



# Convention on the Rights of Persons with Disabilities

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## Committee on the Rights of Persons with Disabilities

### General comment No. 8 (2022) on the right of persons with disabilities to work and employment\*

#### I. Introduction

1. The aim of the present general comment is to clarify the obligations of States parties regarding the right to work and employment as enshrined in article 27 of the Convention. The Convention sets out the principles and standards of the right of persons with disabilities to work and employment, and provides the basis for States parties to meet their commitments under the Sustainable Development Goals, particularly target 8.5, on achieving, by 2030, full and productive employment and decent work for all women and men, including persons with disabilities, and equal pay for work of equal value.

2. The right to work is a fundamental right, essential for realizing other human rights, and forms an inseparable and inherent part of human dignity. The right to work also contributes to the survival of individuals and to that of their family, and, insofar as work is freely chosen or accepted, to their development and recognition within the community.<sup>1</sup> The right to work is recognized in several international and regional legal instruments. The International Covenant on Economic, Social and Cultural Rights proclaims the right to work in a general sense in article 6, and explicitly develops the individual dimension of the right to work through the recognition in article 7 of the right of everyone to the enjoyment of just and favourable conditions of work, in particular safe working conditions. The collective dimension of the right to work is addressed in article 8 of the Covenant, which enunciates the right of all persons to form trade unions and to join the trade union of their choice and the right of trade unions to function freely. The Committee has drawn upon its own jurisprudence, and that of the Committee on Economic, Social and Cultural Rights and other human rights treaty bodies, to develop the present general comment.

3. Meaningful work and employment are essential to a person's economic security, physical and mental health, personal well-being and sense of identity. However, the Committee is aware that a value system known as ableism adversely affects the opportunities for many persons with disabilities to have meaningful work and employment. Ableism and its impact have been described as "a value system that considers certain typical characteristics of body and mind as essential for living a life of value. Based on strict standards of appearance, functioning and behaviour, ableist ways of thinking consider the disability experience as a misfortune that leads to suffering and disadvantage and invariably devalues human life."<sup>2</sup> The foundation of the medical and charity models of disability, ableism leads to social prejudice, inequality and discrimination against persons with disabilities, as it underpins legislation, policies and practices such as segregated employment – for example "sheltered workshops" – and can result in involuntary participation in the informal economy.

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\* Adopted by the Committee at its twenty-seventh session (15 August–9 September 2022).

<sup>1</sup> Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005), para. 1.

<sup>2</sup> [A/HRC/43/41](#), para. 9.



4. Persons with disabilities face barriers to gaining access to and exercising their right to work and employment in the open labour market, on an equal basis with others. Persons with disabilities face high unemployment rates, lower wages, instability, lower standards in hiring conditions, and lack of accessibility of the work environment, and are also less likely than other persons to be appointed to managerial positions when they are formally employed. All such barriers are exacerbated for women with disabilities. Persons with disabilities are more likely to earn lower wages than other persons and are more likely to be in vulnerable employment, including being employed in the informal sector, being self-employed or engaging in part-time employment.<sup>3</sup> Data and other evidence indicate that these differences particularly affect persons with disabilities on such grounds as age, gender, sex, ethnicity and place of residence.

5. Evolving conditions in economies and the labour market create new challenges and opportunities to ensure the right to work. New technologies, including artificial intelligence and the shift to digital work, can create new barriers or forms of discrimination as well as offering new pathways into work and new forms of employment. Economic transformations, such as the transition to a green economy or the response to crises, create opportunities for inclusion as well as the threat of leaving people behind.<sup>4</sup>

6. Article 27 of the Convention incorporates several interdependent and interrelated rights within the right to work, including, in article 27 (1) (b), the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work and to safe working conditions, including protection from harassment, and, in article 27 (1) (c), the collective dimension of the right to work and the exercise by persons with disabilities of their labour and trade union rights on an equal basis with others.<sup>5</sup> The aim of the present general comment is to provide a comprehensive overview of the obligations of States parties under article 27, considering the interdependence of the measures on the right to work listed in that article, and the interrelationship of the right to work and employment with the provisions of other articles of the Convention.

## II. Human rights model of disability

7. The Committee has consistently expressed concern that the legislation and policies of States parties still reflect an ableist approach to disability, through charity and/or medical models, despite the incompatibility of those models with the Convention.<sup>6</sup> Under those models, persons with disabilities are not acknowledged as subjects of rights and as rights holders, but are instead “reduced” to their impairments.<sup>7</sup> Discriminatory or differential treatment and the exclusion of persons with disabilities are seen as the norm, legitimized by a medically-driven, incapacity approach to disability. Such ableist approaches preclude States parties from eliminating persistent barriers, particularly disability stereotypes and stigmas that prevent persons with disabilities from being able to work on an equal basis with others.

8. To realize the rights in the Convention, States parties need to apply the human rights model of disability. In its general comment No. 6 (2018) on equality and non-discrimination, the Committee sets out the human rights model of disability, under which it is recognized that disability is a social construct, that impairments are a valued aspect of human diversity and dignity and that impairments must not be taken as legitimate grounds for the denial or restriction of human rights. Disability is acknowledged as one of many multidimensional

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<sup>3</sup> *Disability and Development Report: Realizing the Sustainable Development Goals by, for and with Persons with Disabilities – 2018* (United Nations publication, 2019), pp. 155–158.

<sup>4</sup> See International Labour Organization (ILO) Global Business and Disability Network and Fundación ONCE, “Making the future of work inclusive of persons with disabilities”, 21 November 2019.

<sup>5</sup> Article 27 (1), chapeau, and (1) (b) and (c) relates directly to three interdependent articles of the International Covenant on Economic, Social and Cultural Rights, namely articles 6, 7 and 8. The Committee on Economic, Social and Cultural Rights has issued general comments on articles 6 and 7 of the Covenant.

<sup>6</sup> Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018), para. 2.

<sup>7</sup> *Ibid.*, para. 8.

layers of identity, meaning that laws and policies must take the diversity of persons with disabilities into account. Human rights are recognized as being interdependent, interrelated and indivisible.

### III. Normative content

9. The right to work is a fundamental human right and an essential component of human dignity. In the Universal Declaration of Human Rights, the right to work is recognized in article 23. Beyond the International Covenant on Economic, Social and Cultural Rights, the right to work is covered in article 8 (1), (2) and (3) (a) of the International Covenant on Civil and Political Rights, article 5 (e) (i) and (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 11 of the Convention on the Elimination of All Forms of Discrimination against Women, article 32 of the Convention on the Rights of the Child and articles 25, 26, 40, 52 and 54 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Similarly, the General Assembly proclaimed the right to work in the Declaration on Social Progress and Development (art. 6), in its resolution 2542 (XXIV) of 11 December 1969.

10. Several regional instruments provide for the right to work – including the European Social Charter of 1961 (part II, arts. 1–10) and the European Social Charter (Revised) of 1996 (part II, arts. 1–10), the African Charter on Human and Peoples’ Rights (art. 15) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (arts. 6–8) – and affirm the principle that respect for the right to work imposes on States parties an obligation to take measures aimed at the realization of full employment.

