**Outline for the preparation of a General Comment on Article 27 of the CRPD (the right to work and employment)**

1. **Introduction**
2. **Normative content**

**a. Legal analysis and links to the general principles of the Convention: the right to work and employment as a fundamental and transversal human right**

1. **Interpretation of article 27.1**
2. **Interpretation of article 27.1 (a): Discrimination in the workplace, including workplace segregation**
3. **Interpretation of article 27 (b): The right to equal remuneration for work of equal value**
4. **Interpretation of article 27 (b) part II: Applying health and safety considerations in a non-discriminatory way**
5. **Interpretation of article 27 (b) part III: Measures to eliminate discriminatory attitudes and harassment, particularly against women, migrants and refugees with disabilities**
6. **Protection from harassment**
7. **Specific measures to eliminate discriminatory attitudes and harassment against women, migrants and refugees with disabilities**
8. **Interpretation of article 27 (c): Labour and trade union rights on an equal basis with others**
9. **Interpretation of article 27 (d) and (j): Access to inclusive education and inclusive vocational training**
10. **Interpretation of article 27 (f): Self-employment, microfinance, business development services**
11. **Interpretation of article 27(g) Employment of persons with disabilities in the public sector**
12. **Interpretation of article 27 (h): Affirmative action programs and special attention to persons with disabilities who are particularly excluded from the labour market**
13. **Interpretation of article 27 (i): The obligation to provide reasonable accommodation in the workplace and the denial of reasonable accommodation as a form of disability-discrimination, including in recruitment processes**
14. **Interpretation of article 27 (k) Return-to-work programmes**
15. **Interpretation of 27 (2) forced or compulsory labour**
16. **States parties’ obligations**
17. **Duty to respect, protect and fulfil**
18. **Immediate obligations**

**I. Non-discrimination, particularly on the basis of disability or multiple grounds**

**II. Provision of reasonable accommodation**

**3.I Particular obligations within the context of article 27**

1. **The impact of new technologies in the labour market, including artificial intelligence and deep learning, on persons with disabilities.**
2. **Telework of persons with disabilities**
3. **Relationship with other provisions of the CRPD**
4. **Consultations with DPOs in the context of social dialogue**
5. **Implementation at national level**

The Committee on the Rights of Persons with Disabilities, in its 22nd session, decided to embark on the process of drafting a General Comment on article 27. This outline highlights the possible sections and content of the draft General Comment.

1. **Introduction**

There are several barriers that impede the full enjoyment of the right to work by persons with disabilities and their inclusion in the labour market. The Committee has often expressed its concern about the high level of unemployment and lack of adequate qualification among persons with disabilities,[[1]](#footnote-1) which finds its root causes in discriminatory attitudes and stigma against persons with disabilities.

There are multiple legislation and provisions which discriminate against persons with disabilities in fields such as technical and vocational education and training, recruitment, employment and retention of persons with disabilities, which impede the full realization of their right to work and employment. For example, there are legislation obliging employers to require that only candidates with disabilities undergo medical clearance; or that restrict access to certain jobs to persons with disabilities with specific types of impairments; discrimination during recruitment processes which are often inaccessible to persons with disabilities, including risks resulting from Artificial Intelligence recruitment software and biased algorithms, as well as inaccessibility of websites encountered in online recruitment processes; and dismissals on the basis of disability, in particular in situations where people acquire an impairment while at work.

The Committee intends to address the following topics:

1. The objective and scope of the GC;
2. The most common challenges in implementing article 27 as identified by the Committee in its dialogues with the States parties under the reporting procedure and in individual communications and inquiries under the Optional Protocol;
3. The interrelation of article 27 of the CRPR with all other rights such as the right to education, legal capacity, personal mobility, access to information and technology, accessibility, social protection, rehabilitation and habilitation, as well as awareness raising;
4. The interconnection of article 27 of the CRPD with the 2030 Agenda for Sustainable Development, in particular with target 8.5, which refers to inclusive economies and decent work for all, explicitly referring to persons with disabilities.
5. **Normative content**
	1. Legal analysis and links to the general principles of the Convention: the right to work and employment as a fundamental and transversal human right
6. **Interpretation of article 27.1**

**ii . Interpretation of article 27.1 (a): Discrimination in the workplace, including workplace segregation**

The references to the prohibition of discrimination in article 27.1 (a) are broadly providing a non-exhaustive list of work-related situations which refers to all types of labour markets, and require employers to guarantee to persons with disabilities access to any opportunities, including technical and vocational education and training provided to employees, on an equal basis with others as well as the provision of reasonable accommodation. The immediate obligation of non-discrimination requires States parties to have anti-discrimination legislation in place and apply a twin track approach entailing the inclusion of disability-specific law alongside the inclusion of the rights of persons with disabilities in mainstream legislation.

