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**Written Submission for the General Discussion**

**on Article 27 of the CRPD**

**Contact**

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1. **Introduction**

1. The Solidarity Against Disability Discrimination (hereinafter SADD) in the Republic of Korea greatly appreciates UN Committee on the Rights of Persons with Disabilities’ timely and appropriate outline for the preparation of a General Comment on Article 27 of the CRPD (The right to work and employment).

2. SADD would like to express special support to the committee’s call for the elimination of the discriminatory concepts such as “fit for work,” “work capacity,” and “medical fitness to work,” throughout the outline. As the outline enshrined, these concepts are closely linked to the discriminations that persons with disabilities are facing in most countries including the overrepresentation of persons with disabilities in low-paid jobs, legislation allowing persons with disabilities to be paid less than the national minimum wage and/or wage gap between persons with disabilities and persons without disabilities.

3. This guideline of the general comment is precise and significant in that in 2018, 9,413 persons with disabilities were LEGALLY paid under the minimum wage in the Republic of Korea as a result of “vocational skill evaluations” according to the “Minimum Wages Act” and “Act on the Employment Promotion and Vocational Rehabilitation of Persons with Disabilities.” For the full realization of “2.a.iii. Interpretation of article 27 (b): The right to equal remuneration for work of equal value,” it is essential to remove the requirements in laws such as “work capacity” and/or “medical fitness to work.”

4. Though there have been some job opportunities and programs for persons with disabilities in many countries, most of them have taken the approach from charity-based perspectives. This also seems to have rooted in the “work capacity” concept; persons with disabilities are employed not because they are recognized as “laborers” but because employers should avoid sanctions and fines by fulfilling the quota. It leads persons with disabilities to be assigned to low-quality jobs. In this process, the right to choose jobs of persons with disabilities are severely violated.

5. Especially in the case of persons with severe disabilities, their right to work has been compromised under the name of “vocational skill evaluation” or “work capacity evaluation.” Since they are the most marginalized group in the labor market, their right to work urgently calls for the public attention.

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

6. “Interpretation of article 27(g) Employment of persons with disabilities in the public sector” states, “Some public sector authorities have put in place specific pathways and employment programs for persons with disabilities. [...] Where these processes exist, people with disabilities should be able to apply through the general procedures, where they should benefit from the relevant reasonable accommodations, if so required, but would also have the option to apply through a specific recruitment process.”

7. This text provides firm support for the right to work of persons with disabilities. Especially, persons with mild disabilities who are highly educated and regarded as productive or efficient by potential employers would greatly benefit from the requirement. However, for those with severe disabilities to be employed on a stable basis through general or specific channels, jobs suited to them should be created first in the public sphere. Otherwise, it seems unlikely that those with severe disabilities benefit substantially from the requirement.

8. Persons with severe disabilities have been less educated and have had poorer access to cultural infrastructures. Moreover, because of their disabilities, they may have trouble efficiently performing the tasks in existing jobs. As recognized in ILO’s guideline (*Achieving Equal Employment Opportunities for People with Disabilities through Legislation*), “people with disabilities were seen as objects of social welfare, charity and care and not as subjects in their own right capable of making their own personal decisions, let alone entitled to the full enjoyment of the right to work. Due to their marginalized position in society and resulting invisibility, as well as widespread prejudice, people with disabilities did not fully enjoy their human rights, including the right to decent work” (p.7), which well describes the reality of persons with severe disabilities who have been deprived of the opportunity to work. Indeed, many public agencies have stated that they do not hire persons with severe disabilities because there is no job suited to them. It has been reported that persons with severe disabilities were, if employed, assigned to temporary “meaningless” jobs.

9. However, persons with severe disabilities, who are regarded as incompetent and inefficient due to social obstacles, too have the right to work. As stated in Article 23.1 of *Universal Declaration of Human Rights*, “[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment,” and those with severe disabilities should not be excluded. On the other hand, from the beginning, ILO made it clear that “(a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity; (b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy.” (Article 2 of D*eclaration concerning the aims and purposes of the International Labour Organisation* (so called *Declaration of Philadelphia*))

10. It is unlikely that private firms evaluating workers exclusively through the lens of productivity would hire persons with severe disabilities. Indeed, despite the hiring quota that the Government is imposing on private firms, they have been refusing to hire persons with severe disabilities. Thus, to ensure their right to work, it is urgently required for the public sector to provide jobs for persons with severe disabilities**. In short, governments and public agencies should take the lead to develop and provide jobs for persons with severe disabilities who have been deprived of the opportunity the most.**

11. This proposition is in line with Article 6.1 of *International Covenant on Economic, Social and Cultural Rights*, which states that “the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” On the other hand, Article 6.2 sets the goal of achieving the full realization of the right under conditions safeguarding fundamental political and economic freedoms to the individual.

12. Moreover, requiring governments and public agencies to take the lead in developing and providing jobs for persons with severe disabilities echoes Article 2 of *Declaration of Philadelphia*: “all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light [that is, all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity]” and “accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective.”

13. It is the States parties’ duty to substantialize the public values and to allow and encourage citizens to engage in activities for the public benefit, including publicizing certain public values, identifying cases of discrimination based on disabilities, and educating the rights of persons with disabilities. To fulfill these duties, they will have to employ workers for such tasks.

