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**Annual report of the United Nations High Commissioner
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High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Thematic study on the work and employment of persons with disabilities

Report of the Office of the United Nations High Commissioner for Human Rights*

Summary

The present study focuses on the work and employment of persons with disabilities. It analyses relevant provisions of the Convention on the Rights of Persons with Disabilities, highlights good practices in promoting employment opportunities for persons with disabilities, and identifies the main challenges that States parties encounter in ensuring that persons with disabilities enjoy access to, retention of and advancement in employment on an equal basis with others.

* The annex to the present report is circulated as received, in the languages of submission only.

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I. Introduction

1. In its resolution 19/11, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a study on the work and employment of persons with disabilities, in consultation with relevant stakeholders, including States, the International Labour Organization (ILO), regional organizations, the Special Rapporteur on disability of the Commission for Social Development, civil society organizations, including organizations of persons with disabilities, and national human rights institutions. The Council also requested that the study be made available on the OHCHR website, in an accessible format, prior to its twenty-second session.

2. OHCHR sent notes verbales to Member States and letters to ILO, intergovernmental organizations, non-governmental organizations, national human rights institutions and the Special Rapporteur on disability of the Commission for Social Development requesting responses to a set of questions related to work and employment of persons with disabilities. The annex to the present document contains a full list of respondents. All submissions are available on the OHCHR website.¹

II. The right to work as a human right

3. The right to work is a fundamental human right. The Universal Declaration on Human Rights recognizes that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (art. 23, para. 1). The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Work usually provides livelihood to the person and her or his family, and insofar as work is freely chosen or accepted, it contributes to the person's development and recognition within the community.

4. The human right to work has been codified in several international legal instruments, the Convention on the Rights of Persons with Disabilities (art. 27) being the most recent and detailed standard. The International Covenant on Economic, Social and Cultural Rights guarantees the right to work in a broad sense (art. 6). It explicitly develops the individual dimension of the right to work through the recognition of the right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions (art. 7). The collective dimension of the right to work is addressed in article 8 of the Covenant, which enunciates the right of everyone to form trade unions and join the trade union of her or his choice as well as the right of trade unions to function freely.

5. The right to work is further guaranteed under the International Covenant on Civil and Political Rights (art. 8, para. 3 (a)); the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5, para. (e) (i)); the Convention on the Elimination of All Forms of Discrimination against Women (art. 11, para. 1 (a)); the Convention on the Rights of the Child (art. 32); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (arts. 11, 25, 26, 40, 52 and 54). Several regional instruments recognize the right to work in its general dimension, including the European Social Charter of 1961 and the Revised European Social Charter of 1996 (part II, art. 1), 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 (art. 6). All of these

¹ See www.ohchr.org/EN/Issues/Disability/Pages/WorkAndEmployment.aspx.

instruments affirm that respect for the right to work imposes on States parties an obligation to take measures aimed at the realization of full employment.

6. The ILO has adopted a wide range of instruments relevant for the right to work, including the Declaration on Fundamental Principles and Rights at Work (1998) and the Declaration on Social Justice for a Fair Globalization (2008). It has also formulated the concept of “decent work,” based on the understanding that work is a source of personal dignity, family stability, peace in the community, democracies that deliver for people, and economic growth that expands opportunities for productive jobs and enterprise development.² The Committee on Economic, Social and Cultural Rights has further elaborated on the concept in its general comment No. 18 (2005) on the right to work, stating that decent work respects the fundamental rights of individuals and provides an income allowing workers to support themselves and their families, and includes respect for the physical and mental integrity of the worker in the exercise of her/his employment (para. 7).

III. Work and employment of persons with disabilities

7. According to global estimates, persons with disabilities constitute some 15 per cent of the world’s population. Between 785 million and 975 million of them are of working age (15 years or older)³ and most live in developing countries where the informal economy employs a substantial proportion of the labour force. The labour force participation rate of persons with disabilities is low in many countries. Recent figures for members of the Organization for Economic Co-operation and Development indicate that slightly less than half of working-age persons with disabilities were economically inactive compared to one in five persons without disabilities of working age.⁴ While it is difficult to draw comparisons between countries on rates of unemployment due to national differences in definitions on disability and statistical methodology, it is clear that an employment gap exists across countries and regions.

8. When persons with disabilities are employed, they are more likely to be in low-paying jobs, at lower occupational levels and with poor promotional prospects and working conditions. More often than their peers, they are in part-time jobs or temporary positions, often with few possibilities for career development. The obstacles that persons with disabilities face in this regard are often related to negative attitudes or opinions, deeply rooted stigma and stereotypes and lack of interest of governments, employers and the general population. Lack of access to education and training in skills relevant to the labour market are also major barriers. Persons with disabilities are often seen as unfit for working life, incapable of carrying out tasks, as required in the open labour market, or better off in protected environments such as sheltered workshops.

9. Article 27 of the Convention on the Rights of Persons with Disabilities sets out the right to work of persons with disabilities; it constitutes one of the most detailed provisions of the Convention, establishing the legal framework for State obligations in relation to work and employment of persons with disabilities.

² ILO, Decent work agenda, see <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang-en/index.htm>.