The Committee outlined in its Concluding Observations that States parties are required under the Convention to move away from sheltered and segregated work employment,[[2]](#footnote-2) and has called on States parties to modify and abolish discriminatory laws and policies, e.g., policies requiring certifications establishing if persons with disabilities are “fit for employment”, restricting access to the performance of specific professions on the grounds of disability.[[3]](#footnote-3) The Committee has also called for the elimination of concepts of “working capacity” or “unemployable” from existing legislation;[[4]](#footnote-4) and the elimination of the requirement of “medical fitness” to work.[[5]](#footnote-5) On this matter, the Committee has also undertaken an inquiry under article 6 of the Optional Protocol to the Convention (CRPD/C/15/4). In its report on the inquiry, the Committee noted that work capability assessments to deem persons with disabilities “fit to work” have been focused on a functional evaluation of skills and capabilities and have put aside personal circumstances and needs and the barriers faced by persons with disabilities in returning to employment, particularly those of persons with intellectual and/or psychosocial disabilities.[[6]](#footnote-6)

1. **Interpretation of article 27 (b): The right to equal remuneration for work of equal value**

Where statistics are available, there is evidence of a persistent wage gap between persons with and persons without disabilities.

The main causes for the wage gap seem to be linked to:

* Overrepresentation of persons with disabilities in low-paid jobs;
* Persons with disabilities working in segregated employment such as sheltered workshops, often receiving wages that are under the minimum wage or not getting a fair wage;
* Legislation allowing persons with disabilities to be paid less than the national minimum wage;
* Limited awareness and knowledge by employers (public, private and non-governmental organizations) on the capabilities and value persons with disabilities.

Wage discrimination where laws deny people with disabilities national minimum wages appear to be inconsistent with the CRPD and articles 27(a) (b) and 4(1) and 5(2) of the Convention.

As reflected in General Comment No. 23 of the CESCR Committee, persons with disabilities “must not suffer wage discrimination due to a perceived reduced capacity of work.”[[7]](#footnote-7)

On the issue of equal remuneration, the CRPD Committee has called on States parties to ensure that persons with disabilities are paid no less than the minimum wage and has also underlined that in order to fully adhere to the CRPD, persons with disabilities must not lose the benefit of disability allowances when they start working.[[8]](#footnote-8)

1. **Interpretation of article 27 (b) part II: Applying health and safety considerations in a non-discriminatory way**

Domestic laws should ensure that work- related health and safety issues are inclusive of persons with disabilities. Diversity of impairments may require specific adjustments in health and safety policies and practices. However, applying a universal design approach when designing health and safety measures, complemented with the provision of individualised supports, when needed in a particular case and protection from the denial of reasonable accommodation, can provide for both general and specific measures.

1. **Interpretation of article 27 (b) part III: Measures to eliminate discriminatory attitudes and harassment, particularly against women, migrants and refugees with disabilities**
2. Protection from harassment

The CESCR Committee has outlined in the General Comment n. 23 that: “legislation, such as anti-discrimination laws, the penal code and labour legislation, should define harassment broadly, with explicit reference to sexual and other forms of harassment, such as on the basis of sex, disability, race, sexual orientation, gender identity and intersex status.”[[9]](#footnote-9) General Comment No. 23 goes on and provides useful guidance on what a national policy should include, where accessibility of information, of training materials and courses, as well as accessibility of complaint and redress procedures are prime candidates.

The protection from violence and harassment at the workplace has now been further regulated by the recently adopted ILO Violence and Harassment Convention (No 190), which refers to the CRPD in its preamble. The Convention provides a framework to address violence and harassment in the workplace. It highlights the fact that certain workers are more at risk of violence and harassment (article 6 of the Convention) and also promotes in its article 4(1) (c) that measures that are being taken should protect all workers.

