Philippine Coalition on the U.N. Convention on the Rights of Persons with Disabilities

1. Has your country adopted legislation establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.
2. NATIONAL LEGISLATION

 The core legislation relating to persons with disabilities is Republic Act 7277 otherwise known as Magna Carta for Disabled Persons of 1992.

The former provision of this domestic law recognizes that there are various barriers that are prejudicial to persons with disabilities while the latter highlights the meaning of social barriers and what are considered to fall under it. But, despite these acknowledgements the law has not provided a direct and uniform definition of discrimination on the basis of disability:

*“SECTION 2. Declaration of Polity*

*The grant of the rights and privileges for disabled persons shall be guided by the following principles:*

*(e). To facilitate integration of disabled persons into the mainstream of society, the State shall advocate for and encourage respect for disabled persons. The State shall exert all efforts to remove all social, cultural, economic, environmental and attitudinal barriers that are prejudicial to disabled persons.*

*“SECTION 4. Definition of Terms*

*For purposes of this Act, these terms are defined as follows:*

*(f). Social Barriers    -   refer to the characteristics of institutions, whether legal, economic, cultural, recreational or other, any human group, community, or society which limit the fullest possible participation of disabled persons in the life of the group. Social barriers include negative attitudes which tends to single out and exclude disabled persons and which distort roles and interpersonal relationship;:”*

On the other hand, even with the absence of concrete definition of discrimination on the basis of disability, the above sections still gives the State the duty to exert all efforts to remove the barriers leading to the exclusion and marginalization of persons with disabilities. Further, in effect inequalities can still be prosecuted under this portion of the which reads as follows:

*“SECTION 44. Enforcement by the Secretary of Justice*

*(a). Denial of Right*

*1). Duty to Investigate   -    the Secretary of Justice shall investigate alleged violations of this Act, and shall undertake periodic reviews of compliance of covered entities under this Act.*

*(b). Potential Violations       If the Secretary of Justice has reasonable cause to believe that*

*1). any person or group of persons is engaged in a pattern of practice of discrimination under this Act; or*

*2). any person or group of persons has been discriminated against under this Act and such discrimination raises and issue of general public importance, the Secretary of Justice may commence a legal action in any appropriate court.*

*SECTION 45. Authority of Court    -   The court may grant any equitable relief that such court considers to be appropriate, including, to the extent required*

*by this Act:*

*(a). granting temporary, preliminary or permanent relief;*

*(b). providing an auxiliary aid or service, modification of policy, practice or procedure, or alternative method; and*

*(c). making facilities readily accessible to and usable by individuals with disabilities.”*

In addition, there is a section of the Magna Carta devoted to prohibition on discrimination against disabled persons. However, it prohibits only discrimination on the basis of disability in employment, transportation and use of public accommodations and services.

Although Education is not mentioned in TITLE 3 PROHIBITION ON DISCRIMINATION AGAINST disabled PERSONS, CHAPTER 2 – Education provides,

*“SECTION 12. Access to Quality Education       The State shall ensure that disabled persons are provided with adequate access to quality education and ample opportunities to develop their skills. It shall take appropriate steps to make such education accessible to all disabled persons. It shall be unlawful for any learning institutions to deny a disabled person admission to any course it offers by reason of handicap or disability. The State shall take into consideration the special requirements of disabled persons in the formulation of education policies and program. It shall encourage learning institutions to take into account the special needs of disabled persons with respect to the use of school facilities, class schedules, physical education requirements and other pertinent consideration. The State shall also promote the provision by learning institutions, of auxiliary services that will facilitate the learning process for disabled persons.”*

Republic Act 9442, enacted 2008 amended Republic Act 7277 by inserting new provisions on Prohibitions on verbal and non- verbal ridicule and vilification against persons with disabilities:

*“Title Four*

*Prohibitions on Verbal, Non-verbal Ridicule*

*and Vilification Against Persons with Disability*

*“CHAPTER 1. Deliverance from Public Ridicule*

*“SEC. 39. Public Ridicule. – For purposes of this chapter, public ridicule shall be defined as an act of making fun or contemptuous imitating or making mockery of persons with disability whether in writing, or in words, or in action due to their impairment/s.*

*“SEC. 40. No individual, group or community shall execute any of these acts of ridicule against persons with disability in any time and place which could intimidate or result in loss of self-esteem of the latter.*