11. The International Labour Organization (ILO) has identified a set of fundamental conventions related to rights at work.<sup>8</sup> The subjects covered are considered to be fundamental principles and rights at work, and include freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.

#### A. Right to work, on an equal basis with others, including the right to gain a living by work freely chosen or accepted in an open, inclusive and accessible workplace (art. 27 (1), chapeau)

12. Under article 27 (1) of the Convention, States parties recognize the right of persons with disabilities to work, on an equal basis with others, including the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. This concept reflects the jurisprudence of the Committee on Economic, Social and Cultural Rights, in which that Committee has made reference to the principle of equality in connection with work and employment by persons with disabilities: it has noted that the right of all persons to the opportunity to gain their living by work that they freely choose or accept is not realized where the only real opportunity open to persons with disabilities is to work in segregated facilities,<sup>9</sup> and considers that persons with disabilities should not be segregated in sheltered workshops.<sup>10</sup> Article 27 (1), in expressly identifying these rights of persons with disabilities, clearly indicates that segregated employment settings are inconsistent with them.

13. Despite some progress, lack of access to the open labour market and segregation continue to be the greatest challenges for persons with disabilities. Discrimination, such as denial of reasonable accommodation, inaccessible workplaces and harassment, poses further obstacles to employment in an open labour market and work environment, leading to a false

<sup>8</sup> See <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

<sup>9</sup> Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994), para. 21.

<sup>10</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 47 (c).

choice of employment in a closed workplace on the basis of disability. The ILO Employment Policy Convention, 1964 (No. 122), refers to “full, productive and freely chosen employment”, linking States parties’ obligation to create the conditions for full employment with their obligation to ensure the absence of forced labour.

14. The Committee observes that segregated employment, such as sheltered workshops, includes a variety of practices and experiences, characterized by at least some of the following elements:

- (a) The persons with disabilities are segregated, away from open, inclusive and accessible employment;
- (b) The employment is organized around certain specific activities that persons with disabilities are deemed to be able to carry out;
- (c) The medical and rehabilitation approaches to disability are focused on and emphasized;
- (d) Transition to the open labour market is not effectively promoted;
- (e) The persons with disabilities do not receive equal remuneration for work of equal value;
- (f) The persons with disabilities are not remunerated for their work on an equal basis with others;
- (g) The persons with disabilities do not usually have regular employment contracts and are therefore not covered by social security schemes.

15. Segregated employment for persons with disabilities, such as sheltered workshops, is not to be considered as a measure of progressive realization of the right to work, which is evidenced only in employment that is freely chosen or accepted and performed in an open and inclusive labour market. Employment ventures that are managed and led by persons with disabilities, including those that are jointly owned and democratically controlled, may not be considered segregated employment if they provide just and favourable conditions of work on an equal basis with others.

## **B. Prohibition of discrimination on the basis of disability (art. 27 (1) (a))**

16. Non-discrimination and equality are core obligations of article 27, extend to the actions of third parties, such as the business sector,<sup>11</sup> and apply throughout the employment cycle, which includes recruitment, hiring and employment, continuance of employment, training programmes and career advancement, as well as searching and applying for work and exiting work. The Committee has noted in its jurisprudence that to achieve *de facto* equality in terms of the Convention, States parties must ensure that there is no discrimination on the grounds of disability in connection to work and employment.<sup>12</sup> International human rights practice identifies a number of forms of discrimination, which can occur individually or simultaneously: direct discrimination, indirect discrimination, denial of reasonable accommodation, harassment and discrimination by association.

17. Direct discrimination occurs when persons with disabilities are treated unfavourably for any reason related to their impairment. An example is a public sector employer not considering a person with disabilities for a job on the assumption that the person with disabilities will be unable to do the work.<sup>13</sup>

18. Indirect discrimination refers to the application of laws, policies or practices that appear neutral but have a negative impact on persons with disabilities. It occurs when an opportunity excludes persons with disabilities because the framing of the opportunity does not take account of their situation and, as a result, they are unable to benefit from the opportunity itself. For example, if the only way to enter a public building for a job interview

<sup>11</sup> Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 7.

<sup>12</sup> Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018), para. 67.

<sup>13</sup> *Ibid.*, para. 18 (a).

is by a set of stairs, candidates who use wheelchairs are put in an unequal position because they are unable to enter the building.<sup>14</sup> Implied in the prohibition of indirect discrimination is an ongoing obligation to ensure accessibility through universal design in all situations.

19. Denial of reasonable accommodation occurs when necessary and appropriate individualized modifications, adjustments and support (that do not impose a disproportionate or undue burden) are not implemented. Reasonable accommodation means those modifications, adjustments and support that are needed to ensure the equal enjoyment or exercise of a human right or fundamental freedom.<sup>15</sup> For example, a public sector employee with a vision impairment who is not provided with the appropriate equipment to perform allocated tasks, such as a computer programme that magnifies text on a computer screen, has been denied reasonable accommodation. Other examples of reasonable accommodation include making information accessible to the individual with disabilities, modifying equipment, enabling work from home, ensuring that an interpreter is provided in meetings, reorganizing activities, rescheduling work or providing support personnel.<sup>16</sup> To fall within the concept of reasonable accommodation, the changes need to be negotiated with the individual. The duty to provide reasonable accommodation is applicable from the moment that a request for such accommodation is received or the need becomes apparent.<sup>17</sup> The Committee emphasizes that the duty to provide reasonable accommodation is different from the duty to ensure accessibility, which flows from the prohibition of indirect discrimination and is set out in articles 4 and 9 of the Convention. While both duties are aimed at guaranteeing accessibility, the duty to ensure accessibility through universal design or assistive technologies involves building accessibility into systems and processes without regard to the needs of a particular person with disabilities, for example, to have access to a building on an equal basis with others.<sup>18</sup> The duty to provide reasonable accommodation, on the other hand, applies from the moment that a person with disabilities seeks to exercise their rights or requires access in non-accessible situations or environments.<sup>19</sup>

20. Harassment is a form of discrimination when unwanted conduct related to disability or other prohibited grounds takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.<sup>20</sup> Under the ILO Violence and Harassment Convention, 2019 (No. 190), the term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.

21. Discrimination by association may occur when family members or a person otherwise associated with a person with disabilities is subjected to discrimination at work because of that relationship, which has a direct or indirect impact on the life of the person with disabilities.<sup>21</sup>

22. Persons with disabilities are often disproportionately affected by multiple and intersectional discrimination. The diversity of persons with disabilities means that they face diverse barriers to realizing the right to work and follow different pathways into employment throughout their working lives. Multiple discrimination occurs when a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated, and intersectional discrimination occurs when several grounds interact with each other at the same time in such a way as to be inseparable.<sup>22</sup> The concepts of multiple and intersectional discrimination reflect the fact that individuals do not experience discrimination as members of a homogeneous group but, rather, as individuals with multidimensional layers

<sup>14</sup> Ibid., para. 18 (b).