³ World Health Organization and the World Bank, *World Report on Disability*, 2011, p. 261, available at http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf.

⁴ *Ibid.*, p. 237.

10. Article 27, paragraph 1 of the Convention obligates States parties to recognize the right of persons with disabilities to work, on an equal basis with others. It expands on the provision of article 23 of the Universal Declaration of Human Rights and employs similar language to that of article 6 of the International Covenant on Economic, Social and Cultural Rights.⁵ It states that the right of persons with disabilities to work includes 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 and sets out a non-exhaustive list of appropriate steps for States parties to take, including through legislation, to safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment.⁶

11. The right of persons with disabilities to work implies an obligation on the part of States parties to create an enabling and conducive environment for employment, in both the public and private sectors. Private-sector employers constitute the main provider of jobs in a market economy; as such they have a responsibility to create a working environment that welcomes persons with disabilities as employees. Article 27 of the Convention guides States parties in the implementation of the right of persons with disabilities to work through, inter alia, the following standards:

(a) Non-discrimination: The general principle of non-discrimination applies to employment as to all other spheres of life; persons with disabilities have the right to work on an equal basis with others;

(b) Accessibility: The right of persons with disabilities to work includes the opportunity to gain a living in a work environment that is accessible to persons with disabilities. Accessibility in the workplace involves identifying and removing barriers that hinder persons with disabilities from carrying out their work on an equal basis with others;

(c) Reasonable accommodation: With a view to facilitating access of persons with disabilities to work on an equal basis with others, States parties must ensure that reasonable accommodation is provided to persons with disabilities who request it, and should take effective steps, including through legislation, to ensure that the denial of reasonable accommodation constitutes discrimination;

(d) Positive measures: Besides a duty to impose obligations on private-sector employers, States should adopt positive measures to promote employment opportunities for persons with disabilities.

12. The process of aligning national standards and practice to the Convention is one of the key implementation measures that States parties should take, including in the promotion of work and employment of persons with disabilities. In this respect, the Convention imposes two general obligations on States parties (art. 4, para. 1 (a) and (b)):

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention related to work and employment;

(b) To take all appropriate measures, including legislation, to modify or abolish laws, regulations, customs and practices that constitute discrimination against persons with disabilities in the areas of work and employment.

13. There are various ways of ensuring the right of persons with disabilities to work in the legal framework. These can include, but are not limited to, constitutional protection,

⁵ See also the Committee on Economic, Social and Cultural Rights' general comments No. 5 (1994) on persons with disabilities and No. 18 (2005) on the right to work.

⁶ See Convention on the Rights of Persons with Disabilities, art. 27, para. 1 (a) to (k).

integral disability legislation, human rights legislation, anti-discrimination legislation and employment legislation. Submissions to this study indicated that an increasing number of countries have such laws in place in the form of constitutional provisions or anti-discrimination legislation prohibiting discrimination against persons with disabilities. Labour codes containing specific provisions on the right of persons with disabilities to work or disability laws that include provisions on work and employment were also mentioned in the submissions received. Contract compliance laws are often in place alongside primary legislation, requiring companies to demonstrate that they are complying with the provisions of the law and acting as an incentive to employers to implement the legal provisions.

A. The right to access employment in the open labour market

14. The Convention on the Rights of Persons with Disabilities establishes the right of persons with disabilities to enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment in the open labour market which, wherever possible, corresponds to their own choice. ILO Vocational Rehabilitation recommendation No. 99 of 1955 and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993) already promoted access to the open labour market by persons with disabilities. The ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) of 1983 defined the concept for the first time in an international, legally binding instrument.

15. While the primary focus of employment strategies for persons with disabilities should be on providing them with equal opportunities for productive and gainful employment in the open labour market, so called “alternative” employment has been, for many, the only real option available. Often, such initiatives take the form of supported employment or sheltered employment.

16. Sheltered employment generally takes place in a separate workshop setting and may entail lower work output requirements than that expected in the open labour market and working arrangements are frequently not covered by labour laws. It is imperative that sheltered employment be regarded as a transitional arrangement as people move to more open forms of employment that enable them to work alongside persons without disabilities, but also one that provides ongoing support to those who, for a variety of reasons, may be unable to assume employment in the open labour market.

17. Supported employment usually involves on-the-job training in a regular workplace, whereby the worker learns on the job alongside a job coach who provides follow-up support to both the worker and the employer once the training is complete and if an employment contract or trial period is offered. In addition to individual supported jobs in the open labour market, supported employment may take the form of small businesses, mobile work crews or enclaves in a company, in the case of individuals requiring a higher level of support.⁷ When it takes place in regular workplaces, supported employment is a preferable alternative to sheltered work and has been found to be more effective in leading to jobs.

