# **Input to the Draft General Comment on Article 27 by the Finnish Disability Forum**

The Finnish Disability Forum represents Finnish disability organisations In European Disability Forum. Currently, we have 28 member organisations representing 200 000 individuals with disabilities. We would like to join in the comments and amendments proposed by the EDF. We would commend the views of the Finnish Human Rights Centre.

## **The European Disability Forum**

The European Disability Forum is an independent NGO that represents the interests of 100 million Europeans with disabilities. EDF is a unique platform which brings together representative organisations of persons with disabilities from across Europe. EDF is run by persons with disabilities and their families. We are a strong, united voice of persons with disabilities in Europe.

## **Points where we propose amendments**

We are proposing amendments to the following sections of the draft General Comment: 5, 6, 14, 18, 22, 24, 30, 31, 32, 37, 38, 42, 44, 46, 50, 62, 79, 97a and 97b

In addition, we would like to propose new sections that cover topics that are not yet explored elsewhere, as well as a suggestion of where in the text they could be integrated. You will see these listed as: 23 new, 50 new, 72 b new and 91 new

## **Our proposed amendments**

(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 shifts to digital work, can create new barriers or forms of discrimination as well as offer new forms and pathways into work if non-discrimination and accessibility are considered adequately. Economic transformations, such as a shift to a green economy or response to crises, create opportunity for inclusion as well as threat of leaving people behind[[1]](#footnote-1).

(6) Article 27 incorporates several interdependent and interrelated rights within the right to work, including the right of persons with disabilities to the enjoyment of just and favourable conditions of work (27(1)(b)), the right to safe working conditions and protection from harassment and the collective dimension of the right to work in 27(1)(c), which enunciates the right of persons with disabilities to exercise their trade union and labour rights.[[2]](#footnote-2) 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 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), independent living (art. 19), inclusive education (art. 24), habilitation and rehabilitation (art. 26) and an adequate standard of living and social protection (art. 28).

(14) Despite some progress, access to the open labour market and segregation continue to be greatest challenges for persons with disabilities. Denial of reasonable accommodation, inaccessible workplaces and harassment pose further obstacles to employment in an open labour market and work environment. In the absence of equal opportunities at open labour market, many persons with disabilities are driven to seek employment in a closed workplace on the basis of disability. The notion of freely chosen employment is also contained in ILO Convention No. 122 concerning Employment Policy (1964) and speaks of “full, productive and freely chosen employment”, linking the obligation of States parties to create the conditions for full employment with the obligation to ensure the absence of forced labour.

(18) Sheltered workshops for persons with disabilities are not to be considered as a measure of progressive realization of the right to work, which is only evidenced in employment in an open and inclusive labour market. It is important not to confuse sheltered workshops with cooperatives, the social enterprises that offer proper work contracts and fair remuneration while facilitating career progression into the open labour market, or jobs organized or run by persons with disabilities in which labour laws are generally respected. Furthermore, it is important to ensure that when supporting the transition from sheltered employment to opportunities in the open labour market, former employees of sheltered facilities are themselves assisted in making the transition to the open labour market and are not left unemployed as a result. This can include repurposing sheltered employment centres as training facilities to prepare persons with disabilities for the open labour market.

(22) ***Denial of reasonable accommodation***constitutes discrimination if the necessary and appropriate modification and adjustments—that do not impose a disproportionate or undue burden—are denied and are needed to ensure the equal enjoyment or exercise of a human right or fundamental freedom.[[3]](#footnote-3) A public sector employee with a vision impairment who is not provided with the appropriate equipment to perform their allocated tasks, such as a specially adapted keyboard or eye-tracking technology to allow a person with a motor disability to operate their computer, is an example of denial of reasonable accommodation. Examples of reasonable accommodation include making existing facilities and information accessible to the individual with disabilities, modifying equipment, reorganizing activities, rescheduling work or enabling access to support personnel.[[4]](#footnote-4) Reasonable accommodation needs to be negotiated with the individual. The duty to provide reasonable accommodation is applicable from the moment a request for accommodation is received.[[5]](#footnote-5) The provision of reasonable accommodation should also apply to recruitment processes, and should not be seen as a substitute for mandatory application of accessibility standards.

(23 new) ***Lack of accessibility is a form of discrimination.*** Private and public employers must ensure, in accordance with CRPD article 9, that accessibility is considered internally, regardless of not having a worker with disabilities. For example, when companies procure a new building or new information and communication technologies, they must make sure these live up to the state-of-the-art accessibility standards to ensure they do not indirectly discriminate against persons with disabilities.

(24) Persons with disabilities are often disproportionately affected by intersectional and multiple discrimination. The diversity among persons with disabilities means they face diverse barriers to realizing the right to work and follow different pathways into work throughout their working lives. *Multiple discrimination* refers to the situation in which a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated.[[6]](#footnote-6) *Intersectional discrimination* occurs when several grounds interact with each other at the same time in such a way as to be inseparable.[[7]](#footnote-7) Intersectional discrimination recognizes that individuals do not experience discrimination as members of a homogenous group but, rather, as individuals with multidimensional layers of identities, statuses and life circumstances. These additional grounds include age, race, ethnic minority, indigenous, national or social origin, refugee, migrant or asylum seeker status, political or other opinion, religion, sex, sexual orientation and gender identity.