<sup>15</sup> Ibid., para. 18 (c).

<sup>16</sup> Ibid., para. 23.

<sup>17</sup> Ibid., para. 24 (b).

<sup>18</sup> Ibid., para. 24 (a).

<sup>19</sup> Ibid., para. 24 (b).

<sup>20</sup> Ibid., para. 18 (d).

<sup>21</sup> See, for example, *Bellini et al. v. Italy* (CRPD/C/27/D/51/2018).

<sup>22</sup> Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016), para. 4 (c).

of identities, statuses and life circumstances. Intersecting layers of identity include age, race, indigenous, national or social origin, refugee, migrant or asylum-seeking status, political or other opinion, religion, sex, sexual orientation and gender identity.

23. These concepts reflect the lived realities and experiences of heightened disadvantage of individuals caused by multiple and intersectional forms of discrimination.<sup>23</sup> The Committee has addressed different situations of multiple and intersectional discrimination. For example, women and gender-nonconforming persons with disabilities face an intersection of gender- and disability-related barriers in attitudes, circumstances and work itself, including the compounded effects of multiple discrimination that limit opportunities to work, affect their right to equal pay and increase the risk of violence and harassment in the workplace. Similarly, disability- and age-related discrimination interact to mean that youth and older persons with disabilities can face substantially different challenges to realize the right to work.

### **C. Right to just and favourable conditions of work on an equal basis with others (art. 27 (1) (b))**

24. Article 27 (1) (b) refers to the protection of the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including:

- (a) Equal opportunities and equal remuneration for work of equal value;
- (b) Safe and healthy working conditions, including protection from harassment;
- (c) The redress of grievances.

25. The right of persons with disabilities to just and favourable conditions of work is a corollary of the right to the opportunity to gain a living by work that is freely chosen or accepted. It is an important component of other rights enshrined in the Convention, such as trade union rights (art. 27 (1) (c)), and enjoyment of it is a prerequisite for, and the result of, the enjoyment of other Convention rights, such as the right to an adequate standard of living (art. 28) through decent remuneration.<sup>24</sup>

26. The right to just and favourable conditions of work is a right of all workers with disabilities in all settings, regardless of impairment, gender, age, cultural or linguistic background or migrant status, or whether they are employed in the formal or informal sectors, self-employed or employed in the agricultural sector or in rural and remote areas.<sup>25</sup> Further, the right to just and favourable conditions of work requires that payment below the minimum wage on the basis of disability not be justified under any circumstances.

27. Just and favourable conditions of work for persons with disabilities includes the benefits and protections enjoyed by other workers, such as a retirement benefit fund, sick leave, long-service leave, parental leave, promotion, rest, leisure and periodic holidays with pay.<sup>26</sup>

28. Workers with disabilities have the right to receive equal remuneration as other workers when they perform the same or similar jobs. Further, their remuneration should also be equal even when their work is completely different but nonetheless of equal value. States parties should ensure that workplaces that are in the process of making the transition away from segregated employment are not exempt from paying equal remuneration for work of equal value.

29. The right to a safe and healthy work environment includes the requirement for a coherent national policy on occupational health that is inclusive of workers with disabilities. The aim of such a policy is to prevent accidents and injuries arising from, linked with or occurring during work. The policy should cover the protection of all workers, including those

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<sup>23</sup> *Ibid.*, para. 16.

<sup>24</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 47 (c).

<sup>25</sup> *Ibid.*, para. 5.

<sup>26</sup> For further details, see Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016).

with disabilities, and also including those who hold short- or long-term contracts, work part-time, are apprentices, are self-employed, are migrant workers or are employed in the informal sector. Organizations of persons with disabilities should participate in the formulation, implementation and review of the national policy to ensure that national policies do not enable discrimination.

30. As the Committee has noted in its jurisprudence, protection from harassment in connection with work and employment extends throughout the employment cycle and requires effective remedies through the enactment and enforcement of specific and comprehensive anti-discrimination legislation.<sup>27</sup> The legislation should be accompanied by appropriate and effective legal remedies and sanctions in relation to discrimination in civil, administrative and criminal proceedings. Individual remedies should be accompanied by effective changes in the workplace to prevent future violations.

#### **D. Labour and trade union rights (art. 27 (1) (c))**

31. Trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions of work. Trade unions should admit, accept and enable the full and meaningful participation of persons with disabilities on an equal basis with others. Trade unions should play an important role in defending the right of persons with disabilities to work, including persons with disabilities still working in segregated employment. States parties have an obligation to respect and protect the work of human rights defenders and other members of civil society, in particular trade unions, who assist persons with disabilities and other marginalized groups in the realization of their right to work.<sup>28</sup>

32. The promotion of employment for persons with disabilities requires the effective involvement of trade unions and other representative associations that protect and promote the rights of workers with disabilities in the definition of priorities, decision-making, planning, implementation and evaluation of strategies.

33. General labour laws and codes should explicitly prohibit discrimination on the basis of disability and should include the responsibility to ensure that trade union workers, employers and labour market institutions are fully aware of issues of equality and non-discrimination in the context of the work and employment of persons with disabilities.

34. Collective bargaining arrangements should prohibit discrimination on the basis of impairment. Where they specify working conditions, the arrangement must include a mechanism by which employees can seek reasonable accommodation.

#### **E. Access to technical and vocational guidance, placement services and training (art. 27 (1) (d))**

35. Non-discriminatory access to general technical and vocational guidance, training and placement services, both public and private, on an equal basis with others is required for the realization of the right of persons with disabilities to work and employment.<sup>29</sup> The participation of persons with disabilities in mainstream services promotes the non-segregation of services and access by persons with disabilities to open employment and vocational training services.<sup>30</sup> Such services may be appropriate for entry into work, during the course of employment or for transitions between roles. States parties should take measures to ensure the certification of capacities and attainments on an equal basis with others, the explicit inclusion of persons with disabilities in legislation dealing with vocational training, explicit references to persons with disabilities in general policies regulating vocational training, the accessibility of premises, information and materials, the provision of

<sup>27</sup> Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018), para. 22.

<sup>28</sup> Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005), para. 51.

<sup>29</sup> See the International Covenant on Economic, Social and Cultural Rights, art. 6, and the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

<sup>30</sup> See [CRPD/C/2/3](#), annex.

vocational training on the rights of persons with disabilities and funding for reasonable accommodation. Vocational and professional preparation, training and other services should be provided in accessible and inclusive ways, including financial support for participation.

#### **F. Promotion of employment opportunities and career advancement (art. 27 (1) (e))**

36. States parties should ensure that persons with disabilities have meaningful opportunities to develop their careers, whatever the form of their employment.<sup>31</sup> Opportunities for development include reskilling and upskilling, training, lifelong learning and mentorship programmes.