18. During the negotiations of the Convention, one of the main topics of debate regarding article 27 was the fear of creating a so-called “loop-hole” for the interpretation of comprehensive inclusion in working life in the form of sheltered workshops. Indeed, the right of everyone to the opportunity to gain a living by work which he or she freely chooses

⁷ O'Reilly, Arthur, *The right to decent work of persons with disabilities* (Geneva, ILO, 2007).

or accepts⁸ is not realized when the only real opportunity open to persons with disabilities is to work in sheltered facilities, often under substandard conditions. In this spirit, the Committee on Economic, Social and Cultural Rights has pointed out that arrangements whereby persons with a certain category of disability are effectively confined to certain occupations or to the production of certain goods may violate the right to work.⁹

19. States parties to the Convention on the Rights of Persons with Disabilities have a duty to raise awareness among employers and the general public on the right of persons with disabilities to work, including on the obligations of different actors in realizing this right in the open labour market. Some submissions to this study show good practices to this end. For instance, Peru and Serbia have initiated State-led efforts aimed at raising awareness among employers on the rights of persons with disabilities with a view to eliminating stereotypes related to the capacity of persons with disabilities to work.

B. Discrimination against persons with disabilities in work and employment

20. Discrimination on the basis of disability is defined in article 2 of the Convention on the Rights of Persons with Disabilities as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”.

21. While the full realization of economic, social and cultural rights, including the right to work, is subject to progressive realization (art. 4, para. 2),¹⁰ the prohibition of discrimination on the basis of disability is an obligation with immediate effect. States parties have an obligation to prohibit discrimination on the basis of disability and must ensure that persons with disabilities are protected from discrimination (art. 5, para. 2), including with regard to all matters concerning all forms of employment (art. 27, para. 1 (a)) as in any other area.

22. Protection from discrimination covers all forms of employment: in the open labour market as well as in sheltered or supported employment schemes. Prohibition of de jure and de facto discrimination should cover all aspects of employment, including, but not limited to, the following:

- (a) Recruitment processes such as advertising, interviewing and other selection processes;
- (b) Review of hiring standards to remove indirect discrimination that places persons with disabilities at a disadvantage;
- (c) Recruitment decisions;
- (d) Terms and conditions of employment such as remuneration rates, work hours and leave;

⁸ See International Covenant on Economic, Social and Cultural Rights, art. 6, para. 1.

⁹ See the Committee’s general comment No. 5 (1994) on persons with disabilities, para. 21. The Committee on the Rights of Persons with Disabilities has also expressed concern over reserved employment, such as the field of “blind massage,” for example, which discriminates against persons with disabilities in their vocational and career choices (CRPD/C/CHN/CO/1, para. 41).

¹⁰ See also International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1.

- (e) Promotion, transfer, training or other benefits associated with employment, or dismissal or any other detriment, such as demotion or retrenchment;
- (f) Benefits related to the (non-discriminatory) termination of employment;
- (g) Victimization and harassment;
- (h) Safe and healthy working conditions.

23. The Convention acknowledges that persons with disabilities can be subject to multiple or aggravated forms of discrimination on the basis of a variety of factors, including race, colour, sex, age language, religion, ethnic, indigenous or social origin or any other status (preamble, para. (p)). They can face multifaceted challenges in accessing, retaining and advancing in employment. Such challenges should be taken into account and a cross-cutting approach should be adopted when designing laws and policies to promote work and employment of persons with disabilities.

24. Indeed, many of the challenges faced by women with disabilities also affect women in general, such as lack of equal access to employment, harassment in the workplace and lower pay for work of equal value. However, the challenges faced by women with disabilities, related to the difficulty of securing employment, extra disability-related costs and lack of control over their own property or money due to laws on legal capacity, often make them doubly disadvantaged in working life.¹¹ In the few countries that have employment data available, disaggregated by disability, gender and type of work,¹² women are consistently underrepresented in all categories of employment, with their representation being drastically lower in management positions.

C. Accessible workplaces

25. Accessibility is both a general principle and a substantive provision of the Convention on the Rights of Persons with Disabilities (art. 9) and applies to workplaces as all other spheres of life. In addition to ensuring that public-sector workplaces are fully accessible, States have an obligation to impose accessibility requirements on private-sector employers.

26. Taking steps towards ensuring a fully accessible workplace is crucial for removing the various barriers – physical, attitudinal, information-, communication- or transport-related – that prevent persons with disabilities from seeking, obtaining and maintaining work. Physical barriers such as inaccessible public transport, housing and workplaces are often among the main reasons why persons with disabilities are not employed. However, the fact that a workplace is not accessible does not justify the failure to employ persons with disabilities.

27. Submissions to this study demonstrate that many States have taken steps to make workplaces accessible for persons with disabilities, including through legislative and policy measures. Most countries have taken action towards promoting physical accessibility, including through building ramps, accessible toilets, elevators and so forth. Submissions from Andorra and Egypt, among others, mentioned steps taken with regard to accessibility of transportation to facilitate access to the workplace; Paraguay stated that sign language interpretation is provided for deaf applicants in interviews; Germany and Mexico, among

¹¹ The Committee on the Rights of Persons with Disabilities has addressed the multiple forms of discrimination faced by women with disabilities; see, for instance, CRPD/C/ARG/CO/1 and CRPD/C/HUN/CO/1.

¹² See, for instance, the submissions to this study from Morocco and Paraguay.

others, have legislated that accessibility must be ensured in both private- and public-sector workplaces with more than a certain number of employees.