*“CHAPTER 2. Deliverance from Vilification*

*“SEC 41. Vilification. – For purposes of this Chapter, vilification shall be defined as:*

*(a) The utterance of slanderous and abusive statements against a person with disability; and/or*

*(b) An activity in public which incites hatred towards, serious contempt for, or severe ridicule of persons with disability.”*

*“SEC. 42. Any individual, group or community is hereby prohibited from vilifying any person with disability which could result into loss of self-esteem of the latter.”*

The fact that both laws were enacted before the CRPD, there is a huge gap in the concept of discrimination on the basis of disability and reasonable accommodation as what is implied in RA 7277 and its amendments from what is defined in the Convention.

Section 4 of RA 7277 defines reasonable accommodation as:

*(h). Reasonable Accommodation include (1) improvement of existing facilities used by 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 provisions of auxiliary aids and services, and other similar accommodations for disabled persons;”*

It should be noted that RA 7277 limits the application of reasonable accommodation in the context of employment unlike in the CRPD that explicitly links this term to the realization of the full range of human rights of persons with disabilities and is embedded on the non-discrimination mandate. Moreover, the former’s first definition that contains the words “readily accessible” may mean that the employer already assumed the modifications needed that contradicts the CRPD’s concept that the accommodations are tailor-fitted based on the unique and present needs of persons with disabilities on a particular case. Magna Carta’s definition also focuses on the physical adjustments and modifications so that the person with disability will fit to the job but not because the person needs to be reasonably accommodated in order for him or her to equally access and perform the duties assigned, receive benefits and to be on an equal footing with all the employees in the company.

Since reasonable accommodation is only present in relation to Employment when we talk about RA 7277 and its amendments, denial of reasonable accommodation is also within just these boundaries. It should be noted as well that it cannot be a ground for violation to other rights being denied even those that fall under the sections of prohibition on discrimination against disable persons because there is no clear definition of discrimination on the basis of disability and even if there is one, it’s not CRPD compliant therefore does not include denial of reasonable accommodation. It is also distressing that while the State can police alleged violations, they are discharged of their obligation to provide reasonable accommodation and are not accountable for its denial unless it talks about the employment of a person with disability.

In Section 4- (L), reasonable accommodation is mentioned as follows:

*(l). Qualified Individual with a Disability shall mean an individual with a disability who, with or without reasonable accommodations, can perform the essential functions of the employment position that such individual holds or desires. However, consideration shall be given to the employer’s judgement as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;*

Again, the context of reasonable accommodation in Section 4(L) is the modification of facilities and adjustments, company policies and materials but not a principle to ensure non-discrimination and full and equal exercise of the rights of a person with disability.

Examining further the Magna Carta on its concept of reasonable accommodation compared to systemic accessibility, the law provides:

*SECTION 8. Incentives for Employer -*

*Private entities that improved or modify their physical facilities in order to provide reasonable accommodation for disabled persons shall also be entitled to an additional deduction from their net taxable income, equivalent to fifty percent (50%) of the direct costs of the improvements or modifications. This section, however, does not apply to improvements or modifications of facilities required under Batas Pambansa Bilang 344.”*

It seems that RA 7277 uses the reasonable accommodation and accessibility interchangeably without taking into account the difference of these two terms. A clear distinction between systemic accessibility and reasonable accommodation is found on Paragraphs 22 and 23 of the Draft General Comment on Article 9 prepared by the CRPD Committee that reads as follows:

“*22. Accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an ex ante duty. States parties therefore have the duty to provide accessibility before receiving an individual request to enter or use a place or service. States parties need to set accessibility standards, which must be negotiated with organizations of persons with disabilities, and they need to be specified for service-providers, builders and other relevant stakeholders. Accessibility standards must be broad and standardized. In the case of individuals who have rare impairments that were not taken into account when the accessibility standards were developed or do not use the modes, methods or means offered to achieve accessibility (not reading Braille print, for example), even the application of disability standards may not be sufficient to ensure them access. In such cases, reasonable accommodation may apply.*

*23. The duty to provide reasonable accommodation is an ex nunc duty, which means that it is enforceable from the moment an individual with an impairment needs it in a given situation (workplace, school, etc.) in order to enjoy her or his rights on an equal basis in a particular context. Here, accessibility standards can be an indicator, but may not be taken as prescriptive. Reasonable accommodation can be used as a means of ensuring accessibility for an individual with a disability in a particular situation. Reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination or equality is assured, taking the dignity, autonomy and choices of the individual into account. Thus, a person with a rare impairment might ask for accommodation that falls outside the scope of any accessibility standard. The decision to provide it or not depends on whether it is reasonable and whether it imposes a disproportionate or undue burden. “*

It should be pointed out as well that Section 32 (G) has used again reasonable accommodation in reference to accessibility. Without realizing that reasonable accommodation should be immediately provided on the unique needs of a person of disability on a particular case to ensure equal access and is maybe beyond the standards of accessibility while the latter is a pre- requisite to guarantee full exercise and enjoyment of rights.

