

African Disability Forum, Arab Organization of Persons with Disabilities, ASEAN Disability Forum, Down Syndrome International, European Disability Forum, Inclusion International,

International Federation of Hard of Hearing People, International Federation for Spina Bifida and Hydrocephalus, Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families, Pacific Disability Forum, World Blind Union, World Federation of the Deaf, World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry

IDA´s submission for the Day of General Discussion on Article 27 of the CRPD (Work and Employment)

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# **Introduction**

1. The International Disability Alliance (IDA) is a unique, international network of eight global and six regional organisations of persons with disabilities (OPDs). Each IDA member represents a large number of national OPDs, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world’s largest –and most frequently overlooked– minority group. IDA’s mission is to advance the human rights of persons with disabilities as a united voice of OPDs utilising the Convention on the Rights of Persons with Disabilities (CRPD) and other human rights instruments.
2. IDA welcomes the initiative by the Committee on the Rights of Persons with Disabilities (hereinafter “the Committee”) to hold a Day of General Discussion on Article 27 (work and employment) of the CRPD, as a first step towards the development of the general comment no. 8, as well as the outline of the future general comment. While the CRPD Committee has addressed key issues in its concluding observations, consolidated and detailed guidance is necessary for States to increase access to employment of persons with disabilities.
3. This IDA’s submission addresses key issues that can enrich the conversations at the Day of General Discussion and the future general comment. Several measures are stressed to tackle inequalities in qualifications and access to employment. The submission also highlights the need to provide detailed guidance on how to implement non-discrimination and reasonable accommodation in employment, through sound normative frameworks and other measures.

# **Overview on the employment of persons with disabilities: Exclusion from employment due to existing barriers**

1. Worldwide, persons with disabilities face barriers in access to employment, leading to lower employment rates and incomes. Data shows that the employment rate of persons with disabilities is significantly lower than that of others: for eight regions, only 36% for persons with disabilities compared to 60% for others.[[1]](#endnote-1) Women with disabilities present even lower employment rates compared to men with disabilities, other women and other men.[[2]](#endnote-2) If working, persons with disabilities are more likely to be engaged in the informal sector, to have lower salaries and worse working conditions and/or to access only part-time jobs.In particular, the global crisis on youth employment poses additional challenges to youth with disabilities.[[3]](#endnote-3)
2. In many countries, persons with disabilities, notably those with intellectual disabilities, are involved in work in segregated settings such as “sheltered workshops”where they are subjected to unacceptable working conditions (e.g., salaries below the minimum wage or just mere “stipends”) and excluded from labour protection and social security. In contravention of the CRPD human rights standards, countries continue to invest great amounts of resources in this practice.[[4]](#endnote-4)
3. Several factors contribute to this. The lack of access to inclusive education and training prevents persons with disabilities from acquiring the qualifications, skills and competencies required by recruiters to compete on equal basis with others, or to develop their own successful business through self-employment. Women with disabilities present a lower access than men.[[5]](#endnote-5)
4. Discrimination of persons with disabilities is pervasive in work and employment. This is the case in recruitments but also in the other stages of the employment cycle, e.g., through exclusion from trainings, limited promotion and career advancement and forced retirement due to the acquisition of an impairment. Negative attitudes, lack of proper individualised assessment of competencies and legal concepts such as “medical fitness” and “incapacity to work” create discriminatory barriers to persons with disabilities to employment. Lack of consideration, and thus effective provision, of support measures and reasonable accommodation completes the pattern of systemic barriers and discrimination. National data shows that, even at equal levels of education, persons with disabilities remain less employed than others.[[6]](#endnote-6) For women with disabilities, disability-based stereotypes intersect with gender-based stereotypes[[7]](#endnote-7) (e.g. role restricted to domestic work).
5. Given the barriers and their exclusion from waged employment, persons with disabilities might be forced attempt undertaking their self-employment usually in small informal business or provision of services, without prospects of growth and merely to seek a minimum income to get by. Available data indicate that persons with disabilities are 9% more represented than others in self-employment and present higher rates of self-employment in low-income countries.[[8]](#endnote-8) Nevertheless, persons with disabilities do not access many relevant services for self-employment, including business development services and even very basic banking services, due to their lack of accessibility and inclusiveness and due to restrictions to legal capacity, in law and regulations and practice.
6. In many countries, climate change and its consequences, including economic losses from climate disasters, significantly reduce work capacities and job opportunities including for persons with disabilities.[[9]](#endnote-9) This is compounded by excluding persons with disabilities from planning and decision-making in disaster management processes.[[10]](#endnote-10) In addition, lack of relevant standards and measures and of inclusive green job employment services, and low awareness about green jobs and opportunities create tremendous barriers to persons with disabilities who seek employment during transitions to low-carbon economies**.[[11]](#endnote-11)**
7. While in many contexts, trade unions have contributed to advance the labour rights of persons with disabilities,[[12]](#endnote-12) in others, persons with disabilities remain excluded from them, limiting the possibility to include their concerns in the collective workers’ voice and influence collective bargaining and agreements. In addition, persons with disabilities deprived of legal capacity are restricted in their right to freedom of association and thus not allowed to create their own trade unions to defend their labor rights.

# **Addressing inequality of persons with disabilities in accessing work and employment**

1. The Sustainable Development Agenda can trigger proactivity from States to implement both inclusive and disability specific measures to improve the employment situation of persons with disabilities, especially of underrepresented groups, which should be in line with the CRPD.[[13]](#endnote-13) Goal 8 on Decent Work and Economic Growth and many of its targets, as well as target 4.4 under Goal 4 on Quality Education, represent key opportunities and as such references to them should be included in the general comment.[[14]](#endnote-14)