14. In our opinion, persons with severe disabilities are suited to such tasks and can make positive contributions, and therefore, governments and public agencies must create more jobs similar to these and hire a significant number of persons with severe disabilities. Since their personal experience would be essential to perform the tasks, employing persons with severe disabilities for such jobs would effectively ensure the right for them to work and eliminate the prejudice that persons with severe disabilities are not suited for any existing jobs.

15. **We encourage States parties to develop work duties that can be performed by persons with severe disabilities not in a way that constitutes a separate working environment from the rest.** Persons with and without disaiblities shall perform labor in cooperation, and there shall be no discrimination just because they take on other duties.

16. The City Government of Seoul, Republic of Korea has implemented a project called “Rights-based Public Jobs of Persons with Severe Disabilities” since July 2020, preferentially hiring persons with disabilities who have started to live independently in the community after moving out of the institutions or who have multiple disabilities. Many of these workers are regarded to have the most severe disabilities and have never experienced wage labor before, but now they work to promote the UN CRPD to the public and realize it and are considered to have achieved positive outcomes through three major duties: **cultural and artistic works, disability rights education, and disability rights advocacy.** The quality of life of those with severe disabilities themselves as well as of their families improved significantly, and these activities are positively regarded as an innovative attempt. Even though only persons with disabilities can be employed in these jobs, these workers work in cooperation with support workers and government officials of Seoul, in an integrated work environment.

17. The fact that “Rights-based Public Jobs of Persons with Severe Disabilities” have had a positive effect on the guarantee of labor rights for persons with severe disabilities and that they have positive meanings in society as a whole has already been addressed in the National Audit of the Republic of Korea through the testimony by one of the workers directly involved. "There is more labor than to create higher added value by injecting added value into certain products," congressman Jang, Chul-min said, stressing the need for a new concept of labor to guarantee the right to work of persons with severe disabilities as well as to create public value. Along with the various positive feedback about the jobs, the Republic of Korea currently plans to spread the jobs to Gyeonggi Province and the whole country from 2021.

18. If this outline includes a statement that encourages new types of jobs that are similar to “Rights-based Public Jobs of Persons with Severe Disabilities” and can be performed by persons with severe disabilities themselves, it would be of great help to create an integrated work environment and the public values such as raising the society's human rights consciousness.

19. Interpretation of article 27(g) also states, “Public works programmes are funded by the public budget and have the objective of providing employment (usually a number of working days per year) for people in rural or disadvantaged areas in particular by working on employment-intensive infrastructure projects. These programmes, found in many developing countries, should also be designed in a way that people with disabilities could benefit from.”

20. Although these work programs are implemented in many developing countries, it is questionable whether the program is actually designed in a way that benefits persons with severe disabilities. In fact, the Republic of Korea also has these kinds of jobs implemented in the name of “welfare jobs,” and many of them are composed of jobs that are difficult for persosn with severe disabilities to perform. Furthermore, in the case of “welfare jobs,” the conditions are usually very unstable, and most of the jobs are limited to simple physical labor, which can seriously restrict the freedom of persons with disabilities to choose their jobs.

21. **Therefore, there is a strong need not only to stabilize public works programs but also to diversify duties in those programs.** This would enable persons with severe disabilities to freely choose jobs and gain a sense of accomplishment.

22. As stated earlier, “Rights-based Public Jobs of Persons with Severe Disabilities” has recieved lots of positive feedback from the government authorities as well as workers with disabilities themselves. One of the reasons is that they provided diverse roles of persons with severe disabilities that existing public work programs have not considered enough. Expanding public jobs of persons with severe disabilities of which duties are promoting disability rights and realizing the society’s principle of equality will serve as a momentum to raise the quality of public works programs implemented in many developing countries.

23. Adding statements on these new types of rights-based public jobs in “2.a.ix. Interpretation of article 27(g) Employment of persons with disabilities in the public sector”, seems to be able to contribute to making the public works programs secure the right to work of persons with severe disabilities, provided that these programs create new jobs not by stigmatizing people who are “unable to work,” and rather by including working persons with severe disabilities in the public sector through general procedures, or a specific recruitment process.

1. **Comments on “3. States parties’ obligations”:**

24. For the opinions of SADD to be actively considered and implemented in States parties, **we suggest that the obligations of States parties to develop various duties for persons with severe disabilities and to provide “Rights-based Public Jobs of Persons with Severe Disabilities” that go beyond charity-based jobs and/or programs be included in “3. States parties’ obligations,”** which says “The “respect” dimension applies mainly in the context of protection from discrimination in employment in the public sector and in those services that are provided by public authorities, such as public employment services and vocational training. … as it relates to the different public policies that states should have in place to promote the right to work of persons with disabilities.”

25. Our suggestion of creating various rights-based jobs for persons with severe disabilities emphasized throughout the paragraphs also accords with States parties’ duties on non-discrimination, particularly on the basis of disability or multiple grounds and on the provision of reasonable accommodation.

1. **Conclusion**

26. Agreeing to the keynote of this outline, SADD suggests further inclusion of the following contents in “Interpretation of article 27(g) Employment of persons with disabilities in the public sector” as well as “3. States parties’ obligations”:

* The obligations of States parties to develop various kinds of duties for persons with severe disabilities
* The obligations of States parties to provide citizens with severe disabilities with the “Rights-based Public Jobs of Persons with Severe Disabilities” that go beyond charity-based jobs and/or programs

27. SADD will continue to make our full efforts to realize the right to work of persons with disabilities in close partnership with government authorities, national and international disability organizations, and the UN Committee on the Rights of Persons with Disabilities.