A non-exhaustive list of these measures is provided in the Recommendation 206 that accompanies ILO Convention 190, such as:

* Gender-responsive guidelines and training programmes to assist judges, labour inspectors, police officers, prosecutors and other public officials in fulfilling their mandate regarding violence and harassment in the world of work, as well as to assist public and private employers and workers and their organizations in preventing and addressing violence and harassment in the world of work;
* Model codes of practice and risk assessment tools on violence and harassment in the world of work, either general or sector-specific, taking into account the specific situations of workers and women workers;
* Public awareness-raising campaigns in the various languages of the country, including those of the migrant workers residing in the country, that convey the unacceptability of violence and harassment, in particular gender-based violence and harassment, address discriminatory attitudes and prevent stigmatization of victims, complainants, witnesses and whistle-blowers;
* Gender-responsive curricula and instructional materials on violence and harassment, including gender-based violence and harassment, at all levels of education and vocational training, in line with national law and circumstances.
1. The Committee intends to address specific measures to eliminate discriminatory attitudes and harassment against women, migrants and refugees with disabilities.
2. **Interpretation of article 27 (c): Labour and trade union rights on an equal basis with others**

The reference in article 4(e) to the protection from discrimination by any organization applies also to trade unions, both in their role as employer as well as in their role as organization representing workers. In this sense, States should repeal any legal or regulatory provision that restricts the right of freedom of association to form trade unions or workers’ associations based on disability, including on deprivation of legal capacity, and promote the inclusion of persons with disabilities in trade unions and workers’ associations. A greater inclusion of persons with disabilities in trade unions will not only comply with article 27(c), but might also lead to increased attention to issues related to employees with disabilities by employers (public and private), also through inclusion of relevant criteria in collective bargaining agreements, including protection from discrimination on the ground of disability and the denial of reasonable accommodation. In light of General Comment n. 7 (2018) on participation with persons with disabilities in the implementation and monitoring of the Convention, trade unions that qualifies as representatives organisations of persons with disabilities, should be closely consulted in legal and regulatory frameworks and procedures across all levels and branches of Government.

1. **Interpretation of article 27 (d) and (j): Access to inclusive education and inclusive vocational training**

Learners with disabilities must receive the support to ensure the effective transition from learning at school to vocational and tertiary education, and, finally, to work. Inclusive education and inclusive vocation training should aim to develop learners’ capacities and confidence and provide learners with reasonable accommodation and ensure equality regarding their assessment and examination procedures. Certification of learners’ capacities and attainments on an equal basis with others should also be ensured.

The Committee has expressed concern about the lack of vocational training opportunities to enable persons with disabilities to gain access to employment.[[10]](#footnote-10) The Committee has called on States to implement training and skills development programmes to facilitate the recruitment of persons with disabilities and to make them more competitive in the open job market.[[11]](#footnote-11)

In this sense, mainstream services that exist to help job seekers to find employment should be inclusive of job seekers with disabilities. Of particular relevance are technical vocational education and training (TVET) services which should also include participation in workplace based learning schemes, including apprenticeship and internships schemes.

Still too often, States parties support specialised technical and vocational education and training (TVET) services targeting persons with disabilities. These services usually provide training in low skill occupations with very poor results in terms of employment generation and wages. Resources that are being used for these services should be reallocated to making the mainstream TVET institutions inclusive of persons with disabilities.

Equally important is to ensure that (public and private) mainstream employment services are inclusive of persons with disabilities. When disability-targeted employment services exist, these should be connected to the mainstream employment services for mutual referral.

1. **Interpretation of article 27 (f): Self-employment, microfinance, business development services**

In most countries, persons with disabilities are overrepresented among those that earn their living through self-employment. In countries where the majority of the general population works in the informal economy, the opportunities for persons with disabilities to find waged employment in the private, public or not for profit sector are very low. It is therefore important to ensure that persons with disabilities are supported successfully through additional incentives in becoming self-employed, entrepreneurs and start their own business. The Committee has recommended States to step up their efforts to increase the number of persons with disabilities who are employed in regular positions and who are self-employed in open work environments.[[12]](#footnote-12)

In practical terms, the business development and other similar services provided by public authorities (or subcontracted to private organizations), which support self-employment and entrepreneurship should be inclusive of persons with disabilities. This would mean, among others, ensuring the accessibility of materials, information, courses, financing tools, including microfinance, as well as the provision of reasonable accommodation, when needed in a particular case.