37. All workers with disabilities have the right, on an equal basis with others, to be considered for promotion through fair, merit-based and transparent processes. States parties should analyse the direct and indirect barriers to career advancement encountered by persons with disabilities, in particular by women with disabilities. Vocational training referred to under article 27 (1) (d) includes training undertaken by workers with disabilities to advance their careers. Courses must be accessible and workers must be able to seek reasonable accommodation.

#### **G. Promotion of opportunities for self-employment, entrepreneurship and cooperatives (art. 27 (1) (f))**

38. Persons with disabilities have the right to freely choose their work, including whether they wish to be self-employed, start their own business or work in a cooperative. States parties should take targeted measures to protect and support persons with disabilities in the informal economy, to promote and accelerate their transition to the formal economy, and to prevent work in the formal economy from becoming informal.<sup>32</sup>

39. The promotion of opportunities for work that is freely chosen requires accessible information on entrepreneurship, micro, small and medium-sized enterprises, and other forms of business models and economic units, such as cooperatives.<sup>33</sup> Non-discriminatory access to business services, markets, infrastructure and technology, occupational health and safety, financial services, mentorship and networking also needs to be considered. States parties should formulate and implement an integrated policy framework that is inclusive of persons with disabilities, ensuring coordination across different levels of government and cooperation between the relevant bodies and authorities, such as tax authorities and social security institutions.<sup>34</sup>

#### **H. Employment in the public sector (art. 27 (1) (g))**

40. The provisions of other subparagraphs of article 27 apply equally to the public and private sectors. However, where the State party is the employer, it should take a more rigorous approach to inclusion. States parties should introduce objective standards for hiring and promoting persons with disabilities on merit and be committed to increasing the number of employees with disabilities. If necessary, specific measures should be taken to build awareness within the public sector, attract and recruit persons with disabilities and support public sector employees with disabilities, with the aim of reflecting the diversity of the community and benefiting from the lived experiences of persons with disabilities.

41. The Committee has recommended to States parties that, in an effort to increase employment of persons with disabilities in the public sector, they develop and implement affirmative action measures, such as the allocation of targeted funding to promote the

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<sup>31</sup> For an example of where such support was not meaningfully provided, see *Gröninger et al. v. Germany* (CRPD/C/D/2/2010).

<sup>32</sup> See ILO, *Transition from the Informal to the Formal Economy Recommendation*, 2015 (No. 204).

<sup>33</sup> *Ibid.*, para. 11 (g).

<sup>34</sup> *Ibid.*, para. 12.

employment of persons with disabilities in the public and private sectors, including vocational programmes.<sup>35</sup> Further measures include quotas – requirements that at least a specific percentage of an employer’s workforce be made up of employees with disabilities — or targets. All measures should be accompanied by an annual reporting requirement on compliance by public authorities.

## **I. Promotion of employment in the private sector, including affirmative action programmes (art. 27 (1) (h))**

42. The Committee has recommended strategies to States parties to increase the employment of persons with disabilities in the public sector that are equally applicable to the private sector. Specific affirmative action measures may be required, such as quotas to increase the employment of persons with disabilities in the private sector. At the same time, quotas alone are insufficient to promote the employment of persons with disabilities and may be resisted by persons with disabilities if the system focuses on impairment rather than ability. Quotas also raise issues of confidentiality. Other affirmative action measures include public procurement measures, such as tendering processes, that give preference to enterprises owned by persons with disabilities or that employ persons with disabilities, and the allocation of targeted funding to promote the employment of persons with disabilities, such as modifications of the working environment, apprentice wage support, payroll tax deductions and wage subsidies.

43. Preferential purchasing policies that promote or support segregated employment are not affirmative action measures that are consistent with the Convention. In order to ensure consistency with the Convention, affirmative action involves, inter alia:

- (a) Ensuring that employers do not restrict persons with disabilities to certain occupations, reserved jobs or specific employment units;
- (b) Ensuring that employers do not restrict access for persons with disabilities to opportunities for promotion and career growth;
- (c) Taking steps to ensure that work promoted under these measures does not constitute “fake” employment, whereby persons with disabilities are engaged by employers but do not perform work or do not have meaningful employment on an equal basis with others;
- (d) Incorporating a disability, gender and age perspective throughout the workplace.

44. States parties should consult closely with organizations of persons with disabilities when designing affirmative action measures.<sup>36</sup> Such measures in the private sector will be most effective if they form part of a holistic approach by States parties to promote the employment of persons with disabilities.

## **J. Provision of reasonable accommodation in the workplace (art. 27 (1) (i))**

45. The duty to provide reasonable accommodation is different from the duty to ensure accessibility. Reasonable accommodation involves the provision of individualized modifications, adjustments and support to enable persons with disabilities to perform the inherent requirements of their work on an equal basis with others. States parties should ensure that the provision of reasonable accommodation is facilitated through measures and programmes that provide technical and financial assistance to public and private employers. Nevertheless, as part of their accessibility duty, public and private employers need to ensure they have a clear, accessible and timely process for dealing with the need for reasonable accommodation. Where a barrier to full inclusion of an individual with disabilities is

<sup>35</sup> For example, [CRPD/C/CAN/CO/1](#), para. 48 (c); [CRPD/C/GTM/CO/1](#), para. 63; [CRPD/C/JOR/CO/1](#), para. 50 (c); and [CRPD/C/URY/CO/1](#), paras. 57–58.

<sup>36</sup> Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018), para. 29.

identified by the individual or the employer, the employer must take the following steps, as failure to do so would constitute denial of reasonable accommodation:

(a) The employer works with the individual to identify potential solutions to remove or avoid the barrier, including the individual's preferred solution;

(b) The employer implements the individual's preferred solution, unless it would impose an undue burden, in which case the employer implements another identified solution that does not impose an undue burden, or implements the preferred solution to the extent possible without experiencing the undue burden.

### **K. Promotion of work experience in the open labour market (art. 27 (1) (j))**

46. Work experience in the open labour market may be promoted through internships, workplace learning schemes, scholarships, bursaries and financial incentives for businesses, such as apprenticeships and other workplace-based learning schemes. As well as being essential to developing the skills of persons with disabilities, work experience offers an opportunity to transform employment conditions and build connections and understanding among employers.

47. Persons with disabilities are at particular risk of the inappropriate use of unpaid internships, training programmes and volunteering schemes, which negatively affects job security and career prospects. Young persons with disabilities are particularly vulnerable in this regard. States parties should clearly regulate and monitor the situation of persons with disabilities under such programmes.

### **L. Promotion of vocational and professional rehabilitation, job retention and return-to-work programmes (art. 27 (1) (k))**

48. All workers may experience the need to retrain, develop new skills or change their occupation. Job retention and return-to-work programmes for persons with disabilities are part of wider efforts to ensure continual workforce development. States parties need to ensure that persons with disabilities are supported to stay in work or transition to new roles after the acquisition of a new impairment or the exacerbation of an existing impairment.<sup>37</sup>

49. In the provision of rehabilitation, States parties should ensure that workers with disabilities as a result of an accident or illness and, where relevant, their dependants receive adequate compensation, including for costs of treatment, loss of earnings and other costs, in addition to access to rehabilitation services.<sup>38</sup>

50. Return-to-work programmes may lead to the employee concerned continuing in the same role, transferring to a different role with the same employer or taking on a role with a different employer. Such programmes should not be used to promote employment in segregated work settings.