## ***Increased access to inclusive education and vocational training***

1. Lack of access to inclusive education and vocational training perpetuates the low level of qualifications of persons with disabilities compared to others and their reduced chances of accessing and advancing in employment. While general comment 4 has addressed article 24 of the CRPD, in the general comment no 8, the Committee should address aspects closely connected to employment, including technical, vocational education and training (TVET).
2. In many contexts, vocational trainings available in practice to persons with disabilities (not mainstream nor inclusive) do not meet the mainstream labor market's requirements and standards,[[15]](#endnote-15) limiting the employability of those few persons with disabilities that access them. Thus, the situation remains that many young persons with disabilities face significant challenges in transitioning to adulthood and seeking to enter the mainstream labour market. Indeed, the lack of marketable skills and knowledge stems from the fact that only few young persons with disabilities have access to formal vocational education and training (TVET).[[16]](#endnote-16) In this vein, the CRPD Committee should call States to ensure that all TVET is fully inclusive of persons with disabilities to improve their qualifications and opportunities,[[17]](#endnote-17) both in urban and rural areas,[[18]](#endnote-18) and to focus efforts on youth with disabilities, drawing on the best practices and successful cases of some countries such as Norway, India, Brazil, and the USA.[[19]](#endnote-19)
3. Any policy strategy on inclusive TVET should incorporate measurable and feasible objectives, clear timeframes, human and financial resources and transparent monitoring and evaluation mechanisms.[[20]](#endnote-20) [[21]](#endnote-21) Targeted training sessions for persons with disabilities should also be available if needed to support them on the side of mainstream vocational programs.[[22]](#endnote-22) Accessibility features and accessible materials during mainstream TVET should correspond to the needs of different groups of persons with disabilities.[[23]](#endnote-23) [[24]](#endnote-24) Finally, given that persons with disabilities might want to seek self-employment,[[25]](#endnote-25) inclusive vocational trainings should be flexible enough to contribute to developing entrepreneurial competencies and knowledge.[[26]](#endnote-26)

## ***Awareness raising on employment of persons with disabilities***

1. The lack of awareness on the rights of persons with disabilities of jobseekers and employees with disabilities, recruiters and employers, as well as the negative stereotypes on persons with disabilities as “incapable”, “not productive”, etc., restrict their opportunities to access employment in the open labor market. In occasions, persons with disabilities internalized those negative stereotypes and attitudes and refrain from seeking employment.[[27]](#endnote-27) Such state of affairs requires strong and diverse awareness raising measures.
2. To begin with, States should adopt inclusive and accessible awareness raising campaigns and program directed to persons with disabilities themselves to inform about their rights in employment, as a way of promoting raising claims and identifying, rejecting and denouncing disability-based discrimination. In addition, information should be disseminated about ways to access to legal aid services and complaint mechanisms to address violations of their rights.[[28]](#endnote-28)
3. IDA also highlights the importance of awareness raising on the employment and work of persons with disabilities **among employers in the public and private sectors**. Training sessions on an inclusive company culture play an important role in improving the participation of persons with disabilities in the open labor market.[[29]](#endnote-29) Indeed, employment support specialists stress on the necessity of educational programs about “inclusive hiring needs” for employers, including managers and human resources recruiters.[[30]](#endnote-30) The Committee has also called for awareness raising measures for “the public and private companies about the reasonable accommodation at work”.[[31]](#endnote-31) Additional elements to include in awareness raising for employers would be 1) basic information about disability[[32]](#endnote-32) and the human rights model; 2) the employment legal framework related to persons with disabilities;[[33]](#endnote-33) 3) examples of benefits of inclusive employment policy;[[34]](#endnote-34) and 4) case studies of successful practices.[[35]](#endnote-35)

## ***Accessibility and access to assistive devices***

1. Accessibility in the broad sense of Article 9 of the CRPD, and more specifically in the workplace and context of employment remains still a challenge in most countries, despite the guidance of general comment no. 2 on Article 9. IDA believes the Committee should call States to include in accessibility plans measures targeting accessibility of working spaces, including both the public sector (which depends on its own action) and the private sector, with baselines, timeframes, goals and indicators, taking into account the needs of the diverse groups of persons with disabilities (e.g. ramps and elevators, signage and information in Braille and Easy to Read Form, sign language interpretation, tactile communication, provision of captioning, alternative and augmentative modes of communication, etc.).
2. As accessibility and reasonable accommodation are often confused, the CRPD Committee should insist in its conceptual distinction and legal implications. Reasonable accommodation, from a non-discrimination perspective (see section IV below) and with immediate application, remains useful as a means to ensure accessibility solutions in a particular case to a candidate or employee with disability, subject to the condition of such measures not posing an “undue or disproportionate burden.” Yet, such provision does not remove the unconditional obligation to adopt measures for general accessibility provision in its different dimensions in employment.
3. Access to assistive products[[36]](#endnote-36) for persons with disabilities remains a challenge in many contexts.[[37]](#endnote-37) This significantly undermine the opportunities of persons with disabilities to fulfil their employment rights. IDA encourages the Committee to highlight the importance of linking social protection and other policies for ensuring access to assistive products with employment policies to support persons with disabilities in the recruitment processes and in the workplace. The provision of assistive devices should be coordinated and timely to make sure that persons with disabilities can participate in recruitment and employment on equal basis with others.

## ***Ending exploitation and segregation of persons with disabilities: forced labour, forced begging and sheltered workshops***

1. Situations of forced labor and exploitation of persons with disabilities can be found in different contexts. Indeed, persons with disabilities might be at a higher risk of different forms of exploitation, including for instance forced begging in favor of criminal networks,[[38]](#endnote-38) forced labour in institutions,[[39]](#endnote-39) modern slavery and human trafficking, especially among women and girls with disabilities.[[40]](#endnote-40)
2. IDA welcomes that the Committee highlights paragraph 2 of Article 27 of the CRPD which addresses the protection of persons with disabilities from forced or compulsory labour. In this vein, The Committee should call States to consider measures such as:

* Adopting legislation and including sanctions of perpetrators by the justice system.[[41]](#endnote-41)
* conducting awareness-raising programmes, including trainings for the police, the judiciary and other key stakeholders on monitoring and combating forced labour;[[42]](#endnote-42)
* establishing effective mechanisms of investigations into the incidents of forced labour of persons with disabilities, both inside and outside institutional settings, providing the victims with adequate protection;[[43]](#endnote-43)
* adopting policies for preventing begging by persons with disabilities, e.g. social protection measures ensuring an adequate standard of living and covering the disability-related expenses.[[44]](#endnote-44)

1. IDA highly regrets that segregation of persons with disabilities in sheltered workshops (“trabajo protegido”, “ateliers protegés”) still happens in many countries around the world. Huge amounts of public resources are allocated to this kind of arrangements,[[45]](#endnote-45) where persons with disabilities, notably those with intellectual disabilities, are subjected to substandard working conditions, including in terms of retribution and social protection benefits, in violation of their rights to work and employment under the CRPD. This Committee has consistently rejected this practice and requested measures for persons with disabilities to transition into an open, inclusive and accessible employment market and requiring the abolition of related legislation and policies.[[46]](#endnote-46) The CESCR Committee continues to do likewise.[[47]](#endnote-47)
2. IDA believes that the general comment should include require States Parties to immediately adopt plans to discontinue this practice, especially as States still invest great amounts of public resources on it. Those resources should be better allocated towards support measures in employment for those persons with disabilities to find employment opportunities elsewhere, respectful of their labour rights and in proper working conditions.