On the other hand, Section 36€ on the prohibition on discrimination against persons with disabilities on the use of public accommodations, the idea of reasonable modifications is not the same from what is defined from Section 4(H). Section 4(H) refers to the modifications that are “readily accessible” and “usable” therefore are prior set whereas modifications in Section 36(B) are only given when it’s needed on a specific case. The concept of reasonableness and disproportionate and undue burden is also implicitly presented in this provision.

Looking into the use of “necessary accommodations” in Section 33(I.1) it must be advised that there can be a pattern of accommodation provided based on similar scenarios but it cannot be definite because all persons with disabilities have unique needs .

\*In 16th Congress, over 30 proposed bills on Anti=Discrimination; some examples below:

House of Representatives[[1]](#footnote-2):

- House Bill No. 3432 authored by Representative Kaka Bag-ao

“Comprehensive Anti-Discrimination Act, includes disability (among others) as a ground for discrimination”

- House Bill No. 4448 authored by Representatives Ibarra Guitierrez and Walden Bello:

“Comprehensive Anti-Discrimination Act, includes disability (among others) as a ground for discrimination”

Senate :

(some proposed bills do not include disability as a ground for discrimination)

- Senate Bill No. 2475 authored by Sen. Sonny Angara[[2]](#footnote-3)

“Discrimination on the basis of: age, ethnicity, religion, political, class, SOGIE, marital relations, disability, HIV, health, language, physical features, etc.”

- Senate Bill No. 2358 authored by Sen. Grace Poe[[3]](#footnote-4)

“Discrimination on the basis ofethnicity, religion, SOGIE, language, disability, educational attainment, etc.”

LOCAL GOVERNMENT LEGISLATION

Local governments have autonomy to pass their own City / Municipal etc. Ordinances; thus these are not systematically found in all local governments nationwide…

Some examples:

a) Cebu City Anti-Discrimination Anti-Discrimination Ordinance[[4]](#footnote-5)

This was primarily advocated by the LGBT local community, but the resulting ordinance included persons with disabilities, along with other groups.

b) HIV/AIDS related City Ordinances in Metro Manila, National Capital Region (Quezon City; Pasay City)[[5]](#footnote-6)

**2. Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements (500 words).**

No, the State does not apply any kind of legal or functional test to determine whether an accommodation is undue or disproportionate.

The closest that our Magna Carta for Persons with Disabilities comes to evaluating the nature of an accommodation may be gleaned only from the following provision:

“a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making *such modifications would fundamentally alter the nature of the goods, facilities, services, privileges, advantages, or accommodations* (para 36.2)..” [italics added]

The Magna Carta places the burden on the service or accommodations provider to demonstrate that the removal of a barrier is “not readily achievable”. In the employment context, by contrast, the Magna Carta only appears to permit arguments on the “reasonableness” of the accommodation (paragraph 32).

But all these in no way approach a functional test on the ‘reasonableness’ of an accommodation.

Notably, even in the existing local government ordinances, as well as in the proposed legislation (see response to #1 above), there is also still no clear guidance on such a legal or functional test.

**3. Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures applied and enforced (500 words).**

We define “affirmative action” as follows:

* measures which restore de facto equality (=” reverse discrimination”)
* address needs of groups which experience inequality
* temporary (measures removed when equality is attained)

Based on this our own domestic legislation does not distinguish between for ex., State duty vs actual Affirmative Action measures.. So below are we feel appear to be AA measures, but we are not certain about this from a legal perspective.

1) Presidential Proclamation 240[[6]](#footnote-7) : 2nd Decade of Persons with Disabilities (2003-2012):

Earmarking of at least 1% of all government agency budgets for persons with disabilities

This actually does not appear to restore de facto equality, and does not depend on the outcome (it is set for a time period, whether equality has been attained or not..)