### **M. Slavery, servitude and forced or compulsory labour (art. 27 (2))**

51. The prohibition of slavery, servitude and forced or compulsory labour is at the core of international human rights law. Persons with disabilities, including children with disabilities, are at an increased risk of experiencing situations of slavery or servitude, such as segregated employment, abduction and forced labour.<sup>39</sup> Such situations extend to debt bondage, trafficking, begging, and work in sweatshops, on farms or in segregated employment for little or no pay.

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<sup>37</sup> See *J.M. v. Spain* (CRPD/C/23/D/37/2016) and *V.F.C. v. Spain* (CRPD/C/21/D/34/2015), in which the Committee found that the State party had failed to fulfil its obligations under the Convention by failing to ensure the authors' continuance of employment through assignment to modified duties.

<sup>38</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 29.

<sup>39</sup> CRPD/C/BOL/CO/1, paras. 41–42.

52. States parties should develop comprehensive measures to prevent and to investigate all instances of slavery, servitude and forced or compulsory labour. Such measures should include awareness-raising programmes, information campaigns, legislative provisions, complaints procedures, sanctions regimes, investigation mechanisms, and redress and reparation measures.

53. To fulfil their obligations under article 27 (2) of the Convention, States parties should pay attention to the right of persons with disabilities to choice, consent and freedom from coercion. Choice must be understood in the context of the harm that conditions of work may cause. In some cases, available working conditions may be harmful to the health and well-being of persons with disabilities for reasons related to their disability. These individuals require reasonable accommodation through modifications to working conditions, and meaningful social protection and other support to ensure that they are not forced to perform work against their will. In other cases, persons with disabilities experience harm through discrimination caused by segregation, lack of equal remuneration for work of equal value and limited pathways to employment that is freely chosen, on an equal basis with others. The risk of coercion stems from the fact that persons with disabilities often face wider social vulnerability, lack of meaningful alternatives and relations of dependency or care that become exploitative. This risk needs to be taken into account for the purposes of understanding whether consent has been given. Even when consent has been given, attention should be paid to a wider context of exploitation or coercion. Consent is not sufficient to indicate that someone is not in a situation of slavery, servitude or trafficking.

## IV. Obligations of States parties

### A. General obligations

54. Article 4 (2) of the Convention requires that, with regard to economic, social and cultural rights, States parties take measures to the maximum of their available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of those rights. The principal general obligation of States parties is therefore to ensure the progressive realization of the right to work. Deliberate, concrete and targeted steps towards that goal must be taken within a reasonably short time after the Convention's entry into force for the State party concerned.<sup>40</sup> This obligation sits alongside States parties' immediate obligations, under articles 4 (1), 5 and 27, to ensure non-discrimination with regard to the right to work.

55. The right of all persons with disabilities to work imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfil. In turn, the obligation to fulfil contains obligations to facilitate, to provide and to promote.<sup>41</sup> The obligation to respect is contained in article 4 (1) (d) of the Convention, under which the State party is required to refrain from engaging in any act or practice that is inconsistent with the Convention. The obligation to protect is contained in article 4 (1) (c) and (e), under which the State party is required to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes and to take all appropriate measures to eliminate discrimination on the basis of disability by third parties, including private enterprises. The obligation to fulfil is contained in, for example, article 4 (1) (f) and

<sup>40</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 2.

<sup>41</sup> In its general comments No. 12 (1999) (para. 15) and No. 13 (1999) (para. 46), the Committee on Economic, Social and Cultural Rights noted that the obligation to fulfil incorporated both an obligation to facilitate and an obligation to provide. In its general comment No. 14 (2000) (para. 33), it then also incorporated a third obligation – the obligation to promote – into the obligation to fulfil, based on the importance of health promotion in the work of the World Health Organization and others. Given that the purpose of the Convention, under article 1, is to promote the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity, in the present general comment the obligation to promote has been included under the obligation to fulfil.

(g), under which the State is required to undertake or promote research and development of universally designed goods and services and new assistive technologies.

56. Retrogressive measures are not permissible in relation to any of the rights covered by the Convention, including the right to work. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives, that they are duly justified, by reference to the totality of the rights provided for in the Convention, in the context of the full use of the State party's maximum available resources,<sup>42</sup> and that they do not have a disproportionate impact on persons with disabilities.

57. The obligation to respect requires States parties to refrain from interfering directly or indirectly with the enjoyment of the right to work by, *inter alia*, refraining from denying or limiting equal access to decent work for all persons with disabilities, refraining from exempting employers from paying the national minimum wage on the basis on disability, and prohibiting forced or compulsory labour. States parties are bound by the obligation to respect the right of women with disabilities and young persons with disabilities to have access to just and favourable conditions of work, and are thus required to take measures to combat multiple and intersectional discrimination and to achieve equal opportunity for promotion and equal remuneration for work of equal value. Any assessment by States parties of the "value" of work must avoid stereotypes relating to persons with disabilities, including concerning their sex or gender, that could undervalue work predominantly performed by women with disabilities.<sup>43</sup> Additionally, States parties should take immediate measures to remove barriers in laws, policies and programmes that associate disability with "inability to work". In particular, measures to assess or classify disability status should not be based on or lead to limitation of the right of persons with disabilities to work.

58. The obligation to protect requires States parties to take all appropriate measures to eliminate discrimination on the basis of disability by private, non-State actors, such as private business enterprises, trade unions and all members of society, to prevent interference with the guarantees of article 27.<sup>44</sup> In particular, States parties have an obligation to protect persons with disabilities from the main forms of discrimination in connection to work and employment – direct discrimination, indirect discrimination, denial of reasonable accommodation, harassment and discrimination by association – which may occur individually or simultaneously. Furthermore, the Committee has in its jurisprudence recommended measures to address multiple and intersectional discrimination, including the following: adopting legislation, policies and programmes that explicitly recognize multiple and intersectional discrimination,<sup>45</sup> to ensure that complaints of such discrimination are considered to determine both liability and remedies; establishing a framework for data collection relevant to combating the intersectional discrimination faced by women and girls with disabilities;<sup>46</sup> permitting complaints of discrimination on more than one ground, establishing higher levels of compensation for victims and imposing higher penalties for perpetrators;<sup>47</sup> strengthening anti-discrimination laws to address intersectional discrimination;<sup>48</sup> examining the appropriateness of current structures used to deal with intersectional discrimination and adopting effective and specific measures to prevent intersectional forms of discrimination against women and girls;<sup>49</sup> and developing frameworks

<sup>42</sup> Committee on Economic, Social and Cultural Rights, general comments No. 3 (1990), para. 9, and No. 14 (2000), para. 32.

<sup>43</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 47 (a).