The reference to the development of cooperatives should be understood as supporting (groups of) persons with disabilities to come together and create a cooperative of persons with disabilities but also, a provision to support persons with disabilities becoming members of cooperatives that are not exclusively composed of persons with disabilities.

1. **Interpretation of article 27(g) Employment of persons with disabilities in the public sector**

All provisions included in other paragraphs of article 27 apply equally to the public sector, however, the particular reference included in paragraph g) to the public sector, aims at underlying the importance of the employment of persons with disabilities within such sector.

Some public sector authorities have put in place specific pathways and employment programs for persons with disabilities, which can comply with the provisions of this paragraph. Where these processes exist, people with disabilities should be able to apply through the general procedures, where they should benefit from the relevant reasonable accommodations, if so required, but would also have the option to apply through a specific recruitment process. When using this specific access, it is important to ensure that people with disabilities who entered the public service through this process, are given the same opportunities for career progression as all other public sector employees. To address barriers resulting from the entry requirements, states may consider organizing training courses targeting persons with disabilities in order to provide them with the adequate skills to access public jobs to be filled.

Collective bargaining agreements that are specific to the public sector should include explicit references to disability as one of the non-discrimination grounds and include measures promoting the employment and retention of employees with disabilities, including explicit references to reasonable accommodation.

Countries may establish targets for the employment of persons with disabilities and request annual reporting by all relevant public authorities that inform how they are complying with these targets and the measures they have taken or are planning to take.

Public works programmes are funded by the public budget and have the objective of providing employment (usually a number of working days per year) for people in rural or disadvantaged areas in particular by working on employment-intensive infrastructure projects. These programmes, found in many developing countries, should also be designed in a way that people with disabilities could benefit from.

1. **Interpretation of article 27 (h): Affirmative action programs and special attention to persons with disabilities who are particularly excluded from the labour market**

The Committee has expressed its concern about the lack of incentives and specific measures to promote the inclusion of persons with disabilities in the open labour market, both in the public and private sectors,[[13]](#footnote-13) and the low level of compliance with specific measures, such as quotas for the employment of persons with disabilities.[[14]](#footnote-14) In its Concluding Observations, the Committee has prompted States take effective and affirmative measures to encourage and ensure the employment of persons with disabilities, particularly women with disabilities, in the public and private sectors, to guarantee non-discrimination in vocational training and employment and to ensure that the open labour market is inclusive and accessible;[[15]](#footnote-15)

The Committee has recommended that States parties adopt affirmative action measures, including providing incentives, to increase the employment of persons with disabilities in the public and private sectors, such as through the introduction of quota systems with effective enforcement mechanisms and sanctions for non-compliance.[[16]](#footnote-16) Over time, the Committee has observed that the obligation to have quotas has not always been effectively implemented in light of the Convention, resulting, in some circumstances, in employers preferring to pay some fines instead of abiding to the incentives foreseen in the quotas system. The quota system should be critically assessed and analysed by State parties, since it also might result in the promotion of the employment of persons with disabilities with low support requirements, leaving behind persons with disabilities with high support requirements or in supporting the recruitment in persons with disabilities only in low level jobs. The Committee has also recognized that affirmative measures such as integration subsidies should not turn into indirect discrimination when difficulties encountered by employers in claiming the subsidies put applicants with disabilities in a disadvantageous position.[[17]](#footnote-17)

Affirmative action programmes that States can use to promote the right to employment are, among others, public procurement and financial incentives. Public procurement measures can include tendering processes that are reserved to enterprises owned by persons with disabilities or tendering processes that give additional points to companies that employ a certain percentage of persons with disabilities which could be the one established in legislation if the country has an established quota. It could also be possible that relevant tendering processes (catering, cafeteria services, maintenance services and similar) include a requirement that a percentage of the staff to be employed are persons with disabilities. Financial incentives, in the form of lump sums for initial recruitment, a reduction in social charges or wage subsidies to cover some of the salary costs of the employee with a disability are available options that seem to be particularly relevant in the context of small and medium enterprises.