2) Department of Social Welfare & Development /Department of Budget Management Joint Circular 2003-01:

Of 25% quota for manufacture of school furniture by Cooperatives, 10% of contracts are reserve for Cooperatives of Persons with Disabilities [ See Philippine Coalition CRPD Parallel Report]

These below have always been cited as examples of AA, but we are uncertain whether they really are legally .. do the % actually cause the attainment of de facto equality? Are they sufficient to qualify as AA..?

3) Republic Act 10524 – An act expanding the reserved positions for persons with disabilities enacted 2013 delivers “SECTION 1. Equal Opportunity for Employment. – At least one percent (1%) of all positions in all government agencies, offices or corporations shall be reserved for persons with disability: Provided, That private corporations with more than one hundred (100) employees are encouraged to reserve at least one percent (1%) of all positions for persons with disability.”. It amended Section 5 of Republic Act 7277 otherwise known as Magna Carta for Persons with Disabilities which provides that, “Five percent (5%) of all casual, emergency and contractual positions in the Department of Social Welfare and Development; Health; Education, Culture and Sports; and other government agencies, offices or corporations engaged in social development shall be reserved for disabled persons.”

4) At least 20% discount[[7]](#footnote-8) on:

hotels and similar lodging establishments, restaurants and recreation centers

* theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement
* medicines in all drugstores
* medical and dental services, including diagnostic and laboratory fees, in all government facilities (subject to guidelines to be issued by DOH in coordination with PhilHealth
* medical and dental services, including diagnostic and laboratory fees, and professional fees of attending doctors in all private hospitals and medical facilities (in accordance with the rules and regulations to be issued by DOH in coordination with PhilHealth)
* domestic air and sea travel
* public railways and bus fare
* skyways and expressways toll fees (for PWD owning a vehicle)

5) 5% discount[[8]](#footnote-9) on:

* + basic necessities (rice, corn, bread, fresh, dried and canned fish and other marine products, freshpork, beef and poultry meat, fresh eggs, fresh and processed milk, infant formulas, fresh vegetables, root crops, coffee, sugar, cooking oil, salt, laundry soap, detergents, firewood, charcoal, candles and other commodities as maybe classified by the Department of Trade and Industry (DTI) and the Department of Agriculture (DA)
* •prime commodities (fresh fruits, dried, processed and canned pork, beef and poultry, meat, dairy products not falling under basic necessities, noodles, onions, garlic, diapers, herbicides, poultry, swine and cattle feeds, veterinary products for poultry, swine and cattle feeds, veterinary products for poultry, swine and cattle, paper, school supplies, nipa shingle, plyboard, construction nails, batteries, electrical supplies, light bulbs, steel wire and other commodities that may be classified by DTI and DA)
* express lanes in all commercial and government establishments
* educational assistance to pursue primary, secondary, tertiary, post tertiary, as well as vocational or technical education in both public and private schools

**4. Does your country have laws, policies and strategies for combating discrimination against women and children with disabilities? Please describe how these policies are reflected in legislation and policy frameworks (500 words).**

Republic Act 9710 or the Magna Carta of Women enacted last 2009[[9]](#footnote-10) is a comprehensive women’s human rights law that seeks to eliminate discrimination against women by recognizing, protecting, fulfilling and promoting the rights of Filipino women, especially those in marginalized sector. It is intended to be the domestic translation of the CEDAW into action.

The Magna Carta of Women defines the marginalized sectors as those who belong to the basic, disadvantaged, or vulnerable groups who are mostly living in poverty and have little or no access to land and other resources, basic social and economic services such as health care, education, water and sanitation, employment and livelihood opportunities, housing security, physical infrastructure and the justice system. These include, but are not limited to women in the following sectors or groups: Small farmers and rural workers, Fisherfolk, Urban poor, Workers in the formal economy, Workers in the informal economy, Migrant workers, Indigenous Peoples, Moro, Children, Senior citizens, Persons with disabilities, and Solo parents. Section 27 ParagraphE has the only direct reference to women with disabilities:

“The State shall support women with disabilities on a community-based social protection scheme.”

