# Submission to CRPD discussion on the General Comment on the rights of persons with disabilities to work and employment (Article 27)

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Sightsavers welcomes the opportunity to provide input to the Committee on the Rights of Persons with Disabilities (CRPD Committee) for its General Comment on the rights to work and employment. Across the world persons with disabilities face lower employment rates and lower market participation than their peers, which in turn contributes to perpetuating a cycle of poverty, inequality and exclusion. Article 27 is essential in enabling persons disabilities to seek work and earn a living on an equal basis with others.

We welcome the committee’s initiative to draft the General Comment on Article 27 and its holistic interpretation of the different elements of this article. This Comment will provide valuable guidance to partners and for our work advocating for the full inclusion and economic empowerment of persons with disabilities. This submission provides an overview of the challenges faced by persons with disabilities in entering the labour market, provides suggestions for points that need further clarification and areas which could be further detailed in the Committee’s General Comment. It is based on Sightsaver’s experience in policy, research and programmes and builds on the strong foundations laid out by work of the Committee in its outline.

### Introduction – Social inclusion and the right to work and employment

Persons with disabilities face significant physical, attitudinal and other barriers which restrict their access to employment, meaning they are less likely to be active in formal labour markets and tend to pursue informal and insecure livelihoods. Globally, the ratio of employment to population for persons with disabilities aged 15 or older is 36 per cent on average. That ratio is 60 per cent for persons without disabilities.[[1]](#footnote-1) Moreover, the type and degree of disability may impact persons with disabilities and their ability to secure employment differently. Persons with psychosocial disabilities are half as likely to be employed as persons with other types of disabilities[[2]](#footnote-2) but 30% of governments in LMICs offer no social support to persons with psychosocial disabilities[[3]](#footnote-3).

Even when persons with disabilities are employed, they are more likely to earn less[[4]](#footnote-4), work in worst conditions and have fewer opportunities for career development than their peers. This is due to entrenched stigma, discriminatory attitudes and practices, as well as negative assumptions about disabilities in the workplace[[5]](#footnote-5). Barriers to accessing education and training, as well as inaccessible workplaces and difficulties obtaining financial support to start a business also add to the challenges faced by persons with disabilities in accessing job opportunities. These many obstacles mean many persons with disabilities are not able to secure a job and remain an underrepresented segment in the labour force[[6]](#footnote-6).

The over-representation of persons with disabilities among the poor and in the informal economy has also increased their risk of acquiring COVID-19. At the same time, COVID has exacerbated the existing inequalities that arise from the multiple barriers such as stigma, inaccessibility of transport and public services, increasing the risk of persons with disabilities experiencing the socioeconomic consequences of the pandemic. Already facing exclusion in employment[[7]](#footnote-7), persons with disabilities are more likely to lose their livelihood and experience greater difficulties accessing work during the recovery[[8]](#footnote-8).

Persons with disabilities are often left out of social protection systems due to discrimination, exclusion from work or being active in the informal economy[[9]](#footnote-9). As highlighted by the former Special Rapporteur of the Human Rights Council on the rights of persons with disabilities, Catalina Devandas-Aguilar, social protection systems 'are not only a powerful instrument for providing income security and reducing poverty and inequality, but play an important role in enhancing human potential, enabling individuals to access food, health care, education, employment and financial means[[10]](#footnote-10).' The General Comment should recognise the role that social protection schemes can play in encouraging labour market participation of persons with disabilities. The pandemic has shown the importance of ensuring comprehensive social protection systems that are inclusive of persons with disabilities to enable persons with disabilities and their families to have income security in times of crisis and beyond.

Under Article 27, States have an obligation to create and enabling environment and promote equal employment opportunities for persons with disabilities both at the public and private sectors. While many countries have taken steps to address barriers to accessing employment through disability-inclusive national employment policies, non-discriminatory legislation or inclusive technical and vocational education policies, there are often gaps in implementation and lack of adequate enforcement mechanisms can undermine the effectiveness of such policies and legislation[[11]](#footnote-11). The General Comment should make it clear to States that they need to take steps to ensure non-discriminatory policies and legislation are effectively implemented so they can have a real impact in increasing labour market participation of persons with disabilities.

The right to work is a fundamental right and essential for realising many other rights, including ensuring the economic independence of persons with disabilities and their families and allowing them to live in dignity and these connections to other CRPD provisions could be made clearer in the General Comment. The inclusion of persons with disabilities in the labour market is crucial to achieve the UN Sustainable Development Goals (SDGs), in particular SDG 8 and will also support the achievement of SDG 10 as it can reduce social stigma, promote social justice and help reduce inequalities by empowering persons with disabilities to have greater and more active participation in society.

