

**CERMI Women’s Foundation**

**Submission concerning the Committee on the Rights of Persons with Disabilities’ draft General Comment on article 27 on the right of persons with disabilities to work and employment**

**3rd December 2021**

**I Who we are.**

CERMI Women’s Foundation is a Spanish non-profit organization created in 2014 by the Spanish Committee of Representatives of Persons with Disabilities (CERMI) to advocate for the full exercise of all human rights and fundamental liberties by women and girls with disabilities, a population of approximately two and a half million citizens in Spain. To this end, CERMI Women’s Foundation takes as its main references the United Nations *Convention on the Rights of Persons with Disabilities* and *Convention on the Elimination of all forms of Discrimination Against Women* from an intersectional approach based on disability and gender. Its aim being to combat multiple discrimination and to foster the full development, advancement and empowerment of women and girls with disabilities, CERMI Women’s Foundation places special emphasis on the principles of respect for their inherent dignity, individual autonomy, including the freedom to make their own personal choices, non-discrimination, equal opportunities, inclusion in the community, independent living and positive action.

It is important to note that the Foundation also boasts a Council for Participation of Women with Disabilities, a consultative body to give direct voice to all women and girls with disabilities in Spain through their representative organizations, both disabled people’s organizations and specific organizations of women with disabilities. The Council has, *inter alia*, the following functions: it is consulted in advance and counsels the Foundation on all matters where necessary; promoting the exchange of experiences and debates and discussions on the social reality of women and girls with disabilities, as well as of mothers and female caregivers of persons with disabilities; suggesting and proposing the drafting of studies and research; and formulating proposals and recommendations as they are deemed necessary.

This document on the right to work and employment of women with disabilities has been drafted in response to the call for submissions by the United Nations Committee on the Rights of Persons with Disabilities regarding its draft general comment on CRPD Article 27. This contribution outlines the content CERMI Women’s Foundations wishes to see reflected in the Committee’s published general comment on work and employment.

**II Suggested amendments to the draft general comment.**

**1 Paragraph 2**

**Amend the current wording as follows (modifications highlighted in red):**

2. […] The Committee has drawn upon its own jurisprudence, ~~and~~ that of the Committee on Economic, Social and Cultural Rights (CESCR), that of the Committee for the Elimination of Discrimination against Women (CEDAW), and other human rights treaty bodies to develop this general comment.

**Rationale**

Given that 60% of all persons with disabilities are women, it is vital to apply a gender approach throughout the general comment.

**2** **Additional paragraph following paragraph 3**

**Add the following new paragraph:**

In its General Comment No 3 on women and girls with disabilities, the Committee has highlighted that besides the general barriers that persons with disabilities face when exercising their right to work, women with disabilities face other additional barriers that compound the discrimination against them in the workplace such as, among others, negative stereotypes, sexual harassment, unequal pay and a lack of access to compensation.[[1]](#footnote-1)

**Rationale**

This new paragraph highlights the gender approach and its basis within CRPD Committee jurisprudence.

**3 Paragraph 4**

**Amend the current wording as follows:**

4 […] Data and evidence indicate that these differences are particularly impact persons with disabilities on the grounds of age, gender, sex, ethnicity, place of residence and other grounds. More precisely, the 2019 Disability and Development Report also points out that in all regions of the world, women with disabilities are less likely to be employed than men with disabilities and than persons without disabilities.[[2]](#footnote-2)

**4 Paragraph 6**

**Add the following to the current wording:**

6 […] The present general comment provides a comprehensive overview of Article 27 obligations, considering on one side the interdependency of the measures listed in article 27 to achieve the right to work, and on the other side the interrelationship of the right to work and employment with other provisions in the Convention such as gender equality for women (art. 6), accessibility (art. 9), equal recognition before the law (art. 12), access to justice (art. 13), freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15), freedom from exploitation, violence and abuse (art. 16), habilitation and rehabilitation (art. 26)~~, and~~ an adequate standard of living and social protection (art. 28)~~.,~~ and participation in political and public life (art. 29).

**Rationale**

These amendments aim to strengthen the gender approach and the manner in which exploitation, violence and abuse in the workplace and trade union participation are addressed.