<sup>44</sup> Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016), para. 18; Human Rights Committee, general comments No. 18 (1989), para. 9, and No. 28 (2000), para. 31; Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 11; Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010), para. 9; and Committee on the Elimination of Racial Discrimination, general recommendation No. 25 (2000), paras. 1–2.

<sup>45</sup> CRPD/C/BRA/CO/1, para. 13, and CRPD/C/MUS/CO/1, paras. 10 and 12.

<sup>46</sup> CRPD/C/CZE/CO/1, para. 14, and CRPD/C/DEU/CO/1, para. 16 (b).

<sup>47</sup> CRPD/C/DNK/CO/1, para. 17.

<sup>48</sup> CRPD/C/AUS/CO/1, para. 15.

<sup>49</sup> CRPD/C/SWE/CO/1, paras. 12 and 14.

for the inclusive, comprehensive and transparent participation of organizations of persons with disabilities, including those experiencing intersectional discrimination.<sup>50</sup>

59. Lastly, the obligation to fulfil – containing the obligations to facilitate, provide and promote – requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards ensuring work environments are open, inclusive and accessible.

60. In order to meet the obligation to facilitate the right of persons with disabilities to work and employment, States parties are required to take positive measures to enable and assist persons with disabilities to undertake technical and vocational education and training, and to implement technical and vocational education plans to facilitate access to employment. States parties are also obligated to undertake or promote research and development of and promote the availability and use of new technologies, including information and communications technology, mobility aids, devices and assistive technologies, giving priority to technologies at an affordable cost.<sup>51</sup>

61. In order to meet the obligation to provide for the right of persons with disabilities to work and employment, States parties are obliged to recognize this right in national legal systems and to adopt a national policy and detailed action plan for its realization. The policy and plan should have sufficient resources allocated to it to increase the participation of persons with disabilities, particularly women with disabilities, in work and employment. States parties are also obliged to provide persons with disabilities with accessible information on the new technologies developed pursuant to the obligation to facilitate.

62. In order to meet the obligation to promote the right of persons with disabilities to work and employment, States parties should take steps to ensure appropriate education, information and awareness-raising campaigns, including gender mainstreaming, in both the private and public sectors. Awareness-raising campaigns should target private and public sector employers and employees, recruiters and employment agencies, and the general public, and should be in relevant languages and accessible formats for persons with disabilities.

## **B. Core obligations**

63. States parties have an immediate, minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right of persons with disabilities to work and employment.<sup>52</sup> In the context of article 27, this core obligation encompasses the obligation to ensure non-discrimination and equal protection of employment.<sup>53</sup>

64. In its jurisprudence on article 5 of the Convention, the Committee has set out the immediate steps that States parties are required to take to achieve de facto equality and ensure non-discrimination on the grounds of disability in relation to the right to work and employment.<sup>54</sup> In particular, in order to ensure the provision of reasonable accommodation pursuant to articles 5 (3) and 27 (1) (i) and to achieve or accelerate de facto equality in work and employment pursuant to article 5 (4), States parties should:

(a) Facilitate the transition away from segregated work environments for persons with disabilities and support their engagement in the open labour market, and in the meantime ensure the immediate applicability of labour rights to segregated settings;

(b) Promote the right to supported employment, including to work assistance, job coaching and vocational qualification programmes, protect the rights of workers with disabilities and ensure the right of workers to freely choose their employment;

(c) Ensure that persons with disabilities are paid no less than the minimum wage and do not lose the benefit of disability allowances when they start work;

<sup>50</sup> CRPD/C/DEU/CO/1, para. 10.

<sup>51</sup> Convention, art. 4 (1) (g).

<sup>52</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 10.

<sup>53</sup> Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005), para. 31.

<sup>54</sup> Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018), para. 67.

(d) Expressly recognize the denial of reasonable accommodation as discrimination and prohibit multiple and intersectional discrimination, and harassment;

(e) Ensure proper transition into and out of employment for persons with disabilities in a non-discriminatory manner, and equal and effective access to benefits and entitlements, such as retirement or unemployment benefits, which must not be infringed upon by exclusion from employment, thereby further exacerbating the situation of exclusion;

(f) Promote work in inclusive, accessible, safe and healthy working environments in the public and private sectors, including access to suitable bathroom facilities;

(g) Ensure that persons with disabilities enjoy equal opportunities for career advancement through regular assessment meetings with their managers and by defining the objectives to be achieved, as part of a comprehensive strategy;

(h) Ensure access to training, retraining and education, including vocational training and capacity-building for employees with disabilities, and provide training on the employment of persons with disabilities and reasonable accommodation for employers, representative organizations of employees and employers, unions and competent authorities;

(i) Work towards universally applicable occupational health and safety measures, including occupational safety and health regulations that are non-discriminatory and inclusive of persons with disabilities;

(j) Recognize the right of persons with disabilities to have access to trade and labour unions.

65. The Committee on Economic, Social and Cultural rights has also identified core obligations regarding the right to just and favourable conditions of work.<sup>55</sup> In particular, States parties should:

(a) Put in place a comprehensive system to combat gender discrimination at work, including with regard to remuneration;

(b) Establish in legislation and in consultation with workers and employers, their representative organizations and other relevant partners, minimum wages that are non-discriminatory and non-derogable, fixed by taking into consideration relevant economic factors and indexed to the cost of living so as to ensure a decent living for workers and their families;

(c) Define and prohibit harassment, including sexual harassment, at work through law, ensure appropriate complaints procedures and mechanisms and establish criminal sanctions for sexual harassment;

(d) Introduce and enforce minimum standards in relation to rest, leisure, reasonable limitation of working hours, paid leave and public holidays.

## **V. Relationship with other articles of the Convention**

66. Article 5 of the Convention, on equality and non-discrimination, requires States parties to promote inclusive equality and eliminate discrimination – direct discrimination, indirect discrimination, denial of reasonable accommodation, harassment and discrimination by association – in all matters of work, employment and the employment cycle. Furthermore, women with disabilities, gender-nonconforming persons with disabilities, older persons with disabilities and young persons with disabilities face an intersection of barriers, related to sex, gender, age and disability, that limit opportunities to work, adversely affect enjoyment of the right to equal pay for work of equal value and increase the risk of violence and harassment in the workplace.

67. Women with disabilities (art. 6) experience multiple and intersectional discrimination in work and employment and throughout the employment cycle, resulting in barriers to equal participation in the workplace. Such barriers include sexual harassment, unequal pay for work

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<sup>55</sup> Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para. 65.

of equal value, lack of career options, less prestigious career paths than other persons to be able to obtain employment, lack of access to redress because of discriminatory attitudes that result in dismissal of their claims, and physical, information and communications barriers.<sup>56</sup> Women with disabilities are at risk of exploitation in the informal economy and in unpaid work, which in turn exacerbates inequalities in areas such as remuneration, health and safety, rest, leisure and paid leave, including maternity leave.

68. The number of children with disabilities (art. 7) globally is estimated at almost 240 million. Millions of children, with and without disabilities, are working as domestic workers or in non-hazardous occupations with their families without adequate rest or education, throughout most of their childhood.<sup>57</sup> Children and youth with disabilities are at greater risk of exposure to hazardous child labour than other children and youth.