## ***Specific measures to achieve de facto equality of persons with disabilities and promote their employment and career advancement: quotas, targets and incentives***

1. The disadvantaged situation of persons with disabilities in employment calls for specific measures to achieve de facto equality (Article 5(4) of the CRPD).[[48]](#endnote-48) States’ practice has included several measures in this direction, including mandatory employment quotas, employment targets, fiscal, financial and public procurement incentives, among others.
2. Over 100 States have adopted some kind of mandatory quota of employees with disabilities.[[49]](#endnote-49) However, in practice, these measures have presented several concerns. Firstly, many of them include or have led to “reserved posts” to be filled by persons with disabilities only, reproducing stereotypes and limiting the participation of persons with disabilities to low-quality and low-skilled jobs.[[50]](#endnote-50) Secondly, these measures usually benefit disproportionally those persons with disabilities with fewer to none support needs. Finally, weak monitoring and none or ineffective enforcements mechanisms complete this overview.[[51]](#endnote-51)
3. The design of specific measures should be done in consultation with organizations of persons with disabilities, in order to address these and other deficits, which apply not only to quotas but also to other measures. For instance, a big business organization may prefer to pay whatever fine is imposed for lack of compliance with the quota, or not seek any tax exemption; procurement mechanisms and officers may disregard disability related requirements when concluding contracts with companies. The Committee should call States to consider factors such as:

* the need to prevent the reproduction of negative stereotypes and ensure career advancement of persons with disabilities.
* the size of the enterprises (e.g., for a small company, tax exemptions can constitute a great incentive, but not for big corporations).
* the sector of economy and the local context.
* the need for effective remedies and enhance external monitoring (e.g., for bid for tenders including requirements or incentives to hire persons with disabilities).

1. Employed persons with disabilities, whether or not in implementation of a specific measure, find barriers in accessing **promotion and career advancement** on equal basis with others, due to lack of access to additional trainings or lack of opportunities to demonstrate their suitability for higher positions. This particular issue, within the employment cycle, should be tackled by specific measures, together with support and awareness raising to employers (see section B, above).

## ***Enhancing employment and social protection support for the inclusion into the formal market of those persons with disabilities currently in the informal economy and in self-employment***

1. In most countries, persons with disabilities are more likely than others to be **employed in the informal sector.[[52]](#endnote-52)** For instance, in the Russian Federation, only 60% of those persons with disabilities who found employment are in the formal labour market, compared to 80% for others.[[53]](#endnote-53) In Indonesia, the majority of employed persons with “mild and severe disabilities'' are involved in the informal labour market (64.93% and 75.80%, respectively).[[54]](#endnote-54) In Nepal, young persons with disabilities are 5.7% more likely to be employed informally than others.[[55]](#endnote-55)
2. For both persons with disabilities in informal waged employment and those undertaking self-employment (as “independent workers”), States measures in the area of employment should be directed to support their inclusion in the formal economy. In particular, in order to support persons with disabilities in self-employment, States should promote inclusive trainings to develop skills and competencies which are relevant for self-employment in the economical context of the community, such as inclusive business development services. In this area, repealing or eradicating any restrictions to legal capacity, in law and in practice, contrary to Article 12 of the CRPD, becomes essential to ensure that all persons with disabilities, including e.g. blind persons, persons with intellectual and persons with psychosocial disabilities, can access the financial services necessary to develop an economic activity independently.
3. On its turn, social protection measures, including both income replacement allowances and disability allowances (for disability related costs),[[56]](#endnote-56) must be compatible with and not create disincentives to seeking formal waged employment or engaging or registering in formal self-employment.[[57]](#endnote-57) Persons with disabilities should not be placed in the “benefit trap” and forced to choose between a minimum but stable income (the benefit) and seeking or undertaking formal economic activities, as this discourages their engagement and reproduces exclusion. By the contrary, an income that allows for an adequate standard of living and covers disability related costs should always be ensured, whether or not the person is initiating an independent economic activity or just found an employment (as its stability might be uncertain).
4. The COVID19 pandemic has come to recall that, in many contexts, **self-employed persons have weaker to non-existent social protection support in case of lack of income**. This is also the case for self-employed independent workers with disabilities who are not entitled to benefits associated with traditional “employee” status. IDA believes that legal and regulatory framework should be reviewed on account of the experience of economic life in this last period. It is essential to improve the social protection of persons with disabilities in self-employment, especially in light of health and economic emergencies.

# **Protection from non-discrimination: legal and regulatory frameworks**

1. Sound and clear legal and regulatory frameworks that provide for effective remedies are essential to protect persons with disabilities from discrimination in employment. Regulations should clarify in detail the duties of employers and employees with disabilities and the procedures related to the provision of reasonable accommodation throughout the employment cycle. Increased visibility and awareness of frameworks should be ensured, mainly through the mainstreaming in general labour legislation and the provision of guidance and training to public and private employers and legal practitioners.