28. States should inform employers – irrespective of size or sector – about their positive obligation to identify barriers to equal access to the workplace by persons with disabilities and to take appropriate steps towards removing such barriers. Good practices to this end include awareness-raising efforts among employers on the need to implement regulations relating to the creation of a barrier-free, disability-friendly environment, and the development of guidelines on accessibility and universal design for employers.

D. Reasonable accommodation in the workplace

29. The Convention defines reasonable accommodation as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms” (art. 2). With regard to work and employment, States parties are required to take appropriate steps, including through legislation, to ensure that reasonable accommodation is provided to persons with disabilities in the workplace (art. 27, para. 1 (i)). The aim of any accommodation measure in the workplace is to enable the person for whom it is implemented to participate fully and equally in working life.

30. The Convention establishes that denial of reasonable accommodation constitutes discrimination on the basis of disability. Therefore, States must ascertain that the duty to ensure reasonable accommodation is introduced in their legislation and anti-discrimination legislation should define denial of reasonable accommodation as a form of discrimination.¹³

31. Under the Convention, employers, service providers and others have a legal obligation to provide reasonable accommodation to persons with disabilities. Legislation must stipulate that both public- and private-sector employees are responsible for providing reasonable accommodation to individual employees with disabilities. Governments should develop policies which promote and regulate flexible and alternative work arrangements that reasonably accommodate the individual needs of employees with disabilities. Such policies should include, inter alia, adjustment and modification of machinery and equipment, modification of job content, working time and work organization, and adaptation of the work environment to provide access to the workplace, in order to facilitate the employment of individuals with disabilities.¹⁴

32. Submissions to the study revealed that the introduction of reasonable accommodation in disability-related legislation has been slow in many countries.¹⁵ Apart from certain common-law jurisdictions, only a few States that contributed to the study have introduced the concept in their national legislation as required by the Convention. In fact, the concept of reasonable accommodation (an individual requirement) is often confused with accessibility measures (a general requirement) or positive measure schemes.

¹³ The Committee has consistently urged States parties to establish, including in legislation, that denial of reasonable accommodation constitutes discrimination.

¹⁴ ILO, *Managing disability in the workplace: ILO code of practice*, (Geneva, 2002), p. 3, sect. 1.4.

¹⁵ The concept of reasonable accommodation was introduced in the United States of America 1968 Civil Rights Act and subsequently applied in the Americans with Disabilities Act of 1990; comparable legislation in the United Kingdom of Great Britain and Northern Ireland and in Australia uses the term “reasonable adjustment;” and European Union Council Directive 2000/78/EC states that reasonable accommodation for disabled persons shall be provided in the area of employment (art. 5).

33. The reluctance of employers to recruit persons with disabilities can often originate in a fear of having to make expensive workplace adjustments. There is a general misconception that all persons with disabilities will need reasonable accommodation or that accommodations will be too costly or difficult to provide. However, many persons with disabilities do not need reasonable accommodation and many accommodations can be provided at little or no cost.¹⁶ Finally, even where required, only accommodation which is reasonable, necessary, appropriate and which does not impose disproportionate or undue burden is mandated. With a view to correcting misconceptions, States have the responsibility to inform employers of their duties to provide reasonable accommodation, to raise awareness on the concept among employers, trade unions and persons with disabilities, and to provide technical assistance on how to transform the provision into practice.

34. The determination of what constitutes “appropriate measures” is essential for the effective implementation of the duty to provide reasonable accommodation. It can be argued that measures are appropriate if they facilitate access to and participation in working life, job advancement and training on an equal footing with others for a person with disabilities requesting them. The identification of appropriate measures must be made on the basis of an individual assessment of the specific job, the needs of the person with a disability and a realistic assessment of what the employer is capable of providing.¹⁷ This process should be interactive and participatory to be effective, and all information related to the reasonable accommodation request should be handled with confidentiality.

E. Positive measures to promote employment of persons with disabilities

35. Besides having a duty to impose obligations on private-sector employers, States have an obligation to take positive measures to increase employment of persons with disabilities in the private sector. The Convention establishes that States parties shall undertake measures to employ persons with disabilities in the public sector, and to promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures (art. 27, para. 1(h), also (e), (i) and (k)).

36. Submissions to this study show that the most common employment promotion scheme tends to be the use of quotas. Most countries have legislation on the percentage of positions in the public-sector for persons with disabilities, and some also have quotas for the private sector. Mauritius, for instance, has introduced legislation requiring public- and private-sector employers with more than a certain number of staff, to employ a defined percentage of persons with disabilities, and provides for sanctions for non-compliance.

37. Existing quota systems can be divided into two main categories: strict quotas and flexible quotas.¹⁸ Strict quotas refer to schemes in which a person with a disability is treated preferentially irrespective of whether he or she is as qualified as other applicants. With

¹⁶ Research by the United States Department of Labor, Office of Disability Employment Policy found that 56 per cent of employers who gave information related to the cost of accommodations said that the accommodations needed by their employees were completely free of cost. See Job Accommodation Network, “Workplace Accommodations: Low Cost, High Impact,” Accommodation and Compliance Series, Updated 09/01/11.

