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(Commission on Human Rights of the Philippines)

HUMAN RIGHTS ADVISORY
ON THE RIGHT TO EDUCATION OF PERSONS WITH
DISABILITIES
CHR A2017-003

Introduction

The Commission on Human Rights (herewith the Commission), as the country's national human rights institution, issues this advisory pursuant to its mandate to protect and promote human rights of all, including persons with disabilities, and to monitor the government's compliance with international human rights standards¹. This advisory is particularly issued to remind the Philippine government's compliance with the *United Nations Convention on the Right of Persons with Disabilities (CRPD)*, which the Philippines ratified on 15 April 2008. The Commission advises the government specifically with respect to Article 24 (on education) of the Convention.

Under the CRPD, persons with disabilities (PWDs) 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.²

Persons with disabilities face various forms of discrimination and exclusion from the social, cultural, political, and economic life of their communities. In many contexts, they are more vulnerable to experience poverty, yet are often not properly included in basic development programs such as skills training and education.

Access to quality education is a fundamental human right³ to which the State has the basic responsibility to secure and guarantee. This responsibility is reflected under Article XIV, Section 1 of the 1987 Constitution which states that "the State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all."

Congruent with this constitutional provision, the State has expressed its commitment to ensure the provision of public services and assistance for the protection and promotion of the right to education especially of the most vulnerable sectors including persons with disabilities by the enactment and

¹ Art. XIII, Sec. 18, par.7, 1987 Philippine Constitution

² Article 1, Paragraph 2, United Nations Convention on the Rights of Persons with Disability

³ Please see <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/> accessed on May 20, 2017\

implementation of domestic laws and the ratification of treaties and international agreements relative thereto.

Contextual Setting

Albeit the presence of the CRPD, and several domestic policies promoting the rights of persons with disabilities in the context of education, such policies still encounter challenges as to implementation, monitoring and budgetary appropriations. Consequently, persons with disabilities often experience discrimination in educational and employment settings and face barriers to social development and participation.

According to latest data gathered from the Department of Education (DepEd), Special Education in the Philippines has only served 2.6% of the targeted 2.2 million children with disabilities in the country, who live without access to basic education.⁴ This inadequacy persists due to several reasons including, among others the lack of adequately trained teachers to handle learners with special needs, the inadequate allocation of resources to provide education materials in alternative formats, the non-provision of access features in schools to accommodate students in wheelchairs, etc.⁵

Another disquieting issue noted is the general lack of data on disability as well as the inconsistency of data collected by different institutions leading to serious doubts on its overall accuracy. This prevents the education department and other agencies of government from knowing the extent of inclusion of persons with disabilities in social services. Further, the absence of disaggregated data put persons with disabilities at a great disadvantage since there are no measurable means by which education for them may be evaluated.⁶

For children with special needs, data has revolved only on enrollment figures (at start of school year) and thus, many are largely excluded from other basic education programs and targets, and corresponding monitoring and evaluation.⁷

DepEd estimates that there are currently 5.49 million children with special needs that comprise 13 percent of the total population of children.⁸ Most recent data from DepEd indicate that in school year 2013-2014, only 110,169 pupils with disabilities were enrolled in government elementary schools. However, 85% or 93,644 of these children did not attend any special education classes and thus were placed or mainstreamed in regular classes in which they do not properly receive

⁴ Department of Education. Department Order (DO) 72, s. 2009 - Inclusive Education as Strategy for Increasing Participation Rate of Children. <http://deped.gov.ph/orders/do-72-s-2009> (last accessed on 21 April 2017)

⁵ Foundation for International Training, "RETA 5956 Identifying Disability Issues Related to Poverty Reduction, Philippines Country Study". Published by: Asian Development Bank. June 2005. <http://library.pcw.gov.ph/sites/default/files/identifying%20disability%20issues-phil%20country%20study.pdf> (last accessed: 31 March 2017)

⁶ Idem.