Programmes that target persons with intellectual and psychosocial disabilities as well as other marginalised groups of persons with disabilities that are facing an even larger exclusion from the labour market, can also be implemented. Supported employment, which entails the assistance by a job coach to the employee as well as individual placement support, are programmes that have led to the employment in the regular labour market of persons with intellectual or psychosocial disabilities. While these programmes would usually be implemented by private entities such as NGOs, the funding of these services should be also provided by Governments.

In the different affirmative action programmes, duty bearers are encouraged to pay particular attention to women with disabilities, parents with children with disabilities or to persons with disabilities coming from other groups facing exclusion (refugees, documented and undocumented migrants, etc..) or persons with multiple disabilities facing intersecting forms of discrimination.

The obligation enshrined in article 27(h) on affirmative actions, should also prompt States to effectively ensure that the work of social enterprises, which are often subsidised by State incentives, is fully conform to all provisions of article 27 of the CRPD, ensuring dignified work for persons with disabilities and providing them with the reasonable accommodation required.

1. **Interpretation of article 27 (i): The obligation to provide reasonable accommodation in the workplace and the denial of reasonable accommodation as a form of disability-discrimination, including in recruitment processes**

While the obligation to provide individualised supports and to protect against the denial of reasonable accommodation is already implicitly covered by paragraph (a) of article 27, its explicit reference in paragraph (i) highlights the relevance the CRPD gives to this provision.

Article 27(i) incorporates two important provisions enshrined in the CRPD Convention, such as the general obligation upon States to adopt all appropriate measures for the implementation of the rights recognized in the Convention; including the obligation to ensure accessibility, as reflected in article 4 of the Convention, and the obligation to ensure specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities, such as the right to individualised support and protection from the denial of reasonable accommodation, as enshrined in article 5.

The wording related to the provision of reasonable accommodation enshrined in article 27(i) is a reflection of this, as it is not an obligation of the State to provide reasonable accommodation (unless it relates to public employment) in the workplace, but of the actual employer that could be a private entity. It is the responsibility of the State to create the conditions for reasonable accommodations to be provided, as reflected in article 5(3) of the Convention. In its recent Concluding Observations, the Committee has also recommended States parties to ensure that the denial of reasonable accommodation is explicitly recognized in all areas of life as a form of prohibited disability-based discrimination, including in the labour area;

The Committee has also recommended that States parties ensure that persons with disabilities, especially women with disabilities and persons with intellectual or psychosocial disabilities, are not denied reasonable accommodation in the workplace.[[18]](#footnote-18)

In the case of *Richard Sahlin vs Sweden*, the Committee found a violation of article 27 in relation to a case where a person with disability, which was considered to be the most qualified candidate for a position in a State-run university to which he had applied, was later informed about the university’s decision to cancel the recruitment, on the claim that it would be too expensive to finance sign language interpretation as a means of guaranteeing the author’s right to employment on an equal basis with others. The Committee recalled that, in accordance with article 27, paragraphs (a), (e), (g) and (i), of the Convention, States parties have the responsibility to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment as well as in hiring and employment procedures. [[19]](#footnote-19)

1. **Interpretation of article 27 (k) Return-to-work programmes**

Persons with disabilities may acquire their disability while being in employment. In these contexts, States parties should have programmes in place that would ensure that persons with disabilities could retain their employment or return to work after having undergone the required health-related rehabilitation.

Independently on how these measures are funded, they should ensure that persons with disabilities could retain either their previous job with the same employer, a different job with the same employer or a new job with a new employer. In all of these circumstances, the provision of reasonable accommodation should be foreseen. Vocational training that the person would require in case she/he has to change occupation should also be promoted.

In the case of *V.F.C v. Spain*, the Committee analysed the case of a forced retirement of a worker with a disability which took place without the offer of alternate working opportunities from the employer’s side. The Committee found that the authorities did not carry out an individualized assessment of the author’s abilities and did not provide reasonable accommodation in employment, violating article 27 of the Convention. [[20]](#footnote-20) In its considerations, the Committee recalled that article 27 (1) of the Convention required States parties to recognize the right of persons with disabilities to retain their employment, on an equal basis with others; to take all appropriate steps, including through legislation, to prohibit discrimination on the basis of disability with regard to the continuance of employment; and to ensure that reasonable accommodation was provided to persons who acquired a disability during the course of employment.

