São Paulo, March 15, 2021.

**To the Monitoring Committee of the Convention on the Rights of Persons with Disabilities**

**Contribution to the Genneral Comment on article 27 (work and employment) of the Convention on the Rights of Persons with Disabilities**

Dear Sirs,

The **Jô Clemente Institute** (“IJC”) is a non-profit civil society organization, established in 1961, in the city of São Paulo, Brazil, which is dedicated to the inclusion, defense and guarantee of rights of persons with disabilities. In the field of the right to work and employment – focus of the General Comment on article 27, that this Committee is preparing, IJC has extensive experience. Since 1971, it supports persons with intellectual disabilities to enter the labor market, and since 2013, it has incorporated the Supported Employment methodology, currently used in several countries around the world.

Through this methodology, IJC gets to know each person with intellectual disability and understand their strengths, interests and eventual support they need. Courses and orientation are offered, before and after work inclusion, based on the individual needs of each person. In parallel, IJC carries out a work within the contracting companies, analyzing the available job vacancies, the profile of the professionals and identifying the best candidates. IJC promotes lectures and awareness-raising actions, preparing the company and local team to receive and include the person with disability and then following up on the inclusion process.

In view of its experience with the topic, IJC herein presents the following considerations, in order to contribute to the consultation.

**Interpretation of articles 27.1 (a): Discrimination in the workplace, including segregation in the workplace and 27 (b): The right to equal pay for work of equal value**

1. Regarding the right to equal payment for equal work, there are plenty situations in which only simple, operational-level vacancies are made available for persons with disabilities. Furthermore, career growth is not stimulated.

2. Frequently, persons with disabilities are seen as the last ones in the hierarchical scale and the relationships they establish in the work environment are merely formal. It is very hard for persons with disabilities to meet or relate to their colleagues out of the company´s door, meaning, out of their working place.

3. Thus, even being inserted in the work environment, that is, although employed, persons with disabilities remain excluded - this is what some researchers call “threshold”. In this condition, persons with disabilities remain in some sort of threshold or limbo, between the exclusion and the inclusion.

4. The issue of qualification of persons with disabilities is also something to be noted. In Brazil the problem behind unemployment of persons with disabilities is not the mere lack of qualification, but prejudice against persons with disabilities, even when they are professionally qualified.

5. Qualification ends up being an excuse for not hiring person with disabilities. Sometimes people with disabilities, even technically qualified end up being overrepresented in low-paying jobs. This is even more evident for persons with intellectual or psychosocial disabilities. Training and qualification may be of little use when it does not come with a total change of mentality of those who are employing persons with disabilities.

6. Talking about equal payment for a work of equal value requires making it available, for person with disabilities, jobs that are not just of an operational nature, and career plans should be structured in a way to allow persons with disabilities to achieve professional progress on equal conditions.

**Interpretation of article 27 (h): Affirmative action programs and special attention to people with disabilities particularly excluded from the labor market**

7. In order to settle inequalities, Brazil passed the Law 8.213/1991, also called the Quota Law, an affirmative action mechanism that aims to include persons with disabilities in the labor market, establishing that companies with 100 or more employees are obliged to fill from 2% (two percent) to 5% (five percent) of their positions with person with disabilities or persons who were rehabilitated.

8. The Brazilian legislation highlights some points that can inspire other countries, such as the provision that the dismissal of a person with a disability or a rehabilitated person at the end of a 90-day term contract or in case of an unmotivated dismissal in an indefinite term contract may only occur if another person with disability or a rehabilitated person is hired to that position. (art. 93, § 1, Law 8,213 / 1991).

9. Brazil also has a legislation on apprenticeship, that provides for the mandatory hiring of young people as apprentices. Taking that into account, another interesting provision is the prohibition of the so-called double quota, that is, the possibility of a company to fill both, the quota of persons with disabilities and the quotas of apprentices by hiring a young person with disability.

10. The Brazilian Inclusion Law on Persons with Disabilities (Law 13,146/2015) updated the Quota Law to provide that “for the reservation of positions it will be only considered the direct hiring of a person with disability, excluding apprentices with disabilities referred to in the Consolidation of Labor Laws (CLT) (art. 93, §3º, Law 8.213/1991).

11. There are also quotas for persons with disabilities in the public service. Law 8,112/1990, which provides for the legal regime of the civil servants of the Union, ensures a reservation of up to 20% of the vacancies to persons with disabilities in public office contests.

12. Despite being the quotas an important affirmative action mechanism, persons with disabilities still face high unemployment rates - from the 25% of the Brazilian population with disability, only 1% of formal job openings are occupied by persons with disabilities.

13. There are still many difficulties that need to be addressed, such as public notices that arbitrarily exclude people with certain types of disabilities from job selection processes - a true affront to the CRPD, featuring discrimination on grounds of disability.

14. Although some public office exams ensure some accessibility resources, in the case of persons with intellectual disabilities this does not occur. The evaluation, generally based on exams focusing on linguistic-mathematical aspects, but never practical, prevents persons with intellectual disabilities to participate in the process with equal condition. Therefore, they usually do not integrate the staff of public offices, what is considered discriminatory. In addition, the lack of connection/correlation between the vacancy and the knowledge required from the candidates for the vacancy prevent the access of persons with disabilities to jobs - for example, when in the selection process for a job of an operational nature, it is required from a person with intellectual disability a highly complex written test, in which the knowledge intended to be tested is not necessary for carrying out the work in place. There is also a lack of preparation of professionals and teams that carry out the selection to orient and to deal with persons with disabilities.