⁷ Philippine Coalition on the UNCRPD, A Parallel Report submitted to the Committee on the Rights of Persons with Disabilities on the implementation of the Convention in the Republic of the Philippines from 2008-2013. 6 December 2013. <http://crpdparallelreport.net.ph/wp-content/uploads/2015/01/2013-CRPD-Parallel-Rept-of-Phil-Coalition.pdf> (last accessed 31 March 2017)

⁸ The Philippine Star. *More DepEd programs to benefit children with special needs*. 30 January 2014.

<http://www.philstar.com/campus/bulletin-board/2014/01/30/1284536/more-deped-programs-benefit-children-special-needs> (last accessed on 21 April 2017)

educational services and treatment appropriate for their special needs⁹. Only 620 out of 34,000 public elementary schools across the country either have a Special Education (SPED) center or at least offers a SPED program.¹⁰

Review of Relevant Laws and International Convention

Some of the notable domestic laws enacted by the State in relation to the right to education of persons with disabilities are the following:

1. R.A. 7277 otherwise known as the Magna Carta for Persons with Disability¹¹, which provides that persons with disabilities shall be entitled to quality and accessible education coupled with educational assistance for them to pursue primary, secondary, tertiary, post tertiary, as well as vocational or technical education in both public and private schools through the provision of scholarships, grants, financial aids, subsidies and other incentives to qualified PWDs.¹²
2. R.A. 9155, otherwise known as the “Governance of Basic Education Act of 2001”, which institutes the framework of governance for basic education by reorganizing the Department of Education Culture and Sports, to the Department of Education (DepEd). Section 2 of the law declares the policy of the State to protect and promote the right of all citizens to quality basic education and to make such education accessible to all by providing all Filipino children free and compulsory education in the elementary and secondary levels. Alternative learning systems for out-of-school youth and adult learners are also provided.¹³
3. R.A. 10070 which amends Section 40 of R.A. 7277 on the role of national agencies and local government units. It provides that Local Government Units (LGUs) shall promote the establishment of organizations of persons with disabilities (PWDs) in their respective territorial jurisdictions. LGUs are mandated to organize and establish a Persons with Disability Affairs Office (PDAO). On the other hand, national agencies and local government units may enter into joint ventures with organizations or associations of PWDs to explore livelihood opportunities and other undertakings that shall enhance the health, physical fitness and the economic and social well-being of PWDs.

With respect to international instruments, two of the key guiding instruments which serve as backbones for the strengthening of our domestic enactments and initiatives relative to the right to education of learners with special needs are: (1) The CRPD, specifically Article 24 (Sec. 1) thereof, which in sum, protects the right

⁹ House Bill No. 3241. Special Education Act of 2016 – Explanatory Note.

http://www.congress.gov.ph/legisdocs/basic_17/HB03241.pdf (last accessed on 21 April 2017)

¹⁰ Rappler. *A long way to go for special education*. 23 February 2014. <http://www.rappler.com/move-ph/issues/education/51277-long-way-special-education> (last accessed on 21 April 2017)

¹¹ An Act Expanding the Benefits and Privileges of Persons with Disability (PWD): The act basically provides educational assistance for all levels, social insurance, tax exemptions and discounts on commodities and services.

¹² Section 32 of RA 9442

¹³ Consideration of reports submitted by State parties under article 35 of the Convention: Initial report of State parties due in 2010 - The Philippines. 24 November 2014. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/249/60/PDF/G1524960.pdf?OpenElement> (last accessed 3 April 2017)

to education of persons with disabilities, emphasizes the right to inclusive, quality and free education and prescribes the steps that have to be taken towards this end; and (2) the UNESCO¹⁴ Salamanca Statement, adopted in June 1994 which calls for appropriate education for children with special needs in the general education setting.

