **Department of Interior and Local Government (DILG)** should ensure compliance of all local government units (LGUs). All LGUs, **who will serve from 2019 to 2022**, must include in the upcoming planning and programming, such as on the **Executive and Legislative Agenda (ELA)**, the protection and promotion of persons with disabilities’ rights.
10. As the body vested with the legislative power by the Constitution, the **Congress of the Philippines** is strongly urged to expedite enactment of legislation on the following:
 - a. Amendment of BP 344’s coverage to include not only the physical environment and transportation, but also information and communication technology, education, justice, and all other aspects of accessibility in accordance with the UNCRPD;
 - b. Expansion of the BP 344 to protect all types of disabilities in accordance with the UNCRPD;

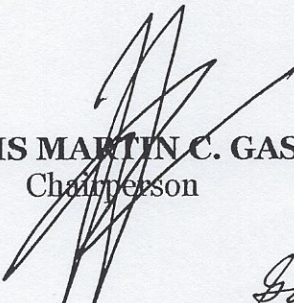
²² <https://www.un.org/en/webaccessibility/>

²³ Jaeger, P. and Bertot, J. (2010). Designing, Implementing, and Evaluation User-Centered and Citizen-Centered E-Government. *International Journal of Electronic Government Research*, 6(2), 1-17.

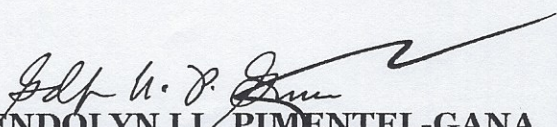
- c. An all-embracing anti-discrimination of persons with disabilities in all setting;
- d. Explicit amendment, on the basis of recent scientific studies and the rights-based approach in the UNCRPD, of Articles 37-39²⁴ of the Civil Code in so far as it identified the circumstances of insanity, imbecility and state of being deaf-mute, among other types of disabilities, as modifying or limiting capacity to act; and
- e. Inclusive education requiring provision of support services such as assistive devices and technology, sign language interpretation, specialized materials and equipment, augmentative and alternative modes of communications, and other support services.

Let a copy of this advisory be furnished the concerned government agencies and civil society organizations working for and supporting persons with disabilities to live independently and participate fully in all aspects of life.

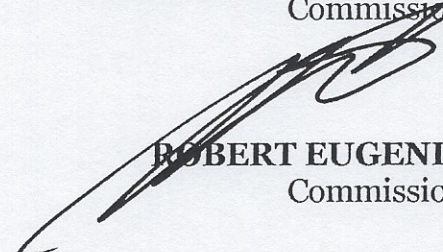
Issued this 1st of July 2019, Quezon City, Philippines.


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²⁴ **Art. 37.** Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost. (n) **Art. 38.** Minority, insanity or imbecility, the state of being a deaf-mute, prodigality and civil interdiction are mere restrictions on capacity to act, and do not exempt the incapacitated person from certain obligations, as when the latter arise from his acts or from property relations, such as easements. (32a) **Art. 39.** The following circumstances, among others, modify or limit capacity to act: age, insanity, imbecility, the state of being a deaf-mute, penalty, prodigality, family relations, alienage, absence, insolvency and trusteeship. The consequences of these circumstances are governed in this Code, other codes, the Rules of Court, and in special laws. Capacity to act is not limited on account of religious belief or political opinion.