(30) Just and favourable conditions of work for persons with disabilities includes the benefits and protections that other workers have such as superannuation, sick leave, long service leave, parental leave including leave to care for children who are sick, educational leave and the right to paid vocational training, promotion, rest, leisure, and periodic holidays with pay.**[[8]](#footnote-8)**

(31) Workers with disabilities have the right to receive equal remuneration when they perform the same or similar jobs as workers without disabilities. Further, their remuneration should also be equal even when their work is completely different but nonetheless of equal value. The value of work is assessed by objective criteria. States Parties should pay particular attention to the gender pay gap faced by women with disabilities who are often receiving lower pay than both men with disabilities and women without disabilities. They should also ensure that segregated workplaces in the process of transitioning are not exempt from paying the minimum wage and ensure they are not paying below the minimum wage.

(32) The right to a safe and healthy work environment for workers with disabilities includes the development of a coherent national policy on occupational health in the working environment for persons with disabilities. The aim of the policy is to prevent accidents and injury arising out of, linked with, or occurring in the course of work. This should cover mental health issues linked to stress and burnout at work. The policy should include the protection of all workers with disabilities such as persons with disabilities who: work on short-term, long-term or even 0 hour contracts or part-time, are working remotely, are an apprentice, are self-employed, are migrant workers or are workers in the informal sector. Representative organisations of workers with disabilities should participate in the formulation, implementation and periodic review of the national policy.

(37) Collective bargaining arrangements must not discriminate on the basis of disability. Where they specify working conditions, this must anticipate or be compatible with provision of reasonable accommodation covered by the agreement. Provisions specifically covering the requirements workers with disabilities should never be used as a bargaining chip when reaching an agreement, and no agreement should be considered complete if it excludes from its scope the requirements of persons with disabilities.

(38) Non-discriminatory access to mainstream technical and vocational guidance, training and placements services on an equal basis is required to realize the right to work and employment for persons with disabilities.[[9]](#footnote-9) The participation of persons with disabilities in mainstream services will promote the non-segregation of services and the ‘access of persons with disabilities to open employment and vocational training services.’[[10]](#footnote-10) These may be appropriate to enter work, through the course of employment, or to transition between roles. States should include measures that allow for and actively promote the certification of capacities and attainments on an equal basis with others, explicit inclusion of persons with disabilities in legislation dealing with vocational training, explicit reference to persons with disabilities in general policies regulating vocational training, accessible premises, information and materials, the provision of vocational staff training on the rights of persons with disabilities, and funding for reasonable accommodation measures, should also be included. Vocational and professional preparation, training, and other services should be provided in accessible and inclusive ways.

(42) The promotion of opportunities for freely chosen work requires accessible information on entrepreneurship, micro, small and medium-sized enterprises, and other forms of business models such as cooperatives.[[11]](#footnote-11) Non-discriminatory access to business services, markets, infrastructure and technology, and occupational health and safety also need to be considered along with access non-discriminatory access to financial services, sources of financing such as business grants and loans, mentorship, and networking, especially for women with disabilities. States Parties should consider the formulation and implementation of an integrated policy framework, coordinated across different levels of government including tax authorities and social security institutions.[[12]](#footnote-12)

(44) 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, targeted funding to promote the employment of persons with disabilities and vocational programmes.[[13]](#footnote-13) Further measures include quotas or targets, as well as encouraging the public sector to support quality social cooperative enterprises, through public procurement. All measures adopted should be accompanied by an annual reporting requirement to inform on how public authorities are complying with the measures taken. This reporting should include disaggregated data by types of disabilities in order to establish, if necessary, particular targets or quotas as for those persons with disabilities most excluded from employment in the public sector.

(46) 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 such as quotas to increase the employment of persons with disabilities in the private sector may be required. The introduction of quotas in the private sector should be accompanied by measures that force employers to respect these obligations. Where fines are imposed for non-respect of quotas there should be transparency around where this money goes and how it is used to further invest in the inclusion of persons with disabilities in the open labour market. There should also be corrective measures for companies that consistently pay fines as an alternative to respecting quotas. At the same time, quotas alone are insufficient to promote the employment of persons with disabilities and can 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 could include targeted funding to promote the employment of persons with disabilities such as modifications of the working environment, apprentice wage supports, payroll tax deductions, and wage subsidies.

(50) The duty to provide reasonable accommodation is a cooperative and interactive process applicable from the moment a request for accommodation is received and requires the employer to enter into dialogue with the employee.[[14]](#footnote-14) Its provision is limited by the concept of ‘disproportionate or undue burden’. This requires an objective analysis of the ‘proportional relationship between the means employed and its aim’—enjoyment of the right to work and employment.**[[15]](#footnote-15)** In addition, labour inspectors should verify on their own initiative or *Ex officio* if the employers provide reasonable accommodation to employees with disabilities.