The CRPD provides that persons with disabilities should not be discriminated against but that they should also be included and able to participate in the general education system. On the other hand, the UNESCO Salamanca Statement asserts that the general education setting should be regarded as a venue of human development open to all schoolchildren, regardless of their physical, emotional, and intellectual state. This entails teaching and learning that is tailored according to the learner's conditions.¹⁵

In compliance with its international obligations and to serve as a concrete measure to actively enforce and implement the mandates enshrined thereunder, the State, by virtue of Presidential Executive Order No. 709 issued on 26 February 2008, 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.

Discussion and Conclusion

The Commission works to ensure that the dignity and human rights of all persons, including persons with disabilities, are always protected, respected and promoted. It is the role of the Commission to take the lead in shining light on discriminatory practices against persons with disabilities and to safeguard the right of all persons to be treated equally without favor or discrimination.

While the Commission regards mainstreaming of persons with disabilities as learners with special needs in general education systems as a welcome gesture, the problem lies with the lack of proper mechanisms to attain inclusive education. It is worth noting as an example that there are educational institutions wherein children with disabilities who are mainstreamed in regular classes are exempted from taking the standard academic performance evaluation test, thus, unlike children without physical, mental and psychosocial disabilities, they are again deprived of means in knowing their performance and the performance of their teachers.¹⁶ Since education is for all, there is a need to ensure that the process of instruction is also inclusive.

As emphasized under the CRPD, education must not only be available and accessible but also inclusive. Inclusive education means valuing differences and diversity of learners and allowing persons with and without disabilities to learn.

¹⁴ United Nations Economic Social and Cultural Organization

¹⁵ UNESCO. (1994). The Salamanca Statement and Framework for Action on Special Needs Education.

<http://unesdoc.unesco.org> (last accessed on 25 July 2017)

¹⁶ Idem.

together, and at the same time taking into account the particular needs of vulnerable groups to enable them to fully participate on equal basis with others.

To provide inclusive education, the State must recognize that the right to education of learners with special needs are the same as others and that policies and practices should aim for the improvement of learning for all.

According to the Office of the UN High Commissioner for Human Rights (OHCHR), inclusion is 'a process that recognizes: (a) the obligation to eliminate barriers that restrict or ban participation, and (b) the need to change culture, policy and practice of the mainstream schools to accommodate the needs of all students, including those with impairments'. As such, education should no longer aim at transferring knowledge but enhancing learning capacities.¹⁷

The Commission lauds legislations enacted to better the situations of persons with disabilities and fully supports pending bills that cater to the educational needs of the same such as Senate Bill Nos. 996 and 1331¹⁸. However, the Commission calls upon the legislators to give due emphasis to modalities on how existing approaches and practices in the education system will be inclusive or lead to inclusion of children and youth with disabilities in the general education system.

The Commission further urges legislators to heed the collective voice of people with different abilities in crafting national policies and to ensure that ample and inclusive consultations be conducted together with the sector to fully substantiate laws drafted for their cause. In essence, persons with disabilities should no longer be viewed merely as "beneficiaries" in crafting policies, rather, they should be given the opportunity to participate fully in the education policy and rule-making process.

In consonance with the human rights based approach, the Commission calls upon the government to guarantee that persons with disabilities are empowered to directly and actively participate in different processes and stages of policy making – the voice of the sector should be the cornerstone of every policy dedicated to them. This is to fully assure that all essential requirements to advance the rights of persons with disabilities are reflected in policies.

Further, the Commission calls upon lead government agencies such as the Department of Education (DepEd), Commission on Higher Education (CHED) and the National Council for Disability Affairs (NCDA) as well as Technical Education and Skills Development Authority (TESDA) to take necessary steps to improve inclusive education in the country. Agencies should work towards the development of curricula that will mold the minds of students towards respect for diversity and support for the creation of an inclusive society that eliminates societal barriers which excludes or restricts on the basis of disability. This initiative should be coupled with the development of training modules for teachers, especially of those in early childhood development, that provide training strategies responsive to education needs of children with disabilities.

¹⁷ Salamanca Statement, para. 7.