## ***Individualised assessments: “essential functions of the job”, support and reasonable accommodation***

1. This Committee has always stressed the need to ensure non-discrimination of persons with disabilities in employment.[[58]](#endnote-58) However, the Committee has not so often elaborated in more detail on the concrete implications for employers’ assessments of candidates and reassignments to persons acquiring an impairment while in employment. This Committee has requested to “ensure individualized assessments are conducted to determine suitability for bona fide occupational requirements”[[59]](#endnote-59) and “to replace any assessment of suitability to work with an assessment that considers the needs and requirements for reasonable accommodation at work for persons with disabilities.”[[60]](#endnote-60)
2. Indeed, assessments of candidates should always be individualised and focused on the “essential functions of the job”:[[61]](#endnote-61) never general and standardised (regardless of the specific core functions of the job). In addition, they should also contemplate the duty to provide reasonable accommodation and support measures.
3. IDA believes that the Committee should elaborate on and consolidate these elements to provide States with a full picture of what non-discrimination means regarding candidates and employees with disabilities, stating very clearly that:

* Labour legislation must explicitly prohibit non-discrimination on the basis of disability, including denial of reasonable accommodation.
* Job descriptions should clearly identify the “essential functions of the job.”[[62]](#endnote-62)
* Assessments of candidates must be individualised focusing on whether the person´s qualifications match those “essential functions” and considering the duty to provide support measures, and reasonable accommodations.
* Occupational health assessments should also focus on “the individual capabilities of the person with disability, the core functions of the job and the environment in which that job is operating,”[[63]](#endnote-63) and not be based on prejudice and negative stereotypes.

## ***Confidentiality of disability related information in employment, including during recruitment procedures***

1. In the area of employment, many persons with disabilities, in particular those with “invisible impairments” such as persons with psychosocial disabilities, might find their right to privacy violated by the informal dissemination of disability or impairment related personal information, e.g., information on the diagnosis of their mental health conditions. Due to negative attitudes, this can lead to discrimination and exclusion within the work environment and even to the dismissal from employment.
2. The CRPD Committee has room to further develop its jurisprudence in regard to article 22 of the CRPD (right to privacy). In connection with the right to work and employment, under article 27 of the CRPD, IDA believes that the Committee should make clear that:

* employees and candidates with disabilities should only have to disclose to their management line (or human resources department) disability related information which is strictly required for the provision of support and reasonable accommodation.
* employees and candidates with disabilities should not be pressured in any way to provide their consent for disclosing any other disability related information,
* employers should ensure that the information is managed confidentially, especially from other employees, and restrict its use to the purpose indicated.

## ***The discriminatory impact of artificial intelligence on persons with disabilities***

1. The use of artificial intelligence (AI) in employment processes increases, including candidate sourcing, pre-employment assessing, and interviewing, creating new barriers and discrimination for persons with disabilities.[[64]](#endnote-64) For instance, software may reject applications of job seekers with disabilities given their low representation in statistics on past successful employees (due to a lower employment rate).[[65]](#endnote-65) Face and body recognition systems used in interview support software often do not recognize facial and gesture characters of persons with Down syndrome, visual and/or mobility impairments.[[66]](#endnote-66) Automatised pre-employment assessments are based on a one-size-fits-all approach for evaluating job applicants' ability and skills creating barriers for candidates with cognitive and other types of disabilities.[[67]](#endnote-67) AI also contributes to intersectional discrimination of women with disabilities and other persons with disabilities, by reproducing gender and racial stereotypes.[[68]](#endnote-68)
2. Public authorities started to react to this trend. The EU General Data Protection Regulation provides that “the data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her."[[69]](#endnote-69) Notably, some countries have taken initiative, including by seeking to develop regulatory framework to ensure the transparent, explainable, and non-discriminatory usage of AI.[[70]](#endnote-70)
3. IDA considers, in line with literature on the topic,[[71]](#endnote-71) and to prevent further AI discrimination of persons with disabilities, that any development and use of AI in employment should be required to: 1) protect worker data and confidentiality;[[72]](#endnote-72) 2) ensure transparency of the employment process;[[73]](#endnote-73) 3) apply participatory design in the development and tests of employment-related software (involving potential users from unrepresented groups, such as persons with disabilities). In this sense, the development of the general comment on article 27 gives the CRPD Committee the opportunity to call States to develop legislative and regulatory frameworks that require the respect of human rights and non-discrimination of persons with disabilities by AI actors and their software and provide for effective remedies.[[74]](#endnote-74)

## ***Discrimination to employees associated with persons with disabilities: reasonable accommodation by association to prevent negative impacts on the rights of persons with disabilities***

1. The outline for the general comment highlights the need for “affirmative actions” targeting parents of children with disabilities. Indeed, parents and primary caregivers of persons with disabilities often experience disadvantages related to employment and earning opportunities. For instance, a study in Australia shows that 26.4% of carers of adults with psychosocial disabilities stopped working altogether, and 25.8% of them were forced to reduce their working hours.[[75]](#endnote-75) In Belgium, parents of children with disabilities were less likely to work compared to other parents.[[76]](#endnote-76) In other contexts, with a large informal sector, especially in rural areas, caregivers of persons with disabilities are frequently subjected to various types of labour discrimination, including pay cuts, verbal assault, etc.[[77]](#endnote-77)
2. Primary caregivers of persons with disabilities who are discriminated by association and/or forced to leave employment find reduced their income and capacity to afford services for their relative(s) with disabilities. As services are usually not free from cost, insufficient and/or not provided within the community, the household risks stepping into a downward spiral with negative consequences to the person with disability in many areas. On top of other possible measures, non-discrimination and reasonable accommodation in employment for primary caregivers (associates) provide with an immediate legal tool to support them in adjusting their work duties with their caring responsibilities.
3. This idea would not be new for the Committee. In 2014, the Committee recommended the European Union to “take necessary measures to ensure that all employees of the European Union who are persons with disabilities, *or have family members with disabilities, receive the reasonable accommodation they need to enjoy their rights from the labour and related relationships on an equal basis with others*.”[[78]](#endnote-78) OHCHR noted in 2016 that “recent developments in the field of employment suggest that the duty to provide reasonable accommodation also applies to the relatives of persons with disabilities.”[[79]](#endnote-79) Nevertheless, while general comment no. 6 on Article 5 of the CRPD includes associates of persons with disabilities as entitled to protection of disability based discrimination, it remains more elusive when it comes to the provision of reasonable accommodation in the exercise of their rights.
4. While the outline for the general comment refers to “affirmative actions” targeting parents of children with disabilities, IDA believes that the Committee has the opportunity to elaborate on the right of primary caregivers of persons with disabilities[[80]](#endnote-80) to reasonable accommodation in employment, in order to prevent the indirect negative impacts of the demands of the labour market on the lives of persons with disabilities.