(50 new) States Parties should support employers in implementing measures for reasonable accommodation. When needed, financial support should be offered by States Parties to enable employers to make necessary investments, and guidance should be on offer to help employers understand where to begin in meeting the requirements of all employees.

(62) The obligation to respectrequires 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 organizations from paying national minimum wages based 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 thus to take measures to combat intersectional discrimination and to promote equal opportunities to promotion and equal remuneration for work of equal value. Any assessments by the States parties of the *value* of work needs to avoid stereotypes of persons with disabilities, including their sex and gender that could undervalue work predominantly performed by women with disabilities.[[16]](#footnote-16) Additionally, States Parties should take immediate measures to remove barriers in laws, policies and programmes that associate disability as “inability to work”. In particular, measures to assess, or classify disability status should not be based on, or lead to, limitations of the right to work for persons with disabilities, nor should a person’s decision to take up work be seen as contradicting their disability assessment or put into question their right to disability allowance or services from that point onwards.

(72,b new) the denial of accessibility as indirect discrimination in the public and the private sector.

(72,d,i.) 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, or on the basis of the income of their spouse or household family members.

(79) Article 5 on equality and non-discrimination requires States parties to ensure that equality and non-discrimination are ensured in regard to all matters of work, employment, and the employment cycle. The denial of reasonable accommodation is a form of disability-based discrimination, and State parties have a responsibility to support the provision of reasonable accommodation at work and all stages of employment. States must also combat intersectional forms of discrimination, for example faced by ethnic minorities, including Roma and indigenous people, religious minorities, older persons with disabilities and gays, lesbians, intersex and trans persons with disabilities.

(91 new) Article 25 on health: States Parties must ensure that employment takes place in a safe and healthy working environment that does not aggravate disability. They must also ensure that working conditions do not cause disability during the course of a working career. States parties should encourage public and private enterprises to be sensitive to and prevent harassment and violence, particularly gender-based violence, including in the cyber sphere.

(97 a) Combat prejudice, stigma and social barriers persons face in attempting to enjoy the right to work by developing an understanding of the place of ableism in the world of work and the social meaning of work, in the context of intersectional attitudes, stigma and discrimination;

(97 b) Carry out studies on barriers for accessing the right to work by persons with disabilities, especially women with disabilities, and identify the specific challenges that groups of persons with disabilities face to realize that right, as well as study and highlight innovative practices and solutions that emerge from safeguarding and promoting the right to work of persons with disabilities;



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1. International Labour Organization, “Making the future of Work Inclusive of Persons with Disabilities” (2019) [↑](#footnote-ref-1)
2. Articles 27(1), 27(1)(b) and (c) form three interdependent articles of the ICESCR: articles 6, 7 and 8. The CESCR has developed separate general comments on articles 6 and 7. A general comment on article 8 has not been developed as yet. [↑](#footnote-ref-2)
3. CRPD General Comment No. 6 (2018), para 18(c) [↑](#footnote-ref-3)
4. CRPD General Comment No. 6 (2018), para 23. [↑](#footnote-ref-4)
5. CRPD General Comment No. 6 (2018), para 24(b). [↑](#footnote-ref-5)
6. CRPD general comment No. 3 (2016), para. 4(c) drawing on Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on temporary special measures, para. 12. [↑](#footnote-ref-6)
7. CRPD General Comment No. 3 (2016) para 4(c) drawing on drawing on Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 (2004) on temporary special measures, para 12 and General Recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para 18. [↑](#footnote-ref-7)
8. Citing ICESCR GC No. 23 on art 7 for more detail. [↑](#footnote-ref-8)
9. CESCR, art. 6 *The right to work* and ILO *Vocational Rehabilitation and Employment (Disabled Persons) Convention* 1983 (No. 159). [↑](#footnote-ref-9)
10. CRPD Committee, ‘Guidelines on Treaty-Specific Document to be Submitted by States Parties under Article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities’ CRPD/C/2/3 (18 November 2009) para 10. [↑](#footnote-ref-10)
11. ILO, *Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)*. [↑](#footnote-ref-11)
12. ILO, *Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)*. [↑](#footnote-ref-12)
13. CRPD Committee, *Concluding observations on the initial report of Canada* (2017) UN Doc CRPD/C/CAN/CO/1, para 48(c), *Concluding observations on the initial report of Jordan* (2017) UN Doc CRPD/C/JOR/CO/1, para 50(c), *Concluding Observations on Uruguay* (2016) UN Doc CRPD/1/URY/CO/1 paras 57–58, *Concluding Observations on Guatemala* (2016) UN Doc CRPD/C/GTM/CO/1, para 63. [↑](#footnote-ref-13)
14. CRPD General Comment No. 6 (2018) *Equality and non-discrimination (art. 5)*, para 24(b). [↑](#footnote-ref-14)
15. CRPD General Comment No. 6 (2018) *Equality and non-discrimination (art. 5)*, para 26(d). [↑](#footnote-ref-15)
16. CESCR General Comment No. 23 (2018), para 47(a). [↑](#footnote-ref-16)