¹⁸ *An Act Instituting Inclusive Education and Establishing Special Education Centers for Children and Youth with Special Needs in all Public Schools Divisions, Providing for Standards and Guidelines, and Appropriating Funds Therefor* and *An Act Authorizing a Program to Prepare Teachers for Digital Age Learners* authored by Senator Win Gatchalian and Senator Sonny Angara respectively

The Commission commends efforts by TESDA, in cooperation with NCDA to give free skills training for persons with disabilities nationwide through its Training for Work Scholarship Program (TWSP).¹⁹ We further encourage TESDA, together with CHED to improve a K-12 curricula that will assist person with disabilities in pursuing tertiary education or advanced studies and finding sustainable employment.

Aside from curriculum improvement, the Commission emphasizes the importance of disability 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 provided in the general education system to facilitate the effective education of learners with special needs.

Further, the Commission calls upon DepEd to define and identify the scope of 'learners with special needs'. This specificity is required to be able to provide efficient services that would cater directly to their needs. The Commission urges the DepEd and CHED to improve efforts to address the substantial lack of enabling facilities for learners with special needs as well as the lack of sufficiently trained Special Education teachers which further deprives the learners' from attaining inclusive education.

The Commission also advocates for the passage of a comprehensive anti-discrimination bill that will further strengthen Republic Act No. 7277, sections 12-17 which provides among others that *'it shall be unlawful for any learning institution to deny persons with disabilities admission to any course it offers by reason of handicap or disability.'* The bill will further provide for an avenue for victims of discrimination, to seek redress by seeking positive measures for action and / or filing of appropriate criminal charges.

Inclusive education is not just a simple physical accommodation of a student with special needs in a general education system.²⁰ Beyond the mere presence of students with special needs in the general education classroom, appropriate adjustments must be made so that the latter can genuinely participate in the learning activities in educational institutions.

Inclusion starts with being able to get in the school, and navigate one's way through halls and corridors. In schools and training facilities where physical barriers inhibit the participation of a student with a disability, alternative learning sessions or homework can be considered.

¹⁹ Under the "Training for Work Scholarship Program (TWSP)," TESDA will provide skills training so that the persons with disabilities could receive the National Certificate which is necessary for job application here and abroad. The TWSP project is also in line with TESDA's Two-Pronged Strategy on Poverty Reduction which aims to provide interventions through skills development by providing access to training to qualified persons with disability for self or wage employment to uplift their socio-economic status."

NCDA, TESDA Sign Agreement for Skills Training for PWDs. 24 March 2017.

<http://www.ncda.gov.ph/2017/03/ncda-tesda-sign-agreement-for-skills-training-for-pwds/> (last accessed on 28 August 2017)

²⁰ Paliokosta, P. & Blandford, S. (2010). Inclusion in school: a policy, ideology or lived experience? Similar findings in diverse school cultures. The University of Warwick. [http:// dx.doi.org/10.1111/j.1467-9604.2010.01464.x](http://dx.doi.org/10.1111/j.1467-9604.2010.01464.x) (last accessed on 25 July 2017)

The Commission encourages the lead agencies to spearhead initiatives that aim to correct misconceptions and remove the stigma attached to disability. Raising awareness must begin at home, in communities and in schools. In line with this, the Commission calls upon the Local Government Units (LGUs), as the arm of the government that has direct and daily reach of students and learners with disabilities, to ensure that the welfare of the sector is protected and promoted at the community level.

The Commission further emphasizes the need for the establishment of a comprehensive, accurate, and disaggregated baseline data as to enrollment, drop-out, retention and completion rates in school with respect to learners with disabilities. Such data should include all types of disability, disability support services needed and other information as may be required for program and policy development. The availability of baseline data would be vital for the determination of existing gaps as well as areas of accountability.

Finally, the Commission strongly urges different stakeholders – the disability rights sector, members of the academe, government agencies, educational institutions and civil society– to join dialogues and educational campaigns advancing the cause of persons with disabilities, to exert further efforts to mainstream education on disability rights, and to take necessary steps towards the elimination of existing barriers that deprive persons with disabilities from attaining inclusive education in the country.

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