**5 Paragraph 8**

**Add the following to the current wording:**

8. To realize the rights in the Convention, States parties need to apply the human rights model and to reach out to persons with disabilities, which through their representative organizations, play a central role in the development of legislative and policy reforms to address the discrimination and marginalization faced by persons with disabilities in relation to the right to work and employment. This human rights-based approach must be intersectional with other identity conditions persons with disabilities have such as, among others, sex, age, living in a rural setting, being a migrant or being of indigenous origin.[[3]](#footnote-3)

**Rationale**

To incorporate the intersectional view employed by the Committee on Economic, Social and Cultural Rights in relation to equal work conditions.

**6 Paragraph 10**

**Amend the current wording as follows:**

10. The right to work is a fundamental human right and an essential component of human dignity. The Universal Declaration of Human Rights recognizes the right to work in article 23. At the international level, the right to work is contained in article 8, paragraph 3(a), of the International Covenant on Civil and Political Civil Rights (ICCPR); in article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); in article 5, paragraphs (e) (i) and (ii), of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); ~~in article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);~~ in article 32 of the Convention on the Rights of the Child (CRC); and in 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 (CMW).

**Rationale**

The target population of the Convention on the Elimination of All Forms of Discrimination against Women is much wider than the other conventions and impacts more persons with disabilities. For this reason, it should be referenced earlier in the paragraph.

**7 Paragraph 12**

**Add the following to the current wording:**

12. The International Labour Organisation (ILO) has identified eight “fundamental” Conventions related to rights at work. The subjects covered are fundamental to article 27 and are 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. The ILO conventions are: the Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182). Also relevant are the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Violence and Harassment Convention, 2019 (No. 190) and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). Furthermore, the Workers with Family Responsibilities Convention, 1981 (No. 156) and the Domestic Workers Convention, 2011 (No. 189) should also be considered.

**Rationale**

Underline the gender approach in relation to the ILO.

**8 New paragraph after paragraph 12**

**Add the following new paragraph:**

Bearing in mind that the prevalence of disability is higher in women than men (19.2% in the female population compared to 12% among men)[[4]](#footnote-4), it is necessary to adopt a twin-track approach with respect to the right to work and employment of women with disabilities based on CRPD article 27 and CEDAW article 11.

**Rationale**

An intersectional methodology must be applied to address effectively the multiple forms of discrimination women with disabilities suffer in accessing work and employment, considering not only the obstacles they face as persons with disabilities, but also as women.

**9** **New paragraph after paragraph 14**

**Add the following new paragraph:**

In its jurisprudence, the CEDAW Committee has addressed the particular difficulties women with disabilities have to join and remain in the labour market and the fact that in some special employment centres not all workers enjoy the same labour rights.[[5]](#footnote-5)

**Rationale**

To strengthen the gender approach in the general comment by referencing CEDAW Committee jurisprudence.

**10 Paragraph 19**

**Amend the current wording as follows:**

19. […] International human rights practice identifies ~~four~~ five main forms of discrimination, which can occur individually or simultaneously: direct, indirect, denial of reasonable accommodation, ~~and~~ harassment and discrimination by association.[[6]](#footnote-6)

**Rationale**

There is a need to include discrimination by association, recognised in the CRPD Committee’s General comment No. 3 (2016) on women and girls with disabilities.

**11 New paragraph after paragraph 23**

**Add the following new paragraph:**

According to the report of the Office of the United Nations High Commissioner for Human Rights, “[w]hen compared with men with disabilities, women with disabilities are more likely to experience poverty and isolation, and tend to have lower salaries and be less represented in the work force. As a result, they are also more likely to be victims of violence and/or less able to escape the cycle of violence.” Moreover, “[t]here is evidence that some forms of disability are directly linked to different patterns of trafficking (such as forced begging and labour exploitative practices).”[[7]](#footnote-7)

**Rationale**

Here we offer evidence on the impact of harassment and violence against women with disabilities in the workplace.

**12 New paragraph after the previous new paragraph**

**Add the following new paragraph:**

**Discrimination by association** means discrimination against persons on the basis of their association with a person with a disability. Often, women in a caregiver role experience discrimination by association. For example, the mother of a child with a disability may be discriminated against by a potential employer who fears that she may be a less engaged or available worker because of her child.

**Rationale**

Add the definition of discrimination by association as set out in the CRPD Committee General Comment No. 3 (2016) on women and girls with disabilities.