# Art 27.1.a Protection from discrimination in the workplace

Article 27 sets out the obligation of States to take steps, including through legislation, to protect persons with disabilities from discrimination in the workplace. The General Comment should clarify that such protections should have **safeguards in place which ensure that people who disclose their disability at work or in the process of applying for a role do not experience discrimination on disclosure**. The General Comment should also clarify that policies and legislation should **extend to indirect discrimination and discrimination by association**, which may occur when family members or a person who is associated with a person with disability is discriminated at work because of this relationship. This should align with paragraph 17c set out in General Comment 3.

The General Comment should **make it clear to State parties that they are responsible for addressing discrimination perpetrated by public authorities as well as by private actors and bodies**. This responsibility is also recognized by Article 26 of the International Covenant on Civil and Political Rights, which prohibits discrimination on any ground and requires States to act against discrimination by public and private agencies in all fields[[12]](#footnote-12).

While it is welcome that many States have taken steps to adopt non-discrimination policies and legislation, these frameworks will only have an impact in encouraging and supporting the participation of persons with disabilities in the labour market if they are effectively implemented. The General Comment should include **clarity to states parties on** **how to ensure non-discrimination policy is effectively implemented**; a number of areas to consider are set out below:

* **Awareness and ownership**: a first step to ensure disability-related employment policies and legislation are effective is to raise awareness of their existence and promote ownership of such frameworks. States should do so through communication and engagement with national and local institutions and stakeholders, in line with Article 8 of the CRPD.
* **Budget for implementation**: States should ensure non-discrimination policies and legislation are accompanied by appropriate allocation of capacity and resources for implementation.
* **Clear guidance, roles and responsibility**: States should provide clear guidance on implementation to avoid ambiguity around interpretation, clarify any misconceptions and ensure the framework can be consistently implemented by different actors. The lack of clarity around specific policy aspects or confusion between different bodies about who has responsibility for implementation can lead to weak accountability, duplication and institutional inertia.[[13]](#footnote-13)
* **Effective accountability mechanisms**: States must ensure there are effective accountability mechanisms to enforce non-discrimination policies and legislation, enabling persons with disabilities to challenge discrimination in the workplace and seek redress when their rights are violated. Persons with disabilities often face challenges accessing **justice mechanisms** on an equal basis with others for reasons such as lack of awareness of their rights, financial barriers, inaccessibility, low self-confidence as well as bias and negative social attitudes[[14]](#footnote-14). People with disabilities should have access to **legal aid** and other measures to enable them to challenge discrimination through national human rights institutions or an equality body, as well as through judicial remedies such as employment tribunals and courts when other institutions cannot impose sanctions and redress[[15]](#footnote-15). **Relevant sanctions** in cases of discrimination should be applied to prevent and discourage such practices in the workplace.

# Art 27.1.b Equal opportunities and equal remuneration for work of equal value

Persons with disabilities experience lower employment rates and salaries than their peers[[16]](#footnote-16). They also face underemployment since persons with disabilities are sometimes discouraged from even looking for work and therefore not counted as part of the labour force. Many people with disabilities work in the informal sector, which increases the likelihood of being paid below minimum wage and not being covered by social security schemes. The Committee should **make links to Article 6 as this is particularly challenging for women with disabilities, who face overlapping barriers including customs and traditions which may discourage them from seeking employment or being paid equal pay for work of equal value[[17]](#footnote-17)**. On the issue of equal remuneration, the Committee should go beyond calling on “States parties to ensure that persons with disabilities are paid no less than the minimum wage” to recommend they should be paid the same wage as anyone without a disability for the same work.

The General Comment should also **look at broader circumstances which may support or hinder access to the labour market for persons with disabilities**. In this regard, social protection systems, whether mainstream schemes or targeted at persons with disabilities, can play a key role in enabling persons with disabilities to access and retain employment. We welcome the recognition of the importance of not losing disability allowances when in work, but this point could be broadened to **create stronger links to Article 28 and consider the wider implications and importance of comprehensive disability social protection systems**.