69. Awareness-raising (art. 8) campaigns targeting the public and private sectors regarding persons with disabilities and their rights are required to combat stereotypes, prejudices and harmful practices relating to persons with disabilities in all areas of life. Such campaigns should include awareness-raising to combat stereotypes based on assumptions that some persons with disabilities – such as autistic persons, deaf persons, blind persons, persons with psychosocial disabilities and others – are unlikely to interact with their work colleagues or to be distracted in the workplace and hence have greater productivity than their co-workers. Values systems such as ableism, that underpin legislation, policies and practices leading to inequality and discrimination, need to be identified and eliminated.

70. Persons with disabilities cannot effectively enjoy their right to work and employment on an equal basis with others in the absence of accessibility (art. 9) and personal mobility (art. 20) throughout the employment cycle, whether in the workplace, in trade union activities or through accessible transport and support services to get to their workplace. All information related to work and employment must be accessible through sign language, Braille, Easy Read, accessible electronic formats, alternative script and augmentative and alternative modes, means and formats of communication.<sup>58</sup>

71. Persons with disabilities have the right to recognition everywhere as persons before the law (art. 12), and they enjoy legal capacity on an equal basis with others in all aspects of life, including the exercise of legal capacity throughout the employment cycle, especially on entry into an employment relationship (for example, through a formal contract), and for access to finance, credit and insurance. The provision of support in the exercise of legal capacity may include supported decision-making.<sup>59</sup>

72. Persons with disabilities are entitled to access to justice (art. 13) on an equal basis with others, regarding all areas of employment law, including with regard to industrial relations and injury compensation claims related to employment.

73. Persons with disabilities have the right to choice, consent and freedom from coercion. The risk of coercion stems from the fact that persons with disabilities experience greater social and environmental barriers resulting in increased vulnerability, lack of meaningful alternatives and relations of dependency or care that can become exploitative (art. 16). Understanding whether consent has been given is crucial. As noted above, even when consent has been given, the wider context of coercion, exploitation and meaningful alternatives must be considered. Consent is not sufficient to indicate that a person with disabilities is not in a situation of servitude or slavery. Children with disabilities are particularly vulnerable to economic exploitation, including child labour, drug trafficking and begging.<sup>60</sup> Young persons with disabilities are also at particular risk of inappropriate use of unpaid internships, training programmes and volunteering schemes.

74. Free choice of work and employment on an equal basis with others is fundamental to living independently and being included in the community (art. 19). It provides economic independence, choice, social connections, friendships and identity. For many people with

<sup>56</sup> Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016), para. 58.

<sup>57</sup> Committee on the Rights of the Child, general comment No. 17 (2013), para. 29.

<sup>58</sup> Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014), para. 41.

<sup>59</sup> See Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014).

<sup>60</sup> Committee on the Rights of the Child, general comment No. 9 (2006), para. 75.

disabilities, programmes and financial support for the provision of personal assistance is critical to ensuring their right to work.

75. Respect for privacy (art. 22) is important factor in life and often involves sensitive personal issues. Respect for the privacy of employees with disabilities requires employers to obtain the consent of an employee with disabilities before sharing – with human resources staff, for example – disability- or impairment-related information that is disclosed to them. The requirement to protect confidential information extends throughout the employment cycle and includes protection from the use of genetic information that could indicate a potential predisposition to certain impairments.

76. Inclusive education (art. 24) plays a vital role in ensuring that persons with disabilities are able to exercise their right to work and employment that is freely chosen on an equal basis with others. Quality inclusive education prepares persons with disabilities for work and employment through the acquisition of the knowledge, skills and confidence necessary for participation in the open labour market.<sup>61</sup> However, a third of out-of-school children worldwide are children with disabilities. Many Governments officially promote inclusive education, but, in practice, children with disabilities, especially girls with disabilities, are either excluded or segregated in special schools,<sup>62</sup> which will negatively affect their enjoyment of the right to work and employment that is freely chosen on an equal basis with others. The transition from secondary or tertiary education to employment needs particular attention to realize the right to work. It is important to ensure that pathways into the open labour market are promoted for persons with disabilities, and that persons with disabilities are not channelled into segregated settings of work. Lifelong education is a key component to ensuring and fostering the continued career development of persons with disabilities.

77. Employers have a fundamental responsibility to protect the health and safety of workers (art. 25). Comprehensive habilitation and rehabilitation services and programmes (art. 26) are vital for the employment of persons with disabilities. When persons with disabilities are injured at work or when a person acquires a disability through work, it is essential that rehabilitation and return-to-work measures fully respect the choice and preferences of the person and are not used to promote employment in segregated work settings.

78. Persons with disabilities are entitled to social protection (art. 28) to cover the loss or lack of earnings due to the inability to obtain or maintain freely chosen employment on an equal basis with others. The social protection system must ensure adequate protection of unemployed workers with disabilities on an equal basis with others. The right to social protection extends to part-time workers with disabilities, casual workers with disabilities, seasonal workers with disabilities and self-employed persons with disabilities, and persons with disabilities working in the informal economy. Benefits should include the continuation of support payments until such time that it is clear that the employment is sustained, and cover periods of loss of earnings when employees with disabilities are requested not to report for work during a public health or other emergency.<sup>63</sup> Where employment ceases, support payments should be immediately reinstated. Support payments related to essential disability-related expenses should be continued throughout employment, to ensure employment on an equal basis with others. The support provided should also cover individuals, including primary caregivers (who are overwhelmingly female) and relatives, who support persons with disabilities.<sup>64</sup> Concepts such as “inability to work” and “fitness to work” are not components of the design of social protection systems. The diversity of personal circumstances, needs and barriers that persons with disabilities experience in seeking, retaining and returning to paid employment requires the design of flexible social protection systems that are responsive to individual situations.<sup>65</sup>

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<sup>61</sup> Committee on the Rights of Persons with Disabilities, general comment No. 4 (2016), para. 56.

<sup>62</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 36 (2017), paras. 43–44.

<sup>63</sup> Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005), para. 37.

<sup>64</sup> Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994), para. 28.

<sup>65</sup> CRPD/C/15/4 and CRPD/C/15/4/Corr.1, para. 102.

79. Collective bargaining is a tool of fundamental importance in the formulation of employment policies.<sup>66</sup> Trade union-related rights apply equally to workers with disabilities as to other workers. Article 27 (1) (c), read in conjunction with article 29, serves to emphasize the importance of the right of persons with disabilities to form their own organizations. If these organizations are to be effective in the promotion and protection of the economic and social interests of persons with disabilities, they should be consulted regularly by government bodies and others in relation to all matters affecting them. It may also be necessary for these organizations to be supported financially, so as to ensure their viability.<sup>67</sup>

80. The collection and analysis of data (art. 31), disaggregated on the basis of disability, in order to identify all forms of discrimination, including multiple and intersectional discrimination, is essential to monitor the barriers to employment for persons with disabilities on an equal basis with others. Appropriately disaggregated data also allows the identification of those working in the informal economy and of the barriers related to self-employment and entrepreneurship.