**13 Paragraph 28**

**Add the following to the current wording:**

28. The Committee draws on the jurisprudence of the CESCR Committee in its General Comment No. 23 of just and favourable conditions of work to describe the normative content of article 27(1)(b).[[8]](#footnote-8) Moreover, the Committee draws on the interpretation of CEDAW article 11, and in particular concerning equal opportunities and the same criteria for selection and assessment in employment, the right to free choice of employment, promotion and job security and all benefits and conditions of service, the right to equal remuneration for work of equal value, to social security, and to protection of health and to safety, including the safeguarding of the function of reproduction.[[9]](#footnote-9) […]

**Rationale**

Consideration of CEDAW article 11 as additional justification for the CRPD Committee and this general comment.

**14 New paragraph after paragraph 31**

**Add the following new paragraph:**

Women with disabilities face far-reaching discrimination in the world of work, including in hiring, retention, promotion, pay and access to training, credit and other productive resources. Furthermore, they are disproportionately affected by the lack of recognition and social support for unpaid care and domestic work.[[10]](#footnote-10)

**Rationale**

To provide verified information on the specific barriers women with disabilities face regarding their right to work, including the unpaid work they perform.

**15 New paragraph after the previous new paragraph**

**Add the following new paragraph:**

In the light of CEDAW article 11, particular focus should be given to ensure special measures adopted by States parties to protect maternity, including maternity leave and other measures, are also guaranteed for women workers with disabilities.

**Rationale**

Highlight the gender approach and the right to maternity in line with CEDAW article 11.

**16 New paragraph after the previous new paragraph**

**Add the following new paragraph:**

Women with disabilities are at a disadvantaged position regarding their earnings and often live in poverty. We must consider that where statistics are available, there is evidence not only of a persistent wage gap between persons with and persons without disabilities, but also that this gap is aggravated as a result of gender. According to the 2020 Gender Equality Index of the European Institute for Gender Equality, average monthly earnings of women with disabilities are lower than both men with disabilities and women without disabilities.[[11]](#footnote-11)

**Rationale**

To provide official information on the wage gap faced by women with disabilities.

**17 Paragraph 33**

**Modify the current wording as follows:**

33. The Committee’s jurisprudence on harassment is set out in General Comment No. 3 ~~6,.~~ and General Comment No. 6. In its joint statement on “Ending sexual harassment against women and girls with disabilities”, UN Women, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of Persons with Disabilities recommend partnerships to prevent all instances of sexual violence, including sexual harassment against women and girls with disabilities in occupational employment centres, and further call on all instances of sexual harassment against women and girls with disabilities to be identified, investigated and, where appropriate, prosecuted. Harassment in connection to work and employment extends to the employment-cycle and requires effective remedies through the enactment and enforcement of specific and comprehensive anti-discrimination legislation. […]

**Rationale**

Paragraph 58 of CRPD Committee General Comment No 3 also addresses workplace harassment.

**18 Paragraph 34**

**Add the following to the current wording:**

34. […]

States Parties have obligations to respect and protect the work of human rights defenders, such as trade unions, who assist persons with disabilities and other marginalized groups in the realization of the right to work. Women with disabilities face numerous environmental, attitudinal and other barriers to political participation, and consequently remain largely excluded from decision-making and advocacy processes about issues that affect their lives.[[12]](#footnote-12)

**Rationale**

Strengthen the gender approach in trade union engagement for women with disabilities.

**19 Paragraph 35**

**Add the following to the current wording:**

35. The promotion of employment for persons with disabilities requires the effective involvement of representative associations for the protection and promotion of the rights of workers with disabilities and trade unions in the definition of priorities, decision making, planning, implementation and evaluation of strategies to promote employment for persons with disabilities. The voices of women and girls with disabilities have historically been silenced, which is why they are disproportionately underrepresented in public decision-making. Owing to power imbalances and multiple discrimination, they have had fewer opportunities to establish or join organizations that can represent their needs.[[13]](#footnote-13)

**Rationale**

To strengthen the Committee’s jurisprudence from a gender perspective.

**20 Paragraph 41**

**Add the following to the current wording:**

41. Persons with disabilities have the right to freely chosen work. This includes persons with disabilities who wish to be self-employed, be entrepreneurs, start their own business or work in a cooperative or in other forms of freely chosen work. For those women with disabilities who pursue self-employment, the lack of access to credit and other productive resources has remained a common challenge.[[14]](#footnote-14) 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.