In the case of *J.M. vs Spain*, the Committee found once more a violation of article 27 in relation to a case of forced retirement as a result of a declaration of “permanent total disability” which also disqualified the author from requesting assignment to modified duty.[[21]](#footnote-21)

1. **Interpretation of 27 (2) forced or compulsory labour**

Paragraph 2 of article 27 addresses the protection of persons with disabilities from forced or compulsory labour Persons with disabilities are at particular risk of being victims of forced or compulsory labour. It is important that when States address these situations, they ensure that these measures are accessible and inclusive of persons with disabilities. The ILO adopted in 2014 its Optional Protocol to the 1930 Forced Labour Convention and the preamble of this Optional Protocol refers to the CRPD. In its Concluding Observations, the Committee outlined that persons with disabilities should be protected, on an equal basis with others, from forced or compulsory labour, exploitation and harassment in the workplace.[[22]](#footnote-22)

1. **States parties’ obligations**
2. Duty to respect, protect and fulfil

Article 27 is a provision where the three elements of what States should do to promote human rights (respect, protect and fulfil) are all relevant and mutually complementary. The “respect” dimension applies mainly in the context of protecting from discrimination in employment in the public sector and in those services that are provided by public authorities, such as public employment services and vocational training. Much more relevant is the obligation to “protect” as it relates to the employment of persons with disabilities by, in particular, the private sector. The employment of persons with disabilities requires also the programmatic element reflected in the obligation to “fulfil”. In fact, much of the content of article 27 falls into this last category of obligations as it relates to the different public policies that states should have in place to promote the right to work of persons with disabilities.

1. Immediate obligations
2. Non-discrimination, particularly on the basis of disability or multiple grounds

Pertinent legislation should prevent any intentional or unintentional discrimination based on disability. One of the possible areas of discrimination relates to medical tests applied only upon persons with disabilities. There is, for instance, legislation in some countries obliging employers to require candidates with disabilities to undergo medical clearance to ensure that the job offered does not impact on their health condition. This is clearly a discriminatory practice as it applies only to persons with disabilities, following a medical model of disability, which is contrary to the Convention.

The CRPD Committee has indeed identified in its Concluding Observations a number of discriminatory laws and policies. It has considered, for instance, that policies requiring certifications establishing if persons with disabilities are “fit for employment” as well as those restricting access to the performance of specific professions on the grounds of disability are discriminatory. It approached in equal manner the concepts of “working capacity” or “unemployable”, recommending the elimination of such concepts from existing legislation. The Committee has also considered the requirement of “medical fitness” as discriminatory.

Legislation should protect persons with disabilities from discriminatory dismissal on the basis of disability, in particular in situations where people acquire an impairment while at work. In these situations, there should be an obligation, including as a form of reasonable accommodation, on the employer to retain the worker and offer them the necessary support to keep their position or, if this is not possible, alternative work should be offered. States should, however, be careful in providing an absolute protection against the dismissal of persons with disabilities, for example through the establishment of very burdensome procedures to allow for the dismissal of a person with disability, as this could lead to disincentives for initial recruitment.

The Committee might want to pay particular attention to the risks resulting from recruitment software that is based on Artificial Intelligence and non-transparently programmed algorithms, as there is evidence that it has led to the exclusion of persons with disabilities. In general, there are significant barriers encountered in online recruitment processes by persons with disabilities, which do not guarantee accessibility on an equal basis with others.

The reference in article 27.1 (a) to career development is also particularly relevant in the context of non-discrimination, as it should ensure that persons with disabilities are not discriminated when seeking to be promoted, including through access to any training provided to employees, as well as by guaranteeing the provision of reasonable accommodation by the employer related to a change of job.

Furthermore, the issue of genetic discrimination linked to an increased likeliness of developing certain impairments or health conditions is a particular risk in the area of employment. Legislation preventing discrimination on the basis of disability should cover this by preventing employers from having access to the genetic information of their current and prospective employees.