Persons with disabilities and their families face significant barriers guaranteeing income security, as well as extra costs to access the essential services they need, such as expenses for assistive devices and greater costs for general services such as medical care and transportation. Recent estimates suggest those costs can amount to 50 per cent of a country’s average wages[[18]](#footnote-18). Many persons with disabilities will face higher costs if they enter the labour market than if they are unemployed. By providing persons with disabilities with income security and ensuring their disability-related needs and extra costs are met, social protection systems can encourage the active participation of persons with disabilities in the labour market and as productive members of society. Social protection can also play an important role by increasing resilience in case of unemployment or sickness, as well as in reducing vulnerability to shocks such as climate disasters or a pandemic like COVID.

As flagged by Special Rapporteur on the Rights of Persons with Disabilities, well-designed social protection schemes can help remove barriers that impede access to employment and enhance productivity, employability and economic development of persons with disabilities[[19]](#footnote-19). The General Comment should **make it clear that States should not tie the eligibility of disability benefits to the inability to work**, which contributes to underemployment, reinforces stereotypes and may constitute a disincentive to look for work. It should encourage States to adopt **disability-related interventions to help cover the additional costs – such as the cost of travel to work and equipment – supplementing earnings and helping persons with disabilities stay in the labour fource**. Such disability-related benefits should complement broader income-related social security schemes in order to prevent poverty and promote the labour inclusion and effective participation of persons with disabilities.

Social protection is also important for persons with disabilities beyond working age, particularly for women with disabilities who are often excluded from formal employment. Those who have not acquired entitlements to a contributory pension throughout their lives could face difficulties maintaining an adequate level of income security when they are older and should have access to non-contributory social protection programmes to guarantee their income security.

# Art 27.1.d and j: Access to inclusive education and inclusive vocational training

While there are many factors that contribute to poverty and social exclusion of persons with disabilities, the lack of access to education has a significant and direct impact in reducing their chances of securing employment. Persons with disabilities often have much lower income than their peers unless they are highly educated and in employment[[20]](#footnote-20). However, children and youth with disabilities are less likely to attend school and often lack access to formal education and information technology skills[[21]](#footnote-21), which in turn affects their employment prospects.

The General Comment should **make stronger links to Article 24 and** **make it clear that States should ensure inclusive education for all children with disabilities** as these foundational skills are critical to enable children to grow into lifelong learners who are able to respond to labour market changes. The Committee should also clarify that **higher education and training institutions need to be inclusive and accessible to persons with disabilities**,from the provision of reasonable accommodation in line with Article 24.5, to admission policies that include diversity as criteria, to the provision of financial support, such as sustainable funding for training programmes as well as scholarships and bursaries for youth with disabilities.

We welcome the Committee’s recommendation for mainstream technical and vocational education and training (TVET) colleges to be inclusive of persons with disabilities. **The General Comment should make it clear that this extends to accessibility of infrastructure and information, as well as preparedness of trainers to support and accommodate trainees with different disabilities**. TVET programmes should also **focus on the genuine skills needed in the local labour market to maximise the chances of finding employment**. The Committee should also recognise the importance of providing **business training** as part of capacity building schemes, enabling persons with disabilities to better understand and respond to market demands.

Persons with disabilities – particularly women - may also face stigmatisation and lack of support from families and communities, all which impact their own self-esteem and self-confidence and limit their ability to compete in the job market and find employment[[22]](#footnote-22). The General Comment should **highlight the importance of supporting persons with disabilities when transitioning from education to employment, including through specific outreach as part of higher education services**. It could also **recommend that States should ensure training programmes and schemes include soft skills**, such as vocational guidance, CV writing, interview training, and broader support to help persons with disabilities to build self-confidence to compete in the job market on an equal basis with other job seekers.

# Art 27.1.f: Self-employment, microfinance, business development services

Given the challenges of entering the labour market, a large number of persons with disabilities, particularly women, work in small and medium sized enterprises or rely on the informal market for a living. The lack of access to funds for investment is a major barrier for persons with disabilities to set up their own businesses[[23]](#footnote-23).

The Committee should more clearly **highlight the responsibility of States to create the right social and economic environment for the financial inclusion of persons with disabilities.** Regulatory structures must ensure there is **no discrimination in accessing loans and financing and that microfinancing, insurance and other financial institutions provide accessible information and services, including customised credit conditions and improved access to mobile banking for persons with disabilities.**

# Art 27.1.h: Affirmative action programs

Measures to protect persons with disabilities from discrimination in the labour market are essential to encourage persons with disabilities to enter and continue in employment. These measures need to be combined with broader policies and legislation, such as equal access to quality education and social protection schemes, to counter the structural disadvantages faced by persons with disabilities.

Nondiscrimination legislation should encourage and sometimes require affirmative actions. The General Comment should **guide States in adopting affirmative actions which include criteria carefully defined in compliance with CRPD**. They should **frame disability as a positive criterion that would make the work environment more diverse and give people with disabilities equal opportunities for career progression**.