15. The effectiveness of quota systems depends not only on their legal provision, but on a series of other factors, as we pointed out above, which are sometimes disregarded by public and private actors when it comes to hiring and including persons with disabilities.

**Interpretation of article 27 (b) part iii: actions to eliminate discriminatory attitudes and harassment, particularly against women, migrants and refugees with disabilities**

16. In Brazil, the Ministry of Labor and Employment was extinguished and absorbed by the Ministry of Economy - a scenario that illustrates how sensitive and challenging it has been to deal with this issue in our country – especially when it comes to the right to work and employment of persons with disabilities. In this context, the monitoring of implementation of the Quota Law has been undermined, also due to the deficit in the number of labor inspectors. The fragility of the current system of labor inspection has contributed to the increase in potential violence suffered by persons with disabilities in the work environment, especially against women, who are often victims of sexual harassment, and documented and undocumented immigrants, victims of moral harassment.

17. The existence of ombudsmen services or whistleblowing channels are tools that can assist in combating the practice of discriminatory attitudes and harassment against persons with disabilities. To involve and ensure the participation of persons with disabilities in internal decision-making and deliberation bodies of companies and other labor environments, can also contribute so that these as well as other issues affecting persons with disabilities can be addressed within the workplace.

**Interpretation of article 27 (k): Programs of return to work**

18. A serious problem that needs to be highlighted when we talk about Brazil is that back in the 70's, the Brazilian government maintained rehabilitation centers in several locations, with specific interdisciplinary staff, equipment, spaces and laws. Over time, these centers were deactivated and their role directed to the INSS (National Institute of Social Security), which does not have any funds for the rehabilitation, because the original idea would be that the Government would no longer do it, and would subsidize organizations to do so. However, this never happened.

19. Today, it is very hard for a person to be retired by the INSS due to “incapability”, except in extreme cases, because in the past there was a distortion in allowing more people to be retired under this condition, which caused a burden to the State. On the other hand, the rehabilitation services that are offered today are limited. Without any kind of funds, these services end up supporting people to obtain opportunities as trainees in different workplaces or releasing them to go back to their previous work without any kind of protection. Moreover, only to exemplify, a bus driver who has to change roles due to a “disability” will probably have to migrate to an administrative area, with a salary that will probably be less than his original remuneration, without the right to receive any compensation for this. Our current legislation is imperfect and should look carefully to the situation of persons with disabilities.

Relationship with other provisions of the Convention

**Right to work and legal capacity**

20. There is an intrinsic relationship between the right to work and employment and the exercise of legal capacity provided for in article 12 of the Convention.

21. In Brazil, persons with disabilities are often prevented by their families from working in order to maintain assistance benefits, more specifically the Benefit of Continued Provision (“BPC”), which corresponds to 1 monthly minimum wage guaranteed to people with disabilities thus recognized as “incapable” and whose monthly per capita income is under ¼ of minimum wage. Today, as per our legislation, when the a person with disabilities start to exercise any labor, the benefit is suspended and may, however, be recovered in case of dismissal. So in Brazil, persons with disabilities face a kind of “forced unemployment”.

22. It is not uncommon that persons with disabilities are prevented from working by their own families, sometimes by institutions that claim that they are “not ready”. What is hidden beyond this reality is that excuses for exclusion of people with disabilities from the labor market often have as background the fact that there are families and organizations who are being financially benefitted from this scenario of exclusion of persons with disabilities from the labor market.

23. The right to work and employment is a subjective right of all person with disabilities alongside with the right to freedom of professional choice, as expressly stated in the Universal Declaration of Human Rights (art. 23), and in the International Covenant on Economic, Social and Cultural Rights (arts. 6 and 7).

24. The rightholder of these subjective rights is the person with disability itself, and not the family or any third party on their behalf. Every person with disability has the right to decide whether or not to work and to freely choose their job without interference from any other individual. Every person with disability must also have ensured respect for his vocational profile and interests, in all circumstances, including in case of supported employment.

25. It must be made clear that the guarantee of these two fundamental rights requires the non-intervention of families either in the decision of the person to have a job, or concerning the job chosen to be performed. Likewise, any and all policies, programs or proposals for the inclusion of persons with disabilities in the labor market must be based on listening to the person´s will and preferences, so that freedom to choose a professional path is respected in practice.

26. Legal capacity and its relation to the right to work and employment also encompasses the availability of employment agreements drawn up and provided in accessible formats, enabling people with disabilities to have knowledge, to understand and express their consent regarding being hired, concerning their remuneration and other conditions that will govern their employment relationship.

27. It includes the right of persons with disabilities to be able to use the results of their work, meaning, their wages, according to their will and preferences. Therefore, it is important to create mechanisms able to prevent people with disabilities from having the resources deriving from their work appropriated by the family or by third parties, on the grounds that they may be deceived or have difficulties managing their funds.

We expect to have collaborated and we remain at your disposal for any additional contributions and dialogue with this Committee.

Sincerely,

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