¹⁷ MariaVentegodt Liisberg, *Disability and Employment: A contemporary disability human rights approach applied to Danish, Swedish and EU law and policy* (Intersentia, 2011).

¹⁸ Olivier de Schutter, “Positive Action,” in D. Schiek, L. Waddington and M. Bell, *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law* (Oxford, Hart Publishing, 2007), chap. 7.

flexible quotas, an applicant with a disability is treated preferentially only if he or she has equal merits and qualifications as another applicant. While strict quotas seem to be more common, some submissions gave examples of flexible quotas.¹⁹

38. A wide range of other employment promotion measures available were mentioned in the submissions to the study, such as subsidies, tax breaks, preference in public procurement, among others. Positive measures can entail ensuring that persons with disabilities are adequately represented; redefining the standard criterion for employment or promotion; and outreach measures targeting individuals or specific groups of persons with disabilities. Despite such efforts, and regardless of the system(s) in place, the jobs reserved for persons with disabilities often have a low skills requirement, and leave little room for self-realization and career development.

39. States are facing challenges in establishing effective positive measures that adequately advance equal possibilities for persons with disabilities to participate in working life. One concern is that they may send a (negative) message that persons with disabilities are hired solely on the basis of their disability, which can lead to reinforcement of stigma and negation of their role as professionals. For this reason, it is important that States design positive measures in such a way that the potential negative element is minimized. The focus of these programmes should be on increasing recognition of the value of diversity in the workplace and equal career development for all. Programmes focusing on promoting employment of persons with disabilities should extend to all persons with disabilities, with a special focus on women and youth with disabilities, persons with intellectual or psychosocial disabilities and other potentially vulnerable groups.

IV. Analysis of key provisions under article 27 of the Convention

A. Just and favourable conditions of work

40. The Convention requires States parties to protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, as well as safe and healthy working conditions, including protection from harassment and the redress from grievances (art. 27, para. 1 (b)). The right to enjoyment of just and favourable conditions of work applies to all workers with disabilities without distinction, whether they work in the open labour market or in alternative forms of employment.²⁰

41. The right to equal remuneration for work of equal value is a human right that for many persons with disabilities is not realized. If persons with disabilities are employed, they commonly earn less than their counterparts without disabilities. Moreover, women with disabilities often earn less than men with disabilities.²¹

42. Employers in both the public and private sector must ensure a good, healthy and safe working environment for persons with disabilities, in which they are protected from discrimination and harassment; receive equal pay and enjoy fair benefits; have their accommodation needs met (including for work activities outside of the workplace); enjoy adequate social protection; have, when needed, the flexibility to take care of disability-

¹⁹ For instance, Andorra, Paraguay and Rwanda mentioned systems of flexible quotas.

²⁰ See the Committee on Economic, Social and Cultural Rights general comment No. 5 (1994) on persons with disabilities, para. 25.

²¹ World Health Organization and the World Bank, *World Report on Disability*, 2011, p. 239.

related issues; and can access accountability mechanisms through which to challenge alleged discrimination.

43. States have an important role to play in specifying the components of just and favourable conditions of work in their legislation, including equal remuneration for work of equal value and the right to a safe and healthy working environment, and in ensuring that legislation covers equality for persons with disabilities in all these areas.

B. Access to technical and vocational training and rehabilitation

44. The Convention requires States parties to enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training. Education, training and continuous learning are central pillars of the right to work. This is also often the first stage at which persons with disabilities fall behind in opportunities related to access to, and advancement in, employment.

45. The Convention also imposes on States the duty to promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities. ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) defines the purpose of vocational rehabilitation as being to enable a person with a disability to secure, retain and advance in suitable employment and thereby to further such person's integration or reintegration into society (art. 1, para. 2). In many countries, employees who acquire disabilities do not have access to vocational rehabilitation and return-to-work programmes, which translates into challenges in terms of returning to working life. States should put in place, and enforce, job retention laws or provisions in employment laws which ensure that workers who acquire a disability have the right to continue the same job with their employer, return to work after a period of absence, or be assigned to another job within the company.

46. The creation of a vocational training and rehabilitation environment that is conducive for and inclusive of persons with disabilities obligates States parties to take the necessary steps, including through legislation, to:

(a) Recognize, through legislation, that persons with disabilities have a right to access technical and vocational guidance, services and programmes on an equal basis with others;

(b) Ensure that mainstream vocational training programmes do not discriminate against persons with disabilities, that they are fully accessible to persons with disabilities, and that reasonable accommodation in technical and vocational training is provided;

(c) Consider mainstreaming disability-related issues into technical and vocational training programmes, with a view to creating an inclusive environment that promotes diversity;

(d) Ensure that rehabilitation programmes adequately take into account the needs of persons with disabilities.

47. Many countries have developed technical and vocational training strategies for persons with disabilities. Often, however, such training tends to take place in separate settings and frequently addresses skills and activities that are not demanded by the labour market and guided by low expectations in terms of what persons with disabilities can do. Consequently, persons with disabilities may be trained for many years without any expectation of inclusion in the open labour market.