# **Data collection and disaggregation by disability in the area of employment for policy design, monitoring and evaluation**

1. IDA stresses that the lack of accurate data remains a serious problem for 1) assessing the current situation of employment of persons with disabilities, including the disability-pay gap; 2) adopt measures, in particular targeted measures addressing underrepresented groups of persons with disabilities, and 3) monitor and evaluate their impact as well as the overall progress in the implementation of Article 27. In particular, lack of disaggregated data prevents the proper monitoring and enhanced implementation of “affirmative actions”[[81]](#endnote-81) for persons with disabilities in employment which remain ineffective. For instance, OHCHR has noted that “a low level of monitoring allows employment quotas to remain unfilled” and that quotas tend to “benefit specific groups of persons with disabilities” and not others.[[82]](#endnote-82) [[83]](#endnote-83)
2. Disaggregation should cover the diversity and complexity of the situation of persons with disabilities in employment, including intersectional identities and employment-related variables (waged/self-employment, full-time/part-time, salary level, etc.), to identify inequalities between persons with disabilities and others, and between the different groups of persons with disabilities. Indeed, research provides examples of inequalities based on disability and intersectional identities. In China, persons with physical, intellectual or “mental” disabilities are less likely to be employed in comparison with people with hearing impairments.[[84]](#endnote-84) In the USA, Native American and African American deaf persons report lower income and employment rates than White or Asian deaf people.[[85]](#endnote-85)
3. Administrative data, e.g., from social protection systems, could be retrieved, systematised and disaggregated to assess the situation of persons with disabilities in registered waged employment, self-employment and social protection benefits. Statistical data collected by national statistics offices in census, labour force surveys and disability surveys can provide a larger picture, including those in informal employment. Methodologies should allow for analysis and comparison within and among sources.[[86]](#endnote-86)
4. The Committee also has identified criteria for data disaggregation, on top of disability, including age, sex, type of employment and salary,[[87]](#endnote-87) type of barriers encounters and geographical location.[[88]](#endnote-88) It has also recommended explicitly to States the use of the Washington Group Set of Questions on Disability.[[89]](#endnote-89) IDA encourages the Committee to consolidate and complete its jurisprudence on these points on grounds for disaggregation and methodology, by developing a strong section on data collection, in line with obligations under Article 31 of the CRPD, providing as much detailed guidance as possible and referring explicitly to the current main technical tools developed by the Washington Group on Disability Statistics and the International Labour Organization.[[90]](#endnote-90)

# **Recommendations:**

1. In view of the above considerations, IDA encourages the CRPD Committee, when developing its general comment no. 8, to:
   1. Call States to adopt and/or review their labour legislation and regulations to include sound, clear and detailed provisions to protect persons with disabilities and their associates from discrimination based on disability and on other grounds, throughout the stages of the employment cycle, including by:
      1. ensuring individualised assessments of competencies focused on the essential functions of the job.
      2. contemplating the duties to provide support measures and/or reasonable accommodation to candidates and employees with disabilities.
      3. including the possibility for reassignment for persons with disabilities who acquire an impairment during employment.
      4. ensuring confidentiality of disability related data which should only be used for the purposes of providing support and reasonable accommodation.
      5. addressing discrimination through the innovative use of Artificial Intelligence, by engaging with and regulating this sector of employment practice.
      6. ensuring the provision of reasonable accommodation to primary care givers of persons with disabilities in the exercise of their right to employment to prevent negative effects on their relatives with disabilities.
   2. Call States to strengthen their data collection systems for increased and improved data collection and disaggregation by disability, gender, type of employment, salary level, and many other relevant grounds to assess the situation of persons with disabilities in employment in all its complexity.
   3. Call States to adopt urgent measures to raise awareness of and prevent and sanction perpetrators any situation of exploitation of persons with disabilities, as well as providing remedies and support to the victims, including trainings to police and justice system officials.
   4. Call States to immediately adopt plans to move swiftly in the phasing out of sheltered workshops or any other segregated setting where persons with disabilities are subjected to substandard working conditions, excluded from labour rights and social security and excluded from the open labour market.
   5. Call States to, in consultation with organizations of persons with disabilities and in coordination with other stakeholders including the private sector, adopt measures to promote the employment of persons with disabilities, including:
      1. Increased access to inclusive education and TVET, connected to the economic reality of the context and flexible enough for the acquisition of entrepreneurial skills, ensuring the provision of support as required.
      2. Awareness raising measures directed to persons with disabilities on their rights, and to public and private employers on their legal duties and on the benefits and contributions that persons with disabilities bring to their organizations.
      3. Measures to enhance accessibility in general and of workplaces in particular and access to assistive devices for enhanced autonomy of persons with disabilities and increased opportunities to enjoy their employment rights.
      4. Specific measures, including quota measures, fiscal, financial and public procurement incentives, to favour the employment and career advancement of persons with disabilities, tailored to the specific situation of each economic sector and of the diversity of companies, and with strong monitoring and evaluation mechanisms to ensure their effectiveness and prevent negative outcomes.
      5. Measures to ensure that social protection schemes are aligned with the purpose of promoting access to formal employment of persons with disabilities, while always ensuring a sufficient income to ensure an adequate standard of living and the coverage of disability related costs.