Quota systems are one of the most commonly used affirmative actions in the context of the right to work and we welcome the Committee’s careful approach and the recognition that the efficacy of quotas is linked to the degree in which they are enforced. The most effective quota systems include the payment of a fee by the non-complying company for not meeting the agreed quotas, which are in turn used to finance measures to promote employment of persons with disabilities[[24]](#footnote-24). The General Comment should also make it clear that **quota systems, when used, must be combined with other positive actions that complement the shortcomings of each system and support the employment of persons with disabilities, including those who work in the informal economy**.

We welcome the recognition that public procurement measures can help contribute to promoting opportunities and changing private and public sector practices regarding persons with disabilities. The General Comment should also **point to the role that public procurement can have in promoting accessible work environments, such as including accessibility and universal design requirements in public procurement contracts**.

Closing the employment gap of persons with disabilities is closely linked to inclusive education, including **affirmative action in higher education** such as admission policies that see disability as a positive criterion for school diversity, as well as continued education and training opportunities, ensuring persons with disabilities are able to seek employment on an equal basis with others.

# Art 27. I: The obligation to provide reasonable accommodation in the workplace and the denial of reasonable accommodation as a form of discrimination

States have the duty to take all appropriate steps to ensure reasonable accommodation and the failure to do so constitutes discrimination on the basis of disabilities. The Committee has rightly highlighted that it is the responsibility of the State to create conditions for reasonable accommodation to be provided, as reflected in article 5 (3) of the Convention. The General Comment should make it clear that **States should provide a clear** **definition of reasonable accommodation** as this concept (an individual requirement), is not widely understood and can be confused with accessibility measures (a general requirement) or affirmative action measures[[25]](#footnote-25). This ambiguity can lead to some employers incorrectly assuming that all persons with disabilities will need adjustments that are too costly to provide, increasing stigma and undermining their chances to get employment. Most accommodations do not entail a significant cost and many have no cost at all[[26]](#footnote-26).

The General Comment should **include the responsibility of the State to provide accessible information, resources and guidance explaining what can be considered reasonable accommodation and that it must be provided through all phases of employment**. This should include, but not be limited to: accessible and inclusive recruitment and selection processes, adapted work environments, flexible work schedules and arrangements, the provision of assistive technologies, support to travel to and from work, as well as employer obligations such as pensions. The General Comment should also **cover the need for States to provide technical and financial support to employers to facilitate the provision of reasonable accommodation, including by earmarking appropriate funds for that purpose and training public officials to ensure effective implementation**[[27]](#footnote-27). It is also essential for the person with disability to be involved in identifying what kind of support they need, which may change and needs to be reviewed over time.

The adoption of legislative and policy frameworks that define the denial of reasonable accommodation as a form of discrimination on the basis of disability is an important step, but unless such frameworks are accompanied by clear guidance, technical and financial support and effective accountability mechanisms, they will fail to ensure a change in attitudes and more equal opportunities in the workplace. The General Comment should **include the responsibility of States to enforce the provision of reasonable accommodation in both the public and private sectors and make sure persons with disabilities can access effective accountability mechanisms** to challenge discrimination in employment, including in the case of lack of provision of effective accommodation.

# Relationship with other provisions of the CRPD

The right to work is a fundamental right and essential for realising many other rights, including ensuring the economic independence of persons with disabilities and their families and allowing them to live in dignity. The full realisation of Article 27 is therefore closely linked to many other articles of the convention which are mentioned above and further outlined below:

**Article 6** given the particular challenges faced bywomen with disabilities in participating in the labour market, as they face compounding barriers to realising their right to work and accessing decent work opportunities on an equal basis and with equal pay.

**Article 8** on the need to raise awareness of the rights of persons with disabilities and combat discrimination, including by ensuring non-discrimination policies and legislation are well understood and effectively implemented.

**Article 24** as inclusive education is an essential condition for individual development and which plays a key role in enabling participation in the labour market as well as the acquisition of lifelong skills and knowledge.

**Article 28** since social protection schemes, when well designed, can encourage and facilitate labour market participation and increase the resilience of persons with disabilities to crisis.

**Article 32** as international cooperation can play an essential role in promoting and supporting efforts to increase the participation of persons with disabilities in the labour market, through initiatives such as economic empowerment programmes, training and capacity building of persons with disabilities, as well as financial support and facilitated access to assistive technologies.

# Further information

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