48. The principal objective of providing technical and vocational training to persons with disabilities is to enhance their employability to ensure that they are competitive in the open labour market on an equal basis with others. Hence, States should ensure that persons with disabilities are provided with vocational training in inclusive settings and that the most marginalized groups, such as persons with intellectual or psychosocial disabilities, are included.

C. Promotion of self-employment, entrepreneurship, the development of cooperatives and starting one's own business

49. Due to a labour market that is often unfriendly to persons with disabilities, self-employment has often been seen as one of the few options available – indeed, it is for many persons with disabilities the only real option to work. Some 80 per cent of persons with disabilities live in developing countries where the informal economy is widespread, and where a large part of income opportunities are created through informal own-account enterprises or similar. To this end, the Convention calls on States parties to promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business (art. 27, para. 1 (f)).

50. Business start-up programmes focusing on persons with disabilities or general programmes that give priority to persons with disabilities seem to be among the most common avenues for promoting self-employment. While some countries provide financial support specifically targeted to persons with disabilities wishing to engage in self-employment, others have adopted legislation to give preference to projects by persons with disabilities, such as in cases where two projects competing for funding otherwise receive the same scoring. Many countries also have measures in place establishing incentives to encourage persons with disabilities to form associations or social enterprises and to initiate income-generating activities.

51. Despite the availability of a wide variety of promotional programmes for self-employment, in practice, persons with disabilities often find themselves in situations where they are denied support to start a business due to barriers in accessing loans, credit guarantees or similar financial assistance. The provision of funding for self-employment schemes should be fully inclusive of persons with disabilities and should not discriminate against them in any way.

D. Protection from exploitation and forced labour

52. The Convention requires States parties to ensure that persons with disabilities are not held in slavery or servitude, and that they are protected, on an equal basis with others, from forced or compulsory labour (art. 27, para. 2). Indeed, persons with disabilities, in particular persons with intellectual or psychosocial disabilities, can be especially vulnerable to situations of forced labour and exploitation due to prejudice related to their mental capacity.²²

²² See the Committee on Economic, Social and Cultural Rights general comment No. 5 (1994) on persons with disabilities, para. 21, which holds that certain forms of 'therapeutical treatment' in institutions can amount to forced labour.

53. Most countries have legislated against contemporary forms of slavery. In a few instances, such legislation explicitly mentions persons with disabilities.²³ Besides the adoption of legislative measures, the duty to protect persons with disabilities from exploitation and forced labour establishes obligations on States parties to prevent, investigate allegations of and, when appropriate, prosecute those responsible for exploitation and forced labour of persons with disabilities. In addition, States should inform the general public, including the private sector, about the prohibition of exploitation and forced labour and instruct the general public about action they can take if they are aware of or witness any such crimes.

V. Interrelation between article 27 and other provisions of the Convention

54. The full realization of the provisions of article 27 of the Convention on work and employment depends on, and is closely linked to, the implementation of, inter alia, the following articles of the Convention:

(a) Article 8, which requires States parties to adopt measures to raise awareness throughout society of the rights of persons with disabilities, and to combat stereotypes, prejudices and harmful practices relating to persons with disabilities in all areas of life;

(b) Article 9, which obligates States parties to take appropriate measures to ensure to persons with disabilities equal access to the physical environment, to transportation, to information and communications, including information and communication technologies and systems, and to other facilities and services open or provided to the public, and to identify and eliminate obstacles and barriers to accessibility;

(c) Article 12, which provides for reaffirmation on the part of States parties that persons with disabilities have the right to recognition everywhere as persons before the law, and recognition that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;

(d) Article 17, which stipulates that every person with a disability has a right to respect for his or her physical and mental integrity on an equal basis with others;

(e) Article 20, which requires States parties to take measures to ensure personal mobility with the greatest possible independence for persons with disabilities;

(f) Article 24, which obligates States parties to recognize the right of persons with disabilities to education, without discrimination and on the basis of equal opportunity in inclusive educational settings at all levels;

(g) Article 26, which requires States parties to organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, including in the area of employment.

²³ For instance, the 2008 Constitution of Ecuador recognizes the State's obligation to adopt the necessary measures to prevent, suppress and punish all forms of slavery, especially against persons with disabilities and any other person in a disadvantaged or vulnerable situation.

VI. Elements supporting the realization of work and employment of persons with disabilities

A. Representation and participation of persons with disabilities and their representative organizations

55. Participation and inclusion of persons with disabilities is both a general principle of the Convention on the Rights of Persons with Disabilities and a core obligation of States parties. The Convention calls for full and effective participation and requires States parties to closely consult with and actively involve persons with disabilities and their representative organizations in the development and implementation of legislation and policies to implement the Convention, and in other decision-making processes concerning issues related to them (art. 4, para. 3). This applies also to work and employment. ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) also calls for consultation with persons with disabilities and their representative organizations in the development of national policies on vocational rehabilitation and employment. (art. 5).

56. Furthermore, trade unions have a duty not to discriminate against persons with disabilities and to ensure equal access for members with disabilities. The collective right to join a trade union²⁴ applies to all workers with disabilities, and is specifically provided for under the Convention (art. 27, para. 1(c)).