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1. UNDESA, *Disability and Development Report: Realizing the Sustainable Development Goals by, for and with Persons with Disabilities* (UN, 2018), p. 152. See also, United States Bureau of Labor Statistics. (2019). “Employment status of the civilian noninstitutional population by disability status and selected characteristics, annual averages”. Available at: www.bls.gov/news.release/disabl.t01.htm. [↑](#endnote-ref-1)
2. UNDESA, *Disability and Development Report* (UN, 2018), p. 152. [↑](#endnote-ref-2)
3. ILO, *Inclusion of youth with disabilities: The business case* (2014). [↑](#endnote-ref-3)
4. Data from Eurostat show that countries invest thousands of millions of euros. One country reaching 1,840 million euros. See Labour Market Policy Dataset, Category 5.1, 2016. [↑](#endnote-ref-4)
5. UNDESA, *Disability and Development Report* (UN, 2018), p. 79. [↑](#endnote-ref-5)
6. US Bureau of Labor Statistics, “[Employment status of the civilian noninstitutional population by disability status and selected characteristics, 2019 annual averages](http://www.bls.gov/news.release/disabl.t01.htm.)”. [↑](#endnote-ref-6)
7. OHCHR, [A/HRC/46/47](https://undocs.org/A/HRC/46/47), para. 8. [↑](#endnote-ref-7)
8. UNDESA, Disability and Development Report, 2019, p. 157. The data covers 19 countries [↑](#endnote-ref-8)
9. ILO, *Persons with disabilities in a just transition to a low-carbon economy* (2019), p. 3. [↑](#endnote-ref-9)
10. ILO, *Persons with disabilities in a just transition to a low-carbon economy* (2019), p. 2. [↑](#endnote-ref-10)
11. See ILO, [“Written submission to the questionnaire in relation to Human Rights Council Resolution A/HRC/RES/41/21 on human rights and climate change”.](https://ohchr.org/Documents/Issues/ClimateChange/Submissions/Disabilities/ILO.docx) [↑](#endnote-ref-11)
12. ILO (2017), *Trade Union action on Disability and Decent Work: A Global Overview*  [↑](#endnote-ref-12)
13. See OHCHR, SDG-CRPD Resource Package (2020), Policy Guideline on SDG 8 Decent Work and Economic Growth. [↑](#endnote-ref-13)
14. IDA notes that only target 8.5 of the SDGs is explicitly mentioned, which might restriction attention to it and its indicators. On the more detail connection between SDG targets and CRPD, see OHCHR, SDG-CRPD Resource Package (2020), Policy Guideline on SDG 8 Decent Work and Economic Growth and on SDG 4 Quality Education. [↑](#endnote-ref-14)
15. See OHCHR SDGs-CRPD Resource Package (2020) Policy Guideline on SDG 4 Quality Education. [↑](#endnote-ref-15)
16. Lindsay, S., Adams, T., McDougall, C., & Sanford, R. (2012). Skill development in an employment-training program for adolescents with disabilities. *Disability and rehabilitation*, 34(3), 228-237, pp. 228-229. [↑](#endnote-ref-16)
17. ILO, *Making TVET and skills systems inclusive of persons with disabilities*, 2017. [↑](#endnote-ref-17)
18. [CRPD/C/SLV/CO/2-3](https://undocs.org/CRPD/C/SLV/CO/2-3), para. 50 (c). [↑](#endnote-ref-18)
19. ILO, *Inclusion of youth with disabilities: The business case* (2014). [↑](#endnote-ref-19)
20. ILO, *Inclusion of People with Disabilities in Vocational Training. A Practical Guide*. (2013) [↑](#endnote-ref-20)
21. OHCHR SDGs-CRPD Resource Package (2020) Policy Guideline on SDG 4 Quality Education, pp. 45-46. [↑](#endnote-ref-21)
22. OHCHR SDGs-CRPD Resource Package (2020) Policy Guideline on SDG 4 Quality Education., p. 45. [↑](#endnote-ref-22)
23. ILO, *Making TVET and skills systems inclusive of persons with disabilities*, 2017, p. 8. [↑](#endnote-ref-23)
24. ILO, Including Persons with Disabilities in Technical and Vocational Education and Training (2016), p17. For instance, trainees with intellectual disabilities may need training materials ahead of time or assistance for taking notes, trainees with hearing impairment may require a sign language interpreter or captioned video [↑](#endnote-ref-24)
25. Vaziri, D., Schreiber, D., Wieching, R. and Wulf, V. (2014). Disabled entrepreneurship and self-employment:

    The role of technology and policy building. *Background Paper for the OECD Project on Inclusive Entrepreneurship,* p.1 [↑](#endnote-ref-25)
26. Bagheri, A., & Abbariki, M. (2017). Competencies of disabled entrepreneurs in Iran: implications for learning and development. *Disability & Society*, 32(1), 69-92. [↑](#endnote-ref-26)
27. Hielscher, E., & Waghorn, G. (2017). Self-stigma and fears of employment among adults with psychiatric disabilities. *British journal of occupational therapy*, 80(12), 699-706. [↑](#endnote-ref-27)
28. See [A/HRC/43/27](https://undocs.org/en/A/HRC/43/27), para. 41. [↑](#endnote-ref-28)
29. Chan, F., Tansey, T. N., Iwanaga, K., Bezyak, J., *et al* (2020). Company Characteristics, Disability Inclusion Practices, and Employment of People with Disabilities in the Post COVID-19 Job Economy: A Cross Sectional Survey Study. *Journal of Occupational Rehabilitation*, 1-11. [↑](#endnote-ref-29)
30. Rashid, M., Hodgetts, S., & Nicholas, D., Building employer capacity to support meaningful employment for persons with developmental disabilities: A grounded theory study of employment support perspectives*. Journal of Autism and Developmental Disorders,* 47(11) (2017), 3510-3519, p. 3516. [↑](#endnote-ref-30)
31. [CRPD/C/BGR/1](https://undocs.org/en/CRPD/C/BGR/1), para. 58(c). [↑](#endnote-ref-31)
32. ILO, The Competitive Advantage of Hiring Persons with Disabilities. An Employer’s Guide to Disability Inclusion at the Workplace, 2016. [↑](#endnote-ref-32)
33. Idem. [↑](#endnote-ref-33)
34. For instance, employee turnover for persons with disabilities is 48% less than the remaining population ([Autism speaks, Workplace Initiative, *Disability Employment and Inclusion: your guide to success*](https://www.autismspeaks.org/sites/default/files/2018-09/Disability-Employment-and-Inclusion_Your-Guide-to-Success.pdf), 2017, p.11). [↑](#endnote-ref-34)
35. Kulkarni, M. (2016). Organizational career development initiatives for employees with a disability. *The International Journal of Human Resource Management*, 27(14), 1662-1679, p. 1672 [↑](#endnote-ref-35)
36. ‘Assistive products’ are those designed to “maintain or improve an individual’s functioning and independence, thereby promoting their well- being” (World Health Organization, “Assistive Technology”, 18 May 2018) [↑](#endnote-ref-36)
37. According to the WHO, between 5 to 15% persons who need a wheelchair actually access to it in low- and middle-income countries (See WHO, *Assistive technology, 2018*). [↑](#endnote-ref-37)
38. OHCHR, SDG-CRPD Resource Package (2020), Policy Guideline on SDG 8 Decent Work and Economic Growth, p 41; [CRPD/C/MAR/CO/1](https://undocs.org/en/CRPD/C/MAR/CO/1), para. 34(a). [↑](#endnote-ref-38)
39. [CRPD/C/IND/CO/1](https://undocs.org/CRPD/C/IND/CO/1), para. 32(c). [↑](#endnote-ref-39)
40. [CRPD/C/THA/CO/1](https://undocs.org/en/CRPD/C/THA/CO/1), para. 33. [↑](#endnote-ref-40)
41. OHCHR, SDG-CRPD Resource Package (2020), Policy Guideline on SDG 8 Decent Work and Economic Growth, p. 41; [CRPD/C/THA/CO/1](https://undocs.org/en/CRPD/C/THA/CO/1), para. 34. [↑](#endnote-ref-41)
42. See OHCHR, SDG-CRPD Resource Package (2020), Policy Guideline on SDG 8 Decent Work and Economic Growth, p. 41. [↑](#endnote-ref-42)
43. [CRPD/C/KOR/CO/1,](https://undocs.org/en/CRPD/C/KOR/CO/1) para. 32. [↑](#endnote-ref-43)
44. See OHCHR, SDG-CRPD Resource Package (2020), Policy Guideline on SDG 8 Decent Work and Economic Growth, p. 41. [↑](#endnote-ref-44)
45. See paragraph 4 of this submission. [↑](#endnote-ref-45)
46. [CRPD/C/AUS/CO/2-3](https://undocs.org/CRPD/C/AUS/CO/2-3), para. 50(b); [CRPD/C/TUR/CO/1](https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvOO0RvDbzSfy057%2flfh1RyuPPMs4u7aeyVVDXGO7kQaXeKOi4HMWsKQKenk8jrFoo0FZVcmmCHHcLleRFN8xZf4sNINqiu43mGrHNXgI14t), para. 53. [↑](#endnote-ref-46)
47. [E/C.12/FIN/CO/7](https://undocs.org/E/C.12/FIN/CO/6), para 30, adopted on March 8th, 2021. [↑](#endnote-ref-47)
48. While the outline refers to “affirmative actions” or “measures”, IDA believes it would be more accurate to refer the broader idea of “specific measures to achieve *de facto* equality” as done by Article 5(4) of the CRPD, which includes but is not limited to temporary measures, neither to measures where persons with disabilities are preferred over others in selection processes (see [CRPD/C/GC/6](https://undocs.org/CRPD/C/GC/6), paras. 28 and 29; and [A/HRC/34/26](https://undocs.org/A/HRC/34/26), para. 19). [↑](#endnote-ref-48)
49. ILO (2019). *Promoting Employment Opportunities for People with Disabilities: Quota Schemes*, Vol. 2 [↑](#endnote-ref-49)
50. See OHCHR, SDG-CRPD Resource Package (2020), Policy Guideline on SDG 8 Decent Work and Economic Growth, p. 31. [↑](#endnote-ref-50)
51. See section D, para. 45 of this submission. [↑](#endnote-ref-51)
52. Disability and Development Report (2019) *Realizing the Sustainable Development Goals by, for and with persons with disabilities,* p. 155. [↑](#endnote-ref-52)
53. Demianova A. (2018) Employment of Disabled People in Russian in the Context of the Digital Economy. *Basic Research Program Working Papers*, HSE, 1-28, p. 14. [↑](#endnote-ref-53)
54. Halimatussadiah, A., Nuryakin, C., Muchtar, P. A., Bella, A., & Rizal, H. (2017). Mapping Persons with Disabilities (PWDs) in Indonesia Labor Market. *Economics and Finance in Indonesia*, 63(2), 126-149, pp. 134-136. [↑](#endnote-ref-54)
55. Ciccone, A., Roncarati, M., Chaykamhang, T. (2019) The Challenges of Youth and Informal Employment in Selected Asia-Pacific Countries. *Social Development Working Papers*, 2019 (2),1-29, p.23. [↑](#endnote-ref-55)
56. Both grounds are usually not distinguished in social protection schemes, including means tested schemes in disability allowances (See [A/70/297](https://undocs.org/A/70/297), para. 52.). In line with the CRPD, the CESCR Committee has clearly distinguish them (see [E/C.12/FIN/CO/7](https://undocs.org/en/E/C.12/FIN/7), para 30: “that the amount of pension benefits adequately cover both income replacement and disability-related costs”). [↑](#endnote-ref-56)
57. [A/70/297](https://undocs.org/A/70/297), para. 52. [↑](#endnote-ref-57)
58. E.g. ([CRPD/C/HTI/CO/1](https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsmn%2bMgbQ3IomHY0qcBUzKBt6tb0OcehXjHBhMICwvEiJArOqjDtYENBtUaIruXaIaoSXAnlWH92vAX8uHP4r7%2f7lTfkr5WW%2fkBNLwAqJe2fx), para. 49; [CRPD/C/CUB/CO/1](https://undocs.org/CRPD/C/CUB/CO/1), para. 46; [↑](#endnote-ref-58)