**Rationale**

Underpin the gender perspective in the general comment.

**21** **New paragraph after paragraph 45**

**Add the following new paragraph:**

Many women and girls with disabilities engage in domestic activities that typically do not generate monetary incomes and are therefore at considerably higher risk of living in poverty. This relegation to the domestic sphere is often linked to stigma associated with disability.[[15]](#footnote-15) In line with the ILO Domestic Workers Convention, 2011 (No. 189), States parties must ensure that care duties, which are often the responsibility of women with and without disabilities, are embedded in a human rights framework recognising the rights, including employment rights, of carers and those receiving care.[[16]](#footnote-16)

**Rationale**

To include informal work in the economic sphere in relation to care performed by women with disabilities and women relatives of persons with disabilities.

**22 Paragraph 48**

**Add the following to the current wording:**

48. States parties should design ~~of~~ affirmative action measures ~~should be done~~ in close consultation with representative organizations of persons with disabilities~~.~~, including organisations of women with disabilities. Affirmative action 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.

**Rationale**

Highlight the need to consult with organisations of women with disabilities, given the fact that they are rarely engaged in decision-making processes and political participation.

**23** **Paragraph 53**

**Add the following to the current wording:**

53. [..] States parties need to ensure that persons with disabilities are supported to stay in work or transition to new roles after ~~the~~ acquiring a new impairment, ~~or~~ exacerbation of an existing impairment~~.~~ or when returning to work following parental leave.

**Rationale**

Highlight the obligations of States parties in line with CEDAW article 11.

**24 New paragraph after paragraph 56**

**Add the following new paragraph:**

Women and girls with disabilities are particularly vulnerable to being trafficked or victims of sexual exploitation and their life experiences are marked by serious rights deprivation. Moreover, they often experience social, political and economic exclusion, resulting in their being more likely to be impoverished, uneducated or undereducated, unregistered or undocumented and unemployed or underemployed, to carry the burden of household and childcare responsibilities, to face restricted access to State benefits, protection and services, to experience intimate partner and domestic violence, abuse and neglect in the family environment, to be in care institutions and to be subjected to child, forced and servile marriage or deprivations due to widowhood. Such situations can be aggravated by the additional burden of an impairment or severe illness that is a consequence of trafficking, including sexual exploitation.[[17]](#footnote-17)

**Rationale**

Include trafficking and sexual exploitation as aggravated forms of exploitation to which women with disabilities are particularly vulnerable.

**25 Paragraph 58**

**Add the following to the current wording:**

[…]

c. Coercion of persons with disabilities can also take place within the context of trafficking and sexual exploitation of persons, which is aggravated in the case of migration. In the context of labour as a form of trafficking in women and girls, demand for trafficking persists due to an insufficient regulatory environment. Where workers are organized, where labour standards for wages, working hours and conditions and health and safety are monitored and enforced and where economic and social rights, as well as changes to tax laws so that States can finance the public services that women need, are adequately implemented, the demand for the labour or services of trafficked persons is markedly lower.[[18]](#footnote-18)

**Rationale**

Add the sexual exploitation of persons with disabilities to the instances of coercion for labour purposes.

**26 New paragraph after paragraph 64**

**Add the following new paragraph:**

In line with CEDAW article 11, States parties must prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status. Moreover, they must ensure maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances for women with disabilities. States parties must also provide special protection to women with disabilities during pregnancy in types of work proved to be harmful to them.[[19]](#footnote-19)

**Rationale**

Add States parties’ obligations regarding pregnancy and maternal leave.

**27 New paragraph after paragraph 73**

**Add the following new paragraph:**

States parties must ensure that legislation guarantees effectively the right of women with disabilities and mothers and women carers of relatives with disabilities to decent, quality employment and to working conditions on an equal basis with others by fostering affirmative action measures which eradicate discrimination against them in their access to the labour market and capacity to remain and advance within the market as a result of negative stereotypes towards them on the grounds of gender, disability and other discriminatory human conditions.[[20]](#footnote-20)

**Rationale**

In line with SDG target 8.5 and with a view to highlighting the obligation to provide decent employment to disadvantaged groups.