1. Provision of reasonable accommodation

As already recognized by the Committee, an *ex nunc* duty, reasonable 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.[[23]](#footnote-23) Moreover, the Committee recognized that reasonable accommodation must be negotiated with the applicant(s) and that the obligation to provide reasonable accommodation is an individualized reactive duty that is applicable from the moment a request for accommodation is received. [[24]](#footnote-24)

Additional measures should be put in place to ensure that the provision of reasonable accommodation is effectively implemented. Two measures seem of particular relevance:-

* The provision of funding to cover, totally or partially, costs related to reasonable accommodation. This will limit the possibility for organizations, especially those that are small, to claim that the accommodation imposes a disproportionate or undue burden with regards to individual supports.
* The provision of technical assistance to all relevant stakeholders and in particular to employers and persons with disabilities on the concept of reasonable accommodation, including examples of accommodations in different stages of employment (recruitment process, on boarding, career development), the process that should be followed to take a decision on the accommodation, the application of the disproportionate or undue burden test, how to document it, protecting confidentiality and privacy, the need for disclosure, among others. This type of assistance could take the form of codes of good practices.

The provision of reasonable accommodation should however avoid over protection in working conditions. A number of countries establish in legislation specific measures for people with disabilities, including extra days of annual leave, reduced working days or weeks, usually with full wage. Often, these are measures that were established for persons who acquired an impairment while at work and were seen as a form of compensation.

While more flexible (and reduced) working hours could be considered as a form of individualised reasonable accommodation, applying such measures to all persons with disabilities is not only grounded on paternalism and over-protection but also creates additional barriers for persons with disabilities to get into the labour market.

The Committee invites interested parties to provide written inputs on such topics, including on obligations subject to progressive realization, non-retrogressive measures and minimum core obligations under article 27 of the Convention.

3.I - Particular obligations within the context of article 27

1. The impact of new technologies in the labour market, including artificial intelligence and deep learning, on persons with disabilities.

There are several examples of assistive technologies that contribute to the inclusion of persons with disabilities and have a possible impact on their employment. What States parties need to ensure is the availability, transparency and affordability of these technologies. State Parties should also encourage research and development in the field of accessible technological environment in line with the Convention (article 4.1 f-g). This is a particular challenge in the context of developing countries.

For mainstream technological developments, it is important that these follow universal design principles in order to avoid creating barriers for persons with disabilities. The platforms that have been used in the Covid-19 pandemic context provide an example in this regard. Ensuring access to the required digital skills seems also to be particularly relevant in this context.

1. Telework of persons with disabilities

Often, allowing persons with disabilities to do their work remotely has been considered as a form of reasonable accommodation. It is clear that telework will remain a widely extended practice and option for many employees, including employees with disabilities. When States legislate on telework, they are required to address the situation of persons with disabilities.

It is important to ensure that telework remains an option and not an obligation for persons with disabilities and that the required workplace accommodations and supports are provided both at home as well as in the premises of the company and that the communication tools that are used to keep all employees connected are fully accessible to persons with disabilities.

1. **Relationship with other provisions of the CRPD**

Article 27 is a good example of the interrelatedness of the different rights enshrined in the CRPD.[[25]](#footnote-25)

The right to work and employment is affected by the effective enjoyment of other rights like legal capacity, independent living, personal mobility, inclusive education, respect of home and the family, rehabilitation and habilitation and access to information, but is also clearly interrelated with enabling elements such as accessibility, in particular of transport and the physical environment, as well as awareness raising. The Committee has in fact expressed its concern with regard to the inaccessibility of the physical environment of workplaces.[[26]](#footnote-26) Another example of this interrelatedness can be grasped in cases of absence of support services like personal assistants, as foreseen in article 19, which creates an almost insurmountable barrier for those persons with disabilities who require them.

The interrelatedness of the right to work and employment with other rights enshrined in the CRPD should not come at the expense of persons with disabilities. As an example, disability benefits which are delivered in light of ensuring an adequate standard of living to persons with disabilities, are compatible with article 28 of the CRPD. However, disability benefits that are not compatible with employment create a situation where persons with disabilities have to opt between accessing a benefit and accessing employment.

1. Consultations with DPOs in the context of social dialogue

Consultation by States of organizations of persons with disabilities and their representative organizations is a clearly established principle of the CRPD and applies equally to article 27.

At the same time, many States address labour market legislation and policies through social dialogue with representative employer federations and trade unions. This could sometimes lead to a conflict between these two obligations.

The Committee intends to receive guidance on how to ensure meaningful involvement of organizations of persons with disabilities in social dialogue processes.