59. [CRPD/C/JOR/CO/1](https://undocs.org/CRPD/C/JOR/CO/1), para. 50(a). [↑](#endnote-ref-59)
60. [CRPD/C/MLT/CO/1](https://undocs.org/en/CRPD/C/MLT/CO/1), para. 40(c). [↑](#endnote-ref-60)
61. ILO defines the essential functions of the job as “the fundamental job duties or requirements of a particular job, [which] cannot be eliminated or substantially modified without changing the nature of the job.” See ILO. (2016). *Promoting diversity and inclusion through workplace adjustments. A practical guide* [↑](#endnote-ref-61)
62. See OHCHR, SDG-CRPD Resource Package, SDG 8 (2020). Decent Work and Economic Growth, p. 40. [↑](#endnote-ref-62)
63. See OHCHR, SDG-CRPD Resource Package, SDG 8(2020). Decent Work and Economic Growth, p. 39. [↑](#endnote-ref-63)
64. See e.g. Nugent, S., Jackson, P., et al. (2020) Recruitment AI has a Disability Problem: questions employers should be asking to ensure fairness in recruitment, Institute for Ethnical AI. [↑](#endnote-ref-64)
65. See e.g. Nugent, S., Jackson, P., et al. (2020) Recruitment AI has a Disability Problem: questions employers should be asking to ensure fairness in recruitment, Institute for Ethnical AI , p. 8. [↑](#endnote-ref-65)
66. Guo, A., Kamar, E., Vaughan, J. W., Wallach, H., & Morris, M. R. (2019). Toward fairness in AI for people with disabilities: A research roadmap. arXiv preprint arXiv:1907.02227), pp. 2-4. [↑](#endnote-ref-66)
67. See e.g. Nugent, S., Jackson, P., et al, Recruitment AI has a Disability Problem: questions employers should be asking to ensure fairness in recruitment, Institute for Ethnical AI, 2020, p. 12. [↑](#endnote-ref-67)
68. Zuiderveen Borgesius, F. J. (2020). Strengthening legal protection against discrimination by algorithms and artificial intelligence. The International Journal of Human Rights, 24(10), 1572-1593). [↑](#endnote-ref-68)
69. European Union’s General Data Protection Regulation (2016), Article 22, para. 1 [↑](#endnote-ref-69)
70. See e.g. Lauterbach, A. (2019) “Artificial intelligence and policy: quo vadis?” in Digital Policy, Regulation and Governance, 238-263, p. 225. In this direction, the article highlights the case of France, among others. With another approach, India has focused on how to use technologies for social inclusion (including for finding quality jobs). [↑](#endnote-ref-70)
71. See Berg, J. (2019). Protecting Workers in the Digital Age: Technology, Outsourcing, and the Growing Precariousness of Work. Comp. Lab. L. & Pol'y J., 41, 69, pp. 90- 93. [↑](#endnote-ref-71)
72. See section IV-B of this submission. [↑](#endnote-ref-72)
73. including research of how particular system operate, the evaluation risk of discrimination against specific groups of persons with disabilities. [↑](#endnote-ref-73)
74. See also Council of Europe Commissioner for Human Rights. (2019). *Unboxing Artificial Intelligence: 10 steps to protect Human Rights*.) [↑](#endnote-ref-74)
75. Diminic, S., Hielscher, E., & Harris, M. G. (2019). Employment disadvantage and associated factors for informal carers of adults with mental illness: are they like other disability carers? BMC public health, 19(1), 1-13, p. 5 [↑](#endnote-ref-75)
76. Vinck J., & Van Lancker, W. (2019). An intersectional approach towards parental employment in families with a child with a disability: the case of Belgium. SPSW Working Paper No. 4. Leuven: Centre for Sociological Research, KU Leuven; p.16. In addition, their ability to reconcile professional with caring responsibilities depends on the "severity” of the impairment of the child. [↑](#endnote-ref-76)
77. See e.g. Grech, S. (2019). Disabled Families: The Impacts of Disability and Care on Family Labour and Poverty in Rural Guatemala. Societies, 9(4), 76, 1-16. [↑](#endnote-ref-77)
78. [CRPD/C/EU/CO/1](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fEU%2fCO%2f1&Lang=en), para. 79. (Under Article 5 of the CRPD). [↑](#endnote-ref-78)
79. [A/HRC/34/26](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/26), para. 25. The case cited by OHCHR in footnote 19 of its Thematic Study pertains to the Californian [*Fair Employment and Housing Act*](https://www.dfeh.ca.gov/legal-records-and-reports/laws-and-regulations/) (Government Code, Title 2, Division 3, Part 2.8), which by then included the duty to provide reasonable accommodation, and in which the concept of disability includes associates to persons with disabilities (§ 12926, subd. (o)) [↑](#endnote-ref-79)
80. (not only “parents with children with disabilities” as mentioned in the outline). [↑](#endnote-ref-80)
81. More technically “specific measures to increase de facto equality”, as stated in Article 5(4) of the CRPD. [↑](#endnote-ref-81)
82. See OHCHR, SDG-CRPD Resource Package, SDG 8(2020). Decent Work and Economic Growth, p. 31. [↑](#endnote-ref-82)
83. This is the case, e.g., in Kenya, where inadequate monitoring “contributes to non-compliance with the 5 % quota for employment of persons with disabilities” and prevents assessing formal employment (See Jahan, N., & Holloway, C. (2020). *Barriers to Access and Retain Formal Employment for Persons with Disabilities in Bangladesh and Kenya*, p. 22. [↑](#endnote-ref-83)
84. Wang, C., & Li, M. (2018). “Gender differences in employment among people with disabilities in China”. Journal of Disability Policy Studies, 29(1), 12-21, p. 19. [↑](#endnote-ref-84)
85. Garberoglio, C. L., Palmer, J. L., Cawthon, S. W., & Sales, A. (2019). Deaf people and employment in the United States: 2019, p. 10. [↑](#endnote-ref-85)
86. OHCHR, SDG-CRPD Resource Package, SDG 8 (2020) Decent Work and Economic Growth, p. 26. [↑](#endnote-ref-86)
87. [CRPD/C/ALB/CO/1](https://undocs.org/CRPD/C/ALB/CO/1), para. 44(c). [↑](#endnote-ref-87)
88. [CRPD/C/NER/CO/1](https://undocs.org/en/CRPD/C/NER/CO/1), para. 44(a). [↑](#endnote-ref-88)
89. E.g. [CRPD/C/ALB/CO/1](https://undocs.org/CRPD/C/ALB/CO/1), para. 52(b); [CRPD/C/IND/CO/1](https://undocs.org/CRPD/C/IND/CO/1), para. 65; and [CRPD/C/NOR/CO/1](https://undocs.org/CRPD/C/NOR/CO/1), para. 50(a). [↑](#endnote-ref-89)
90. For labour force surveys, the ILO has developed an add-on module, based on the Washington Group of Questions, which even includes a section on workplace accommodation (See Labour force survey (LFS) resources. Available at: https://ilostat.ilo.org/resources/lfs-resources/) [↑](#endnote-ref-90)