**28** **Paragraph 80**

**Modify the current wording:**

80. Addressing the multiple discrimination that women with disabilities (article 6) face in work requires States parties to adopt affirmative action measures to accelerate de facto equality for women with disabilities in exercising their right to work and employment. Such measures must serve to combat the intersectional forms of discrimination they suffer and foster their full development, advancement and empowerment. States parties must also ensure that policies to improve the right to work and employment for persons with disabilities and the right to work and employment for women overall address the multiple and intersectional discrimination faced by women with disabilities.[[21]](#footnote-21)

**Rationale**

Address the multiple and intersectional discrimination faced by women with disabilities.

**III Contact details.**

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1. Paragraph 58, Committee on the Rights of Persons with Disabilities General comment No. 3 (2016) on women and girls with disabilities, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en>. [↑](#footnote-ref-1)
2. P. 152, United Nations Disability and Development Report, <https://social.un.org/publications/UN-Flagship-Report-Disability-Final.pdf>. [↑](#footnote-ref-2)
3. In paragraph 5 of its General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International

   Covenant on Economic, Social and Cultural Rights), the Committee on Economic, Social and Cultural Rights notes that the right to just and favourable conditions of work is a right of everyone, without distinction of any kind. The reference to “everyone” highlights the fact that the right applies to all workers in all settings, regardless of gender, as well as young and older workers, workers with disabilities, workers in the informal sector, migrant workers, workers from ethnic and other minorities, domestic workers, self-employed workers, agricultural workers, refugee workers and unpaid workers, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f23&Lang=en>. [↑](#footnote-ref-3)
4. Page 28, World Report on Disability, WHO, 2011. [↑](#footnote-ref-4)
5. See, for example, the Committee’s COBs on the combined fourth to seventh periodic reports of Latvia, CEDAW/C/LVA/CO/4-7, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLVA%2fCO%2f4-7&Lang=en>, and its COBs on the ninth periodic report of Austria, CEDAW/C/AUT/CO/9, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAUT%2fCO%2f9&Lang=en>. [↑](#footnote-ref-5)
6. Committee on the Rights of Persons with Disabilities General Comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3. [↑](#footnote-ref-6)
7. Thematic study on the issue of violence against women and girls and disability, Report of the Office of the United Nations High Commissioner for Human Rights, <https://undocs.org/en/A/HRC/20/5>. [↑](#footnote-ref-7)
8. CESCR General Comment No. 23 (2016) *The right to just and favourable conditions of work (art.7)* is a substantial general comment—80 paragraphs and 20 pages long. It addresses each of the components in Article 27(1) four-line sub-paragraph (b). [↑](#footnote-ref-8)
9. Article 11, CEDAW, <https://www.ohchr.org/SP/ProfessionalInterest/Pages/CEDAW.aspx>. [↑](#footnote-ref-9)
10. UN Women, Making the SDGs count for women and girls with disabilities, <https://www.unwomen.org/en/digital-library/publications/2017/6/issue-brief-making-the-sdgs-count-for-women-and-girls-with-disabilities>. [↑](#footnote-ref-10)
11. <https://eige.europa.eu/gender-equality-index/2021>. [↑](#footnote-ref-11)
12. UN Women, Making the SDGs count for women and girls with disabilities, <https://www.unwomen.org/en/digital-library/publications/2017/6/issue-brief-making-the-sdgs-count-for-women-and-girls-with-disabilities>. [↑](#footnote-ref-12)
13. Paragraph 60, Committee on the Rights of Persons with Disabilities General Comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en>. [↑](#footnote-ref-13)
14. Paragraph 17, Situation of women and girls with disabilities and the Status of the Convention on the Rights of Persons with Disabilities

    and the Optional Protocol thereto, Report of the Secretary-General submitted pursuant to General Assembly resolution 70/145, A/72/227, <https://undocs.org/A/72/227>. [↑](#footnote-ref-14)
15. Ibid, paragraph 16. [↑](#footnote-ref-15)
16. Domestic Workers Convention, 2011 (No. 189), International Labour Organization, <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189>. [↑](#footnote-ref-16)
17. Paragraph 20, CEDAW Committee General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en>. [↑](#footnote-ref-17)
18. Ibid., párrafo 31. [↑](#footnote-ref-18)
19. Article 11, CEDAW. [↑](#footnote-ref-19)
20. In line with SDG target 8.5. [↑](#footnote-ref-20)
21. In line with CRPD Committee General Comment No. 3 on women and girls with disabilities and CEDAW Committee General Recommendation No. 18 on disabled women. [↑](#footnote-ref-21)