57. As persons with disabilities are generally underrepresented in working life, representation in trade unions is not sufficient to ensure that their rights in individual workplaces are protected and promoted. The interests of workers with disabilities should also be represented in collective bargaining and other employment-related negotiations at the national level, through trade unions in collaboration with representative organizations of persons with disabilities.²⁵ To this end, capacity-development is needed to enable representatives of persons with disabilities to effectively take part in negotiations on their behalf.

58. While consultation often takes place on an ad-hoc basis in relation to the development of new laws and policies, certain good practices in institutionalized participation can be highlighted in the submissions to this study. In Sri Lanka, for instance, the Steering Committee of the Ministry of Labour and Labour Relations comprises stakeholders from the Government, private sector, international organizations and representative organizations of persons with disabilities with the aim of jointly defining strategies to improve the employment situation of persons with disabilities.

B. Access to social protection programmes

59. The Convention recognizes the right of persons with disabilities to enjoy social protection without discrimination on the basis of disability. States parties are required to take appropriate steps to safeguard and promote the realization of this right, including through measures to ensure access by persons with disabilities, in particular women, girls and older persons with disabilities, to social protection programmes and poverty reduction programmes (art. 28, para. 2 (b)).

²⁴ International Covenant on Economic, Social and Cultural Rights, art. 8, para. 1 (a).

²⁵ ILO, *Managing disability in the workplace: ILO code of practice* (Geneva, 2002).

60. Social security and income-maintenance schemes are particularly important for many persons with disabilities, given their overall low labour force participation rate. As reflected in the submissions to this study, there is a large variety of social protection systems, including disability pensions, so-called sickness benefits, work injury compensation and rehabilitation support. Many countries have in place both long-term income-replacement benefits for persons with permanent disabilities, and short-term benefits for persons who have reduced work capacity for a limited period of time.

61. The risk of losing social benefits when taking up formal work seems to be a major disincentive for persons with disabilities to enter the labour market, which aggravates an already difficult work situation of persons with disabilities. Indeed, social security provisions can in themselves become a “benefit trap” leading to low labour force participation. The conditions attached to and the size of income-replacement benefits is seen as influencing the motivation for and, therefore, actual labour market participation. Disability classification systems in many countries continue to categorize people in terms of impairment levels, and lay down conditions of eligibility that often require persons with disabilities to choose between receiving a disability-related allowance and taking a job.

62. Measures to facilitate the transition from receiving benefits to performing work have been introduced in some countries and should be further encouraged. For instance, obligating employers to provide occupational health services, reintegration and employment support and work incentives have encouraged persons with disabilities to work. Other examples are so called bridging arrangements, transitional arrangements which allows persons with disabilities who take up work to retain benefits until a certain wage threshold is reached, to return to receiving benefits without delay should they lose their jobs, and to retain their right to benefits in kind – such as health care – for a specified period. It is important that persons with disabilities and their representative organizations be consulted with and involved in the introduction or development of such measures.

C. Data collection, accountability and monitoring mechanisms

63. The scarcity of statistics on employment of persons with disabilities makes it difficult to address the situation of their low representation in working life. In many countries, the large majority of persons with disabilities are not registered as being employed or unemployed, which effectively makes them invisible in labour market efforts. In other countries, compiling data on the population with disabilities is challenging because disability is categorized as sensitive personal data, the collection of which is prohibited by personal data laws or similar.

64. States should design indicators to monitor effectively their progress in implementing the right to work, based on ILO indicators such as the rate of unemployment, underemployment and the ratio of formal to informal work.²⁶ Also, States parties should undertake systematic collection of disaggregated data as a basis for a proper assessment of compliance with their obligations under article 27 of the Convention.²⁷ Data should be collected in accordance with article 31 of the Convention and disaggregated by type of disability and type of work with a view to designing effective and targeted programmes to promote employment of persons with disabilities.

²⁶ Committee on Economic, Social and Cultural Rights general comment No.18 (2005) on the right to work, para. 46.

²⁷ See CRPD/C/ARG/CO/1, CRPD/C/HUN/CO/1, CRPD/C/CHN/CO/1, CRPD/C/ESP/CO/1.

65. The establishment of an independent monitoring mechanism to promote, protect and monitor implementation of the Convention is a key obligation of States parties (art. 33). Such a mechanism should play an important role in promoting work and employment of persons with disabilities, and monitoring progress. Furthermore, persons with disabilities who, individually or as a group, are victims of a violation of the right to work should have access to effective judicial or other appropriate remedies at the national level.²⁸

D. International cooperation

66. The submissions to this study provided a variety of examples of international cooperation programmes aimed at supporting national efforts to promote employment opportunities for persons with disabilities. Most of the programmes advocate a disability-specific approach, such as focusing on promoting vocational training for certain groups of persons with disabilities. International cooperation in the area of work and employment of persons with disabilities should consistently seek to apply a “twin track” approach, which on the one hand, allows for disability-specific programmes or initiatives aimed at overcoming particular disadvantages or obstacles, and on the other hand, seeks to ensure that persons with disabilities are included in general skills development as well as in enterprise- and employment-related services and programmes on vocational training and employment.