The following appear to “protect” children with disabilities, but in reality these are archaic policies which stigmatize children with disabilities and consequently institutionalize discrimination:

Child and Youth Welfare Code

Chapter 2

MENTALLY RETARDED, PHYSICALLY HANDICAPPED,

EMOTIONALLY DISTURBED AND MENTALLY ILL CHILDREN

Art. 168. Mentally Retarded Children. - Mentally retarded children are (1) socially incompetent, that is, socially inadequate and occupationally incompetent and unable to manage their own affairs; (2) mentally subnormal; (3) retarded intellectually from birth or early age; (4) retarded at maturity; (5) mentally deficient as a result of constitutional origin, through hereditary or disease, and (6) essentially incurable.[[10]](#footnote-11)

**5. Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?**

Despite the presence of a SubCommittee in the National Council on Disability Affairs (NCDA) on ‘Access to Justice and Non-discrimination’, it has not collected any data relating to this. Neither has the Philippine Statistics Authority which is not surprising if the policy making body itself has not tackled this entire area.

It is noteworthy that the NCDA follows no framework (and also there is no domestic law basis) in monitoring discrimination. Even Republic Act 9442 with the sections on ridicule and villification are not monitoried ( to date no complaints have even been filed invoking this law.)

The strong disparity in terms of national documentation on discrimination against persons with disabilities reflects the lack of attention to the human rights situation of the sector particularly in access to justice.

The Commission on Human Rights is the independent constitutional body that documents and investigates all forms of violations on human rights of Filipinos including those with disabilities. Out of the 41 national government agencies surveyed by the Commission on Human Rights regarding persons with disabilities, it reported 57 victims of human rights violations during 1987-2006 (roughly three cases a year), 17.5 % of whom involved children[[11]](#footnote-12).

Contrastingly, these findings are just a portion of what has been documented by Philippine Deaf Resource Center for the deaf alone which accounted for 256 cases in just 5 years. Moreover, the data by the Commission was not sufficiently gathered nationwide.

As for the trial courts, there is no way of systematically securing information unless the cases reached the Supreme Court. When court personnel are interviewed about noting data involving persons with disabilities, they say that they do note these in their monthly logs of cases. But there is no national mechanism which gathers all of these data from the over 2,000 lower courts in the country.

1. [http://www.congress.gov.ph](http://www.congress.gov.ph/) [↑](#footnote-ref-2)
2. <https://www.senate.gov.ph/lis/leg_sys.aspx?congress=16&type=bill&p=1> [↑](#footnote-ref-3)
3. <https://www.senate.gov.ph/lis/leg_sys.aspx?congress=16&type=bill&p=1> [↑](#footnote-ref-4)
4. [http://www.philippine-transgender-movement.com/news/anti-discrimination-ordinance-in-cebu-city/](http://www.philippine-transgender-movement.com/news/anti-discrimination-ordinance-in-cebu-city/?utm_source=copy&utm_medium=paste&utm_campaign=copypaste&utm_content=http%253A%252F%252Fwww.philippine-transgender-movement.com%252Fnews%252Fanti-discrimination-ordinance-in-cebu-city%252F) [↑](#footnote-ref-5)
5. oohttp://www.undp.org/content/dam/philippines/docs/HIV/POLICY%20Review-LGU%20(Pasay%20City%20and%20QC).pdf [↑](#footnote-ref-6)
6. <http://www.ncda.gov.ph/disability-laws/proclamations/proclamation-no-240/> [↑](#footnote-ref-7)
7. Republic Act 9442 : National Council on Disability Affairs - <http://www.ncda.gov.ph/disability-laws/republic-acts/republic-act-9442/> [↑](#footnote-ref-8)
8. Ibid. [↑](#footnote-ref-9)
9. Q & A: Magna Carta of Women (Republic Act No. 9710) | Philippine Statistics Authority [↑](#footnote-ref-10)
10. Chapter 2. Mentally Retarded, Physically Handicapped and Emotionally Disturbed and Mentally Ill Children. Presidential Decree 603 Child and Youth Welfare Code Art. 141 to 186. <http://www.chanrobles.com/childandyouthwelfarecodeofthephilippines.htm> [↑](#footnote-ref-11)
11. Commission on Human Rights of the Philippines. 2007. Rights of persons with disabilities in accessing the justice system. CHRP Working Paper. [http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf\_files/FINAL%20full persons with disabilitiesreport.pdf](http://www.chr.gov.ph/main%20pages/about%20hr/advisories/pdf_files/final%20fullpwdreport.pdf) [↑](#footnote-ref-12)