**5. Implementation at national level**

The Committee will look for good practices in the implementation of article 27 at the national level, including in law and policy-making, access to justice and redress in situations of discrimination in employment data collection and implementation of specific measures to ensure full inclusion in the open labour market.

1. See for example, CRPD/C/GRC/CO/1, para. 38. [↑](#footnote-ref-1)
2. See for example, CRPD/C/MDA/CO/1, para. 48. [↑](#footnote-ref-2)
3. UN Committee on the Rights of Persons with Disabilities, ‘Concluding Observations on Gabon’, (2 October 2015) UN Doc CRPD/C/GAB/CO/1, paragraph 58 (CRPD/C/GAB/CO/1). [↑](#footnote-ref-3)
4. UN Committee on the Rights of Persons with Disabilities, ‘Concluding Observations on Lithuania’, (10 May 2016) UN Doc CRPD/C/LTU/CO/1, paragraphs 51-52 (CRPD/C/LTU/CO/1). See also UN Committee on the Rights of Persons with Disabilities, ‘Concluding Observations on Turkmenistan’, (13 May 2015) UN Doc CRPD/C/TKM/CO/1, paragraphs 45-46 (CRPD/C/TKM/CO/1). [↑](#footnote-ref-4)
5. UN Committee on the Rights of Persons with Disabilities, ‘Concluding Observations on Jordan’, (15 May 2017) UN Doc CRPD/C/JOR/CO/1, paragraphs 49-50 (CRPD/C/JOR/CO/1). [↑](#footnote-ref-5)
6. CRPD/C/15/4, para 102. [↑](#footnote-ref-6)
7. UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), para. 47 (c). [↑](#footnote-ref-7)
8. See for example, CRPD/C/MDA/CO/1, para. 48. [↑](#footnote-ref-8)
9. UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), para. 48. [↑](#footnote-ref-9)
10. See for example, CRPD/C/RWA/CO/1, para. 49. [↑](#footnote-ref-10)
11. See for example, CRPD/C/RWA/CO/1, para. 50. [↑](#footnote-ref-11)
12. CRPD/C/ECU/CO/2-3 (CRPD 2019). [↑](#footnote-ref-12)
13. See for example, CRPD/C/MMR/CO/1, para. 51. [↑](#footnote-ref-13)
14. See for example, CRPD/C/TUR/CO/1, para 52. [↑](#footnote-ref-14)
15. See for example, CRPD/C/CUB/CO/1, para. 46. [↑](#footnote-ref-15)
16. For example, [CRPD/C/15/4](https://undocs.org/en/CRPD/C/15/4), para. 22; [CRPD/C/HRV/CO/1](https://undocs.org/en/CRPD/C/HRV/CO/1), para. 42; [CRPD/C/KEN/CO/1](https://undocs.org/en/CRPD/C/KEN/CO/1), para. 48; and [CRPD/C/PRY/CO/1](https://undocs.org/en/CRPD/C/PRY/CO/1), para. 64. [↑](#footnote-ref-16)
17. See *Gröninger et al. v. Germany*. [↑](#footnote-ref-17)
18. See for example, CRPD/C/VUT/CO/1, para. 45. [↑](#footnote-ref-18)
19. CRPD/C/23/D/45/2018, Para 8.4. [↑](#footnote-ref-19)
20. CRPD/C/21/D/34/2015. [↑](#footnote-ref-20)
21. CRPD/C/23/D/37/2016. [↑](#footnote-ref-21)
22. For example, [CRPD/C/15/4](https://undocs.org/en/CRPD/C/15/4), para. 25, and [CRPD/C/MEX/CO/1](https://undocs.org/en/CRPD/C/MEX/CO/1), para. 52. [↑](#footnote-ref-22)
23. CRPD, General comment No. 6 (2018) on equality and non-discrimination, para 24 (b). [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. See for example, General Comment No 1 (2014) on Equal recognition before the law, General Comment No 2 (2014) on Accessibility, General comment No. 4 (2016) on the Right to inclusive education, General comment No. 5 (2017) on Living independently and being included in the community and General Comment No 6 (2018) on Equality and non-discrimination. [↑](#footnote-ref-25)
26. See for example, CRPD/C/SEN/CO/1, para. 45. [↑](#footnote-ref-26)