VII. Conclusions and recommendations

67. **While the reasons for low labour force participation by persons with disabilities are multifaceted, it is evident that one of the core challenges lies in negative attitudes, stigma and stereotypes of persons with disabilities being in some way “unsuitable” to participation in working life, on an equal basis with others. This translates into continued marginalization and discrimination of persons with disabilities in the area of work and employment, and for many persons with disabilities around the world, denial of their right to work, as provided for in article 27 of the Convention on the Rights of Persons with Disabilities.**

68. **Submissions to this study highlighted a wide range of efforts undertaken by States parties to promote employment of persons with disabilities. Nevertheless, such efforts often focus on creating jobs or training opportunities in separate settings and fail to respect the principle of inclusion provided for in the Convention. It is imperative that States parties move away from sheltered employment schemes and promote equal access for persons with disabilities in the open labour market. More importantly, States parties have an obligation to raise awareness among employers of their duty to employ persons with disabilities; employers in both the public and private sectors must proactively seek to create a working environment that welcomes persons with disabilities as employees. Besides ensuring that public-sector workplaces are accessible to persons with disabilities, States should impose accessibility requirements on private-sector employers, including through informing employers about their duty to identify and eliminate barriers that hinder persons with disabilities from accessing the workplace on an equal basis with others.**

69. **States parties must take immediate action to enact and/or enforce legislation prohibiting disability-based discrimination in the area of work and employment, and**

²⁸ Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, para. 48.

ensure that legislation creates the obligation to provide reasonable accommodation and stipulates that denial of reasonable accommodation constitutes discrimination. States parties should inform public- and private-sector employers, as well as persons with disabilities, of the concept and implications of reasonable accommodation.

70. The Convention requires States parties to adopt positive measures to increase employment of persons with disabilities in the public and private sectors, including through the promotion of self-employment schemes which are non-discriminatory and fully inclusive of persons with disabilities. Both State actors and employers carry the responsibility of ensuring that all positive measures or programmes are designed and promoted in a way that recognizes the value of diversity in the workplace and equal career development for all.

71. With the aim of enhancing the employment opportunities of persons with disabilities in the open labour market, States parties should ensure, including through legislation, equal access to vocational training and rehabilitation programmes that are non-discriminatory, accessible to and inclusive of all persons with disabilities, and guarantee that reasonable accommodation is provided. Employers must ensure that employees with disabilities have equal access to such programmes.

72. Social protection programmes should support persons with disabilities in seeking and maintaining work, and avoid creating so called “benefit traps” which discourage persons with disabilities from engaging in formal work.

73. States parties are requested to include indicators on type of disability and type of work when collecting data on employment so as to allow for well-informed and targeted efforts to be made to improve the employment situation of persons with disabilities. Further, States must involve representative organizations of persons with disabilities in the design, implementation, evaluation and monitoring of all policies and programmes related to the employment of persons with disabilities. An independent mechanism to monitor the implementation of the Convention, as provided for under article 33 of the Convention, can play a role in helping to create stronger links between social partners already engaged in employment policy and monitoring and representative organizations of persons with disabilities.

Annex

[English/French/Spanish only]

List of respondents

States

| | |
|------------------------|--------------------|
| Andorra | Mauritius |
| Armenia | Malta |
| Australia | Morocco |
| Austria | Mexico |
| Azerbaijan | New Zealand |
| Belgium | Norway |
| Bosnia and Herzegovina | Paraguay |
| Colombia | Qatar |
| Cuba | Republic of Congo |
| Egypt | Russian Federation |
| Estonia | Senegal |
| Finland | Serbia |
| France | Slovenia |
| Georgia | Spain |
| Germany | Sri Lanka |
| Ireland | Sweden |
| Lebanon | Tunisia |

Intergovernmental organizations

European Union Agency for Fundamental Rights
International Labour Organization

Civil society organizations

All-Russian Federation of the Deaf
Agence de Diffusion du Droit International Humanitaire en Afrique Centrale
Amis des Etrangers au Togo
Association rélwendé pour le développement, Burkina Faso
Comité Español de Representantes de Personas con Discapacidad, España
Confédération Nationale des Plateformes en Droits Humains, Madagascar
Disability Council International

DPI Germany (ISL e.V.)

German Association of Blind and Partially Sighted Academics

International Disability Alliance

NCBI, Ireland

National human rights institutions

Centre for Equal Opportunities and Opposition to Racism, Belgium

Commission Consultative des Droits de l'Homme, Luxembourg

Commission on Human Rights, Philippines

Commissioner for Fundamental Rights, Hungary

Equal Opportunities Commission, Hong Kong

Danish Institute for Human Rights

Human Rights Centre, Finland

Human Rights Commission, Maldives

Human Rights Commission, New Zealand

Institute of the Commissioner for Human Rights, Azerbaijan

National Commission for Human Rights, Honduras

National Commission for Human Rights, India

National Commission for Human Rights, Rwanda

National Human Rights Commission, Thailand

Ombudswoman, Croatia

Ombudsman, Portugal

Procuraduría para la Defensa de los Derechos Humanos, Nicaragua

South African Human Rights Commission

Individuals

Mr. Tom Butcher, Essl Foundation

Mr. Ryosuke Matsui, Hosei University, Tokyo

Mr. Trevor Smith, New Zealand