81. International cooperation (art. 32) is essential in terms of promoting national efforts to realize the right to work and advancing progress towards achieving the Sustainable Development Goals, particularly target 8.5 thereof, on achieving full and productive employment and decent work for all persons and equal pay for work of equal value. International cooperation is also essential in terms of addressing inequitable access to assistive technologies in resource-scarce settings, so that persons with disabilities are able to participate in the labour market on an equal basis with others.

## VI. Implementation at the national level

82. In order to ensure the right of persons with disabilities to work and employment on an equal basis with others, and in addition to upholding the normative content and meeting the obligations outlined above, States parties should take the following measures to ensure the full implementation of article 27 of the Convention:

(a) Undertake a comprehensive study to determine the impact of ableism on the right of persons with disabilities to work and employment, on an equal basis with others, including the right to the opportunity to gain a living by work freely chosen;

(b) Undertake studies on barriers to access by persons with disabilities to the right to work, identify the specific gender- and age-related challenges that persons with disabilities face in terms of realizing this right, and highlight innovative practices and solutions that emerge from the protection and promotion of the right of persons with disabilities to work and employment;

(c) Consistent with article 4 (3) of the Convention, closely consulting and actively involving persons with disabilities, including underrepresented groups, through their representative organizations, conduct a review of national employment legislation, policies, programmes and practices and harmonize them with the Convention, repeal discriminatory laws and regulations that are inconsistent with the Convention, change or abolish customs and practices that are discriminatory against persons with disabilities, and develop a code of practice for the employment of persons with disabilities to serve as a step-by-step guide to prevent discrimination against persons with disabilities in the labour market and in the workplace;

(d) Ensure that the review extends across the public and private sectors, that it includes the incorporation of gender, age and disability perspectives into laws, policies and programmes and into the implementation and evaluation thereof,<sup>68</sup> and that it extends to the following areas: the promotion of youth employment; occupational health and safety

<sup>66</sup> Committee on Economic, Social and Cultural rights, general comment No. 18 (2005), para. 39.

<sup>67</sup> Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994), para. 26. See also Committee on the Rights of Persons with Disabilities, general comment No. 7 (2018).

<sup>68</sup> CRPD/C/DNK/CO/1, para. 19.

measures; protections against violence, including gender based violence, harassment and forced labour; and the transition from the informal to the formal economy;

(e) Develop a national employment strategy and plan of action, inclusive of persons with disabilities, that is devised and reviewed on the basis of a participatory and transparent process, and that includes methods such as indicators and benchmarks by which progress can be monitored;

(f) Ensure that the protection and promotion of the right of persons with disabilities to work is integrated into emerging areas of work and employment, including the digital economy, teleworking, regulation of the gig economy and of the platform economy, economic reactivation or recovery from crisis, transition to a green economy, and use of artificial intelligence in recruitment and work;

(g) Ensure that measures to protect and promote the right to work cover the diversity of persons with disabilities, their professional experience and skills;

(h) Ensure that measures are taken to eliminate the exploitation of women with disabilities, children with disabilities and gender-nonconforming persons with disabilities in the formal and informal economy and in unpaid work, including the following: ensuring parental leave rights for all; taking affirmative action to increase the number of women with disabilities in the formal work sector; adopting laws and policies to allow for sufficient paid parental leave, for affordable, accessible and appropriate childcare of good quality, and for social protection that does not negatively affect persons with disabilities who are pregnant or those who must take leave to meet caregiving obligations; adopting laws and policies to protect all child workers from conditions that violate their rights; and adopting laws and policies to ensure that employers prevent and respond to gender-based violence efficiently and to promote a paradigm shift related to cultural and societal norms that contribute to gender-based violence;

(i) Expediently phase out segregated employment, including sheltered workshops, by adopting concrete action plans, with resources, time frames and monitoring mechanisms, to ensure the transition from segregated employment to the open labour market, which include obligations:

(i) To review the laws, policies, approaches and assumptions on which the promotion of sheltered employment has been based;

(ii) To closely consult with and actively involve persons with disabilities, through their representative organizations, as a matter of priority, in the design, implementation and monitoring of transition processes;

(j) Develop and carry out knowledge, awareness-raising and capacity-building programmes, with the meaningful participation of persons with disabilities, through their representative organizations, including training in the public and private sectors and the informal economy, to ensure compliance with the Convention;

(k) Establish methods for collecting appropriately disaggregated data, according to a strong human rights conceptual and methodological framework, as set out in *Human Rights Indicators: A Guide to Measurement and Implementation*,<sup>69</sup> to facilitate understanding of the situation of persons with disabilities in and out of employment, with particular attention to the relevance and efficacy of State party measures to promote employment in the formal economy;

(l) Establish accessible and effective redress mechanisms and ensure access to justice, on an equal basis with others, for victims of discrimination based on disability, encompassing access by all persons with disabilities to effective judicial and/or administrative procedures, including effective and accessible complaints mechanisms, and to appropriate, affordable and quality legal aid;

<sup>69</sup> Office of the United Nations High Commissioner for Human Rights (Geneva, 2012). See also [CRPD/C/CZE/CO/1](#), para. 14.

(m) Identify and strengthen pathways into work for persons with disabilities, including through job-matching mechanisms that act as a bridge between persons with disabilities and employers, and the development of specific entry mechanisms into public sector employment;

(n) Foster and strengthen multi-stakeholder partnerships and networks to promote employment for persons with disabilities, including using networks to bring employers together on the promotion of work for persons with disabilities; working collaboratively with organizations of persons with disabilities, including by systematically sending public and private sector employment vacancies to those organizations; and encouraging mainstream agencies that promote employment to strengthen their ability to support persons with disabilities through partnerships with organizations working on disability rights;

(o) Promote reporting by State and non-State employers on the levels and conditions of employment of persons with disabilities, including information on measures taken and results achieved with regard to career advancement among employees with disabilities;

(p) Promote the employment of persons with disabilities, in particular women with disabilities,<sup>70</sup> including through affirmative action such as quota mechanisms and targets, and take measures to mitigate the possibility of unintended negative consequences, such as the reinforcement of stereotypes, limited compliance and the creation of employment opportunities for only limited groups among persons with disabilities, in particular by:

- (i) Ensuring clear monitoring, transparency and reporting;
- (ii) Identifying and preventing work practices that are not consistent with the Convention, including segregation, stereotyping or discrimination;
- (iii) Assessing performance and results, including evaluating the quality of work achieved and checking whether employees with disabilities become restricted to certain roles or types of work and whether only certain groups of persons with disabilities are benefiting from employment;
- (iv) Ensuring appropriate accountability and enforcement mechanisms;
- (v) Ensuring that affirmative action is accompanied with measures to support employers in fulfilling them.

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<sup>70</sup> CRPD/C/DNK/